

Appendix A. Systemic Internal Policy Assessment

NOTE: At CMS’s request, HHSC revised the Systemic Internal Assessment Crosswalk in 2020 and 2021 to provide additional detail, including rationale for compliance determinations and remediation activities.

Section 1. Community Living Assistance and Support Services (CLASS) Waiver Program

All state rule citations for the CLASS systemic assessment can be found at [40 TAC Chapter 45](#) & [26 TAC Chapter 749](#). Additional policy guidance is located in the [CLASS Provider Manual](#).

HHSC assessed policies for all CLASS program services and determined that the following services are fully compliant with requirements of the HCBS Settings Rule at 42 CFR §441.301(c)(4): adaptive aids; behavioral support; cognitive rehabilitation therapy (CRT); dental treatment; dietary services; financial management services (FMS); habilitation (transportation); minor home modifications; nursing; respite¹; specialized therapies; therapies (occupational therapy, speech therapy, physical therapy); and transition assistance services (TAS).

HHSC determined that policy revisions are needed for the settings in which support family services (SFS), continued family services (CFS), prevocational services, support employment (SE) and employment assistance (EA) are provided. SFS and CFS are delivered in provider-owned and controlled residential settings; prevocational services, SE and EA are individualized services delivered in non-residential settings determined based on the individual’s needs and preferences. Compliance determinations and planned remediation for these services are described in the table below.

Compliance levels are indicated as follows:

- “N/A” indicates that the corresponding requirement of the HCBS Settings Rule is not relevant to the specified waiver service.
- “Non-Compliant” indicates that state rules and policies contradict the HCBS Settings Rule.
- “Silent” indicates that state rules and policies do not address the corresponding requirement of the HCBS Settings Rule.
- “Partially compliant” indicates that existing state rules and policies address the corresponding requirement of the HCBS Settings Rule but do not fully comply with the federal rule requirement.
- “Compliant” indicates that existing state rules and policies address and meet the corresponding requirement of the HCBS Settings Rule.

HHSC plans to amend policies that are non-compliant, silent, or partially compliant. HHSC anticipates that the rules will become effective in January 2023. Provider manual revisions and updates to provider monitoring processes will be completed by March 2023.

Note that rule language provided in the table below is currently in draft form and is subject to change.

Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including 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 individuals not receiving Medicaid HCBS. 42 CFR §441.301(c)(4)(i)	PARTIALLY COMPLIANT Rationale: Policies require that the individual live in a residence within the community and have the opportunity to participate in the community, including the right to seek employment. However, policies do not specify that the setting support full access to the greater community, including controlling personal resources and receiving services in the community. TAC §45.531,Support Family Requirements <ul style="list-style-type: none">▶ (c) <i>"The support family must ensure that: the child participates in age-appropriate community activities..."</i>▶ (d) <i>"The support family must... be a typical residence in the neighborhood..."</i> TAC §45.533, Support Family Duties <ul style="list-style-type: none">▶ (a)(9) <i>"The support family must provide...assistance with participation in community activities..."</i> TAC §749.1003, Minimum Standards for Children's Rights <ul style="list-style-type: none">▶ (b)(3) <i>"Living a normal life..."</i>▶ (b)(3)(L) <i>"the right to seek employment..."</i> CLASS Provider Manual, Section 1000 <ul style="list-style-type: none">▶ "...every person has the opportunity to participate in their community..." Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(i). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings. Draft rule: <i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual's person-centered service plan: (1) is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual: (A) to seek employment and work in a competitive integrated setting; (B) engage in community life; and (C) control personal resources;"</i>	PARTIALLY COMPLIANT Rationale: Policies require that the individual has the opportunity to participate in and access the community. However, policies do not specify that the individual has full access to the greater community including opportunities to seek employment and control personal resources. CLASS Provider Manual, Section 1000 <ul style="list-style-type: none">▶ <i>"...every person has the opportunity to participate in their community..."</i> Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(i). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings. Draft rule: <i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. 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CLASS Provider Manual, Section 1000 <ul style="list-style-type: none">▶ <i>"...every person has the opportunity to participate in their community..."</i> Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(i). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings. Draft rule: <i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual's person-centered service plan: (1) is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual: (A) to seek employment and work in a competitive integrated setting; (B) engage in community life; and (C) control personal resources;"</i>	PARTIALLY COMPLIANT Rationale: Policies require that the individual has the opportunity to participate and have access to the community and the service supports individuals to obtain competitive integrated employment. However, policies do not specify that the individual has full access to the greater community, including opportunities to control personal resources. CLASS Provider Manual, Section 1000 <ul style="list-style-type: none">▶ <i>"...every person has the opportunity to participate in their community..."</i> Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(i). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings. Draft rule: <i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. 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¹ Respite may be provided in institutional settings including a NF or ICF/IID for no longer than 30 days in an individual’s service plan year. In responses to public comments on the [HCBS Settings Final Rule](#), CMS indicates that the delivery of some Medicaid HCBS, such as respite, is permitted in an institutional setting.

Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>The setting is selected by the individual from among setting options, including non-disability specific settings, and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p> <p>42 CFR §441.301(c)(4)(ii)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual and LAR meet with the support family agency to review the individual’s needs, to inform the selection of a support family. A support family’s home, which is a typical residence in the community. Before placement, the individual or LAR must agree to placement with the identified support family.</p> <p>TAC §45.522, Placement Activities</p> <ul style="list-style-type: none">▶ (b)(4) <i>"the support family agency must... obtain the child’s parents’ or LAR’s agreement to the placement”</i> <p>Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(ii). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p><i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</i></p> <p><i>(2) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a provider-owned or controlled residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for provider-owned or controlled residential settings, resources available for room and board.”</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The service is individualized, and service settings are based on the individual’s needs and preferences. However, policies do not specify the individual has the option to select from among settings options.</p> <p>TAC §45.103, Definitions</p> <ul style="list-style-type: none">▶ (90) <i>"...services that are not job-task oriented and are provided to an individual...to prepare the individual for employment...essential to obtaining and retaining employment, such as the effective use of community resources, transportation, and mobility training”</i> <p>Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(ii). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p><i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</i></p> <p><i>(2) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a provider-owned or controlled residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for provider-owned or controlled residential settings, resources available for room and board.”</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The service is individualized, and service settings are based on the individual’s needs and preferences. However, policies do not specify the individual has the option to select from among settings options.</p> <p>TAC §45.103, Definitions</p> <ul style="list-style-type: none">▶ (117) <i>"...assistance provided to sustain competitive employment to an individual...perform in a work setting at which individuals without disabilities are employed”</i> <p>TAC §45.808, related to EA and SE</p> <ul style="list-style-type: none">▶ (e)(1) <i>"making employment adaptations...support the individual to be self-employed, work from home, or perform in a work setting”</i> <p>Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(ii). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p><i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</i></p> <p><i>(2) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a provider-owned or controlled residential setting. 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However, policies do not specify the individual has the option to select from among settings options.</p> <p>TAC §45.103, Definitions</p> <ul style="list-style-type: none">▶ (43) <i>"...assistance provided to an individual to help the individual locate competitive employment in the community”</i> <p>TAC §45.808(c)(1) related to EA and SE</p> <ul style="list-style-type: none">▶ (c)(1) <i>"identifying an individual’s employment preferences, job skills, and requirements for a work setting and work conditions...locating prospective employers ...transporting the individual to help the individual locate competitive employment in the community</i> <p>Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(ii). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p><i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</i></p> <p><i>(2) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a provider-owned or controlled residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for provider-owned or controlled residential settings, resources available for room and board.”</i></p>
<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p> <p>42 CFR §441.301(c)(4)(iii)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Expects that the individual will live a life that provides the same rights to those that live in the community that do not receive HCBS services. However, policies do not specify that the individual has the right to privacy, dignity, respect, and freedom from coercion and restraint.</p> <p>TAC §749.1003, related to Minimum Standards for Children's Rights</p> <ul style="list-style-type: none">▶ (3)(E) <i>"Living a normal life, including: The right to privacy...”</i> <p>CLASS Provider Manual, Section 1000</p> <ul style="list-style-type: none">▶ <i>"...[to] live with dignity and respect.”</i> <p>Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(iii). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p><i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</i></p> <p><i>(3) The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.”</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Expects that the individual will live a life that provides the same rights to those that live in the community that do not receive HCBS services. 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A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</i></p> <p><i>(3) The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.”</i></p>
<p>The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p> <p>42 CFR §441.301(c)(4)(iv)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual has the right to make choices and to live a normal life in these settings. However, policies do not specify that these settings offer the individual to optimize their autonomy to make independent life choices and with who they interact with.</p> <p>TAC §749.1003, Minimum Standards for Children's Rights</p> <ul style="list-style-type: none">▶ (b) <i>"...right to good care and treatment that meets the child’s needs in the most family-like setting possible...living a normal life...”</i> <p>CLASS Provider Manual, Section 1000, Introduction</p> <ul style="list-style-type: none">▶ <i>"...participate in their community, gain, and maintain relationships of their choosing, express preferences, make choices...”</i> <p>Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(iv). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p><i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</i></p> <p><i>(3) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.”</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual has the rights to make their own life choices and to gain and maintain their relationships with others. However, policies do not specify that the setting optimizes individual autonomy to make life decisions.</p> <p>CLASS Provider Manual, Section 1000, Introduction</p> <ul style="list-style-type: none">▶ <i>"...participate in their community, gain, and maintain relationships of their choosing, express preferences, make choices...”</i> <p>Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(iv). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p><i>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. 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Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR §441.301 (c)(4)(v)	PARTIALLY COMPLIANT Rationale: Policies require that the setting allow the individual to make choices regarding services and supports. However, policies do not specify that the setting facilitates individual choices. TAC §45.214(c) related to Development of Enrollment IPC <ul style="list-style-type: none">▸ "...the individual...agree on the type and amount of services to be included..." CLASS Provider Manual, Section 1000 <ul style="list-style-type: none">▸ "...express preferences, make choices... tailoring program services to the individual's needs and circumstances..." Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(v). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings. Draft rule: "(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual's person-centered service plan: (5) The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports."	PARTIALLY COMPLIANT Rationale: Policies require that the setting allow the individual to make choices regarding services and supports. However, policies do not specify that the setting facilitates individual choices. TAC §45.214, Development of Enrollment IPC <ul style="list-style-type: none">▸ (c) "...the individual...agree on the type and amount of services to be included..." Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(v). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings. Draft rule: "(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual's person-centered service plan: (5) The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports."	PARTIALLY COMPLIANT Rationale: Policies require that the setting allow the individual to make choices regarding services and supports. However, policies do not specify that the setting facilitates individual choices. TAC §45.214, Development of Enrollment IPC <ul style="list-style-type: none">▸ (c) "...the individual...agree on the type and amount of services to be included..." Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(v). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings. Draft rule: "(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual's person-centered service plan: (5) The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports."	PARTIALLY COMPLIANT Rationale: Policies require that the setting allows the individual to make choices regarding services and supports. However, policies do not specify that the setting facilitates individual choices. TAC §45.214, Development of Enrollment IPC <ul style="list-style-type: none">▸ (c) "...the individual...agree on the type and amount of services to be included..." Remediation: HHSC has drafted new rules that bring all settings where CLASS program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(v). These new rules will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings. Draft rule: "(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual's person-centered service plan: (5) The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports."
In a provider-owned or controlled residential setting: The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. 42 CFR §441.301(c)(4)(vi)(A)	PARTIALLY COMPLIANT This requirement is not relevant to SFS and CFS, because they are provided in a support family's home, which is a typical residence in the community. A support family must be verified by a licensed Child Placing Agency. Before placement with a support family, the support family agency must obtain the child's parents' or LAR's agreement to the placement. TAC §45.522, Pre-Placement Activities <ul style="list-style-type: none">▸ (b)(4) "Before placement, the support family agency must: obtain the child's parent's or legally authorized representative's agreement to the placement."▸ (c) The support family agency must facilitate written agreements and authorizations between the child's parents or legally authorized representative, the support family, and the support family agency." Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(A). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions. Draft rule: "(b) An individual's support family agency or continued family agency must ensure that an individual receiving SFS or CFS has a written residential agreement with the support family. (c) The residential agreement required by subsection (b) of this section must include: (6) a provision that: (A) the support family and the individual or LAR agree that the residential agreement is a "lease" under Texas Property Code Chapter 92 and that they are subject to state law governing residential tenancies, including Texas Property Code Chapters 24, 91, and 92 and Texas Rules of Civil Procedure Rule 510; and (B) to the extent allowed by law, in the event of a conflict or inconsistency between any provision of the residential agreement and any provision of state statutory law, including Texas Property Code Chapters 91 and 92, the provision in the residential agreement governs; (C) the individual or LAR is not waiving any right or remedy provided to tenants under state law and is not agreeing to any notice period that is shorter than the notice period to which tenants are entitled under state law;"	N/A This requirement is not relevant to prevocational services, because they are provided in non-residential settings.	N/A This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.	N/A This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.

Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <p>► Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(1)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: SFS and CFS are provided in a support family’s home, which is a typical residence in the community. A support family must be verified by a licensed Child Placing Agency. Rules for foster homes require that an individual’s bedroom affords privacy, but do not require door locks on bedroom doors.</p> <p>TAC §749.3023, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment</p> <p>► (a) <i>"Only a room that provides adequate opportunities for reset and privacy may be used as a bedroom."</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(B)(1). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p><i>"(k) In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <p><i>(1) an individual has privacy in the individual’s bedroom;</i></p> <p><i>(4) a lock is installed on the individual’s bedroom door at no cost to the individual and that:</i></p> <p><i>(A) the lock is operable by the individual; and</i></p> <p><i>(B) only the individual, a roommate of the individual, and the support family has keys to the individual’s bedroom door;"</i></p>	<p>N/A</p> <p>This requirement is not relevant to prevocational services, because they are individualized services provided in non-residential settings.</p>	<p>N/A</p> <p>This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping unit:</p> <p>► Individuals sharing units have a choice of roommates in that setting.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(2)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: SFS and CFS are provided in a support family’s home, which is a typical residence in the community. A support family must be verified by a licensed Child Placing Agency or must be a foster family verified by Texas DFPS. Rules for foster homes require that an individual’s bedroom affords privacy, but do not require that an individual has a choice of roommates.</p> <p>TAC §749.3023, Foster Homes: Which rooms in the home may not be used as bedrooms?</p> <p>► (a) <i>"Only a room that provides adequate opportunities for reset and privacy may be used as a bedroom."</i></p> <p>TAC §749.3021, Foster Homes: How much space must bedrooms used by foster children have?</p> <p>► (a) <i>"A bedroom must have at least 40 square feet of space for each occupant and no more than four occupants per bedroom are permitted, even if the square footage of the room would accommodate more than four occupants."</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(B)(2). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p><i>"(k) In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <p><i>(1) an individual has privacy in the individual’s bedroom;</i></p> <p><i>(2) an individual has the option not to share a bedroom with a roommate;</i></p> <p><i>(3) an individual sharing a bedroom has a choice of roommates;"</i></p>	<p>N/A</p> <p>This requirement is not relevant to prevocational services, because they are individualized services provided in non-residential settings.</p>	<p>N/A</p> <p>This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <p>▸ Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(3)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: SFS and CFS are provided in a support family’s home, which is a typical residence in the community. A support family must be verified by a licensed Child Placing Agency or must be a foster family verified by Texas DFPS. Rules for foster homes require that an individual’s bedroom affords privacy. However, rules for foster homes and CLASS program rules for SFS or CFS providers do not specify that individuals have freedom to furnish their bedrooms.</p> <p>TAC §749.3023, Foster Homes: Which rooms in the home may not be used as bedrooms?</p> <p>▸ (a) <i>"Only a room that provides adequate opportunities for reset and privacy may be used as a bedroom."</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(B)(3). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p><i>"(k) In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <p><i>(1) an individual has privacy in the individual’s bedroom;</i></p> <p><i>(5) an individual can furnish and decorate the individual’s bedroom;"</i></p> <p><i>"(b) An individual’s support family agency or continued family agency must ensure that an individual receiving SFS or CFS has a written residential agreement with the support family.</i></p> <p><i>(c) The residential agreement required by subsection (b) of this section must include:</i></p> <p><i>(6) a provision that:</i></p> <p><i>(G) the individual may furnish and decorate the individual’s bedroom;"</i></p>	<p>N/A</p> <p>This requirement is not relevant to prevocational services, because they are individualized services provided in non-residential settings.</p>	<p>N/A</p> <p>This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>▸ Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.</p> <p>42 CFR §441.301(c)(4)(vi)(C)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: SFS and CFS are provided in a support family’s home, which is a typical residence in the community. A support family must be verified by a licensed Child Placing Agency or must be a foster family verified by Texas DFPS. A support family must ensure that the individual has the opportunity to participate in community activities. Rules for SFS and CFS providers do not require them to allow the individual (who is a minor children) complete freedom and control over their schedule and activities.</p> <p>TAC §45.531, Support Family Requirements</p> <p>▸ (c)(1) <i>"The support family must ensure that: the child participates in age-appropriate community activities"</i></p> <p>TAC §45.533, Support Family Duties</p> <p>▸ (b)(4) <i>"The support family must: ensure that a preschool-age client receives an early childhood education with appropriate activities and services;"</i></p> <p>▸ (b)(5) <i>"The support family must: provide clients with age-appropriate activities that enhance self-esteem and maximize functional level"</i></p> <p>▸ (a)(1) <i>"The support family must provide services... including: direct personal assistance with activities of daily living (such as grooming, eating, bathing, dressing, and personal hygiene)"</i></p> <p>TAC §749.3061, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment</p> <p>▸ (b) <i>"Caregivers must provide a toddler or school age child with three meals and at least one snack a day."</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(C). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p><i>"(k) In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <p><i>(6) while in the residence, an individual has the freedom and support:</i></p> <p><i>(A) to control the individual’s schedule and activities that are not part of the implementation plan; and</i></p> <p><i>(B) to have access to food at any time."</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(C). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>"(b) In addition to the requirements in subsection (a) of this section, a DSA must ensure that a group setting in which prevocational services are provided:</i></p> <p><i>(1) allows an individual to:</i></p> <p><i>(A) control the individual’s schedule and activities related to prevocational services;</i></p> <p><i>(B) have access to the individual’s food at any time;"</i></p>	<p>N/A</p> <p>This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. SE is provided in non-residential settings where an individual may control their daily schedules, including accessing food, to the same degree as individual not receiving Medicaid HCBS. This includes when receiving SE in a work environment where the individual must follow the work site’s policies and procedures. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. EA is provided in non-residential settings where an individual may control their daily schedules, including accessing food, to the same degree as individual not receiving Medicaid HCBS. This includes when receiving EA in a work environment where the individual must follow the work site’s policies and procedures. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>► Individuals are able to have visitors of their choosing at any time.</p> <p>42 CFR §441.301(c)(4)(vi)(D)</p>	<p>COMPLIANT</p> <p>Rationale: SFS and CFS are provided in a support family’s home, which is a typical residence in the community. A support family must be verified by a licensed Child Placing Agency. The support family must allow the individual to have visitors.</p> <p>TAC §45.533, Support Family Duties</p> <p>► (b)(1) <i>"The support family must: allow the client's family members and friends access to the client without arbitrary restrictions, unless exceptional conditions are justified by the client's interdisciplinary team (IDT), documented in the ISP, and approved by the Department of Human Services"</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(D). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p><i>"(k) In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <p><i>(7) an individual may have visitors of the individual's choosing at any time;"</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(D). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>"(b) In addition to the requirements in subsection (a) of this section, a DSA must ensure that a group setting in which prevocational services are provided:</i></p> <p><i>(1) allows an individual to:</i></p> <p><i>(C) receive visitors of their choosing at any time;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>SE is provided in non-residential settings where an individual may receive visitors to the same degree as individuals not receiving Medicaid HCBS. This includes when receiving SE at a place of employment, where the individual must follow the employer’s policies and procedures regarding visitation.</p> <p>TAC §45.103, Definitions</p> <p>► (117) "Supported employment – Assistance provided to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform work in a setting at which individuals without disabilities are employed"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>EA is provided in non-residential settings where an individual may receive visitors to the same degree as individuals not receiving Medicaid HCBS. This includes when receiving EA at a place of employment, where the individual must follow the employer’s policies and procedures regarding visitation.</p> <p>TAC §45.103, Definitions</p> <p>► https://texreg.sos.state.tx.us/public/readtac\$ext.TacPage?sl=T&app=9&p_dir=F&p_rloc=202307&p_tloc=14693&p_ploc=1&pg=2&p_tac=&ti=40&pt=1&ch=45&rl=103(43)</p> <p>"Employment Assistance -- Assistance provided to an individual to help the individual locate competitive employment in the community"</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>► The setting is physically accessible to the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(E)</p>	<p>COMPLIANT</p> <p>Rationale: SFS and CFS are provided in a support family’s home, which is a typical residence in the community. A support family must be verified by a licensed Child Placing Agency. Rules require the support family’s home to meet the child’s needs.</p> <p>TAC §45.531, Support Family Requirements</p> <p>► (d) <i>"The residence must be a typical residence in the neighborhood and meet the needs of the child and the child's parents or legally authorized representative."</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(E). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p><i>"(k) In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <p><i>(Z) the residence is physically accessible to the individual."</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(E). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>"(b) In addition to the requirements in subsection (a) of this section, a DSA must ensure that a group setting in which prevocational services are provided:</i></p> <p><i>(2) is physically accessible and free of hazards to an individual."</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. However, program rules require all program services to be accessible to the individual. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. However, program rules require all program services to be accessible to the individual. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>► Identify a specific and individualized assessed need.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(1)</p>	<p>COMPLIANT</p> <p>Rationale: The person-centered service plan addresses the individual’s individualized assessed needs.</p> <p>TAC §45.103, Definitions</p> <p>► (62) <i>"IPC—A written developed by an individual’s service planning team using person-centered service planning and documented on an HHSC form"</i></p> <p>► (65) <i>"IPP – A written plan documented on an HHSC form that describes the goals and objectives to be met by the provision of each CLASS Program service and CFC service"</i></p> <p>► (86) <i>"Person-centered planning – A process that empowers the individual to direct the development of an IPC that meets the individual's outcomes."</i></p> <p>CLASS Provider Manual, Section 2300, Service Planning</p> <p>► <i>"The person-centered planning process: determines the service needs of an individual; identifies any special needs, requests or considerations staff should know when supporting this individual; and documents the individual's unmet needs."</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(F). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p><i>"(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p><i>(1) notify the case manager of the needed modification; and</i></p> <p><i>(2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p><i>(m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following:</i></p> <p><i>(1) a description of the specific and individualized assessed need that justifies the modification;"</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The person-centered service plan addresses the individual’s individualized assessed needs.</p> <p>CLASS Provider Manual, Section 2300, Service Planning</p> <p>► <i>"The person-centered planning process: determines the service needs of an individual; identifies any special needs, requests or considerations staff should know when supporting this individual; and documents the individual's unmet needs."</i></p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(F). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>"(c) If a DSA becomes aware that a modification to a requirement described in subsection (b)(1) of this section is needed based on a specific assessed need of an individual:</i></p> <p><i>(1) the DSA must:</i></p> <p><i>(A) notify the case manager of the needed modification; and</i></p> <p><i>(B) provide the case manager with the information described in paragraph (2)(A) of this subsection as requested by the case manager; and</i></p> <p><i>(2) the case manager must, if notified by the DSA of a needed modification, convene a service planning team meeting in person or by videoconferencing to update the individual's IPP to include the following:</i></p> <p><i>(A) a description of the specific and individualized assessed need that justifies the modification;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringes on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>CLASS Provider Manual, Section 2300, Service Planning</p> <p>► <i>"The person-centered planning process: determines the service needs of an individual; identifies any special needs, requests or considerations staff should know when supporting this individual; and documents the individual's unmet needs."</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringes on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>CLASS Provider Manual, Section 2300, Service Planning</p> <p>► <i>"The person-centered planning process: determines the service needs of an individual; identifies any special needs, requests or considerations staff should know when supporting this individual; and documents the individual's unmet needs."</i></p>

Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>‣ Document the positive interventions and supports used prior to any modifications to the person-centered plan.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(2)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. However, policies do not specify that positive interventions must be documented in the plan.</p> <p>CLASS Provider Manual, Section 2300, Service Planning</p> <p>‣ <i>“The person-centered planning process: identifies the individual’s strengths, preferences, support needs and desired outcomes; documents the risks to the individual’s health and safety, as well as a plan to mitigate those risks;”</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(F). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p><i>“(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p><i>(1) notify the case manager of the needed modification; and</i></p> <p><i>(2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p><i>(m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual’s IPP to include the following:</i></p> <p><i>(2) a description of any positive interventions and supports that have been tried but did not work;”</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(F). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>“(c) If a DSA becomes aware that a modification to a requirement described in subsection (b)(1) of this section is needed based on a specific assessed need of an individual:</i></p> <p><i>(1) the DSA must:</i></p> <p><i>(A) notify the case manager of the needed modification; and</i></p> <p><i>(B) provide the case manager with the information described in paragraph (2)(A) of this subsection as requested by the case manager; and</i></p> <p><i>(2) the case manager must, if notified by the DSA of a needed modification, convene a service planning team meeting in person or by videoconferencing to update the individual’s IPP to include the following:</i></p> <p><i>(B) a description of the positive interventions and supports that were tried but did not work;</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>‣ Document less intrusive methods of meeting the need that have been tried but did not work.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(3)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. However, policies do not specify that less intrusive methods of meeting the need that have been tried but did not work be documented in the plan.</p> <p>CLASS Provider Manual, Section 2300, Service Planning</p> <p>‣ <i>“The person-centered planning process: determines the service needs of an individual; documents the risks to the individual’s health and safety, as well as a plan to mitigate those risks; identifies any special needs, requests or considerations staff should know when supporting this individual; and documents the individual’s unmet needs.”</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(F). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p><i>“(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p><i>(1) notify the case manager of the needed modification; and</i></p> <p><i>(2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p><i>(m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual’s IPP to include the following:</i></p> <p><i>(3) a description of any less intrusive methods of meeting the need that have been tried but did not work;”</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(F). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>“(c) If a DSA becomes aware that a modification to a requirement described in subsection (b)(1) of this section is needed based on a specific assessed need of an individual:</i></p> <p><i>(1) the DSA must:</i></p> <p><i>(A) notify the case manager of the needed modification; and</i></p> <p><i>(B) provide the case manager with the information described in paragraph (2)(A) of this subsection as requested by the case manager; and</i></p> <p><i>(2) the case manager must, if notified by the DSA of a needed modification, convene a service planning team meeting in person or by videoconferencing to update the individual’s IPP to include the following:</i></p> <p><i>(C) a description of the less intrusive methods of meeting the need that were tried but did not work;”</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>► Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(4)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. However, policies do not specify that the service planning team include a clear description that is directly proportionate to the specific assessed need.</p> <p>CLASS Provider Manual, Section 2300, Service Planning</p> <p>► <i>“The person-centered planning process: determines the service needs of an individual; documents the risks to the individual’s health and safety, as well as a plan to mitigate those risks; identifies any special needs, requests or considerations staff should know when supporting this individual; and documents the individual’s unmet needs.”</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(F). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules: “(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must: (1) notify the case manager of the needed modification; and (2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager. (m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual’s IPP to include the following: (4) a description of the condition that is directly proportionate to the specific assessed need;”</p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(F). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule: “(c) If a DSA becomes aware that a modification to a requirement described in subsection (b)(1) of this section is needed based on a specific assessed need of an individual: (1) the DSA must: (A) notify the case manager of the needed modification; and (B) provide the case manager with the information described in paragraph (2)(A) of this subsection as requested by the case manager; and (2) the case manager must, if notified by the DSA of a needed modification, convene a service planning team meeting in person or by videoconferencing to update the individual’s IPP to include the following: (D) a description of the condition that is directly proportionate to the specific assessed need;”</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>► Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(5)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The individual’s case manager must meet with the individual once per year to renew the individual’s IPC and IPP, and the individual or LAR may request a revision to the IPC and IPP at any time if a modification is needed. However, policies do not specify that data must be regularly collected and reviewed to measure the ongoing effectiveness of the modification.</p> <p>CLASS Provider Manual, Section 2300, Service Planning</p> <p>► <i>“The person-centered planning process: determines the service needs of an individual; documents the risks to the individual’s health and safety, as well as a plan to mitigate those risks; identifies any special needs, requests or considerations staff should know when supporting this individual; and documents the individual’s unmet needs.”</i></p> <p>► <i>“The case manager is responsible for initiating revisions to the individual’s IPC and IPP-A as determined necessary throughout each plan year. The case manager will submit all proposed IPCs and revised IPP-A to HHSC.</i></p> <p><i>On an ongoing basis, the case manager must assist individuals in gaining access to needed CLASS services and other services and supports, including medical, social, and educational resources, regardless of the funding source for the services and supports.”</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(F). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules: “(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must: (1) notify the case manager of the needed modification; and (2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager. (m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual’s IPP to include the following: (5) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;”</p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(F). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule: “(c) If a DSA becomes aware that a modification to a requirement described in subsection (b)(1) of this section is needed based on a specific assessed need of an individual: (1) the DSA must: (A) notify the case manager of the needed modification; and (B) provide the case manager with the information described in paragraph (2)(A) of this subsection as requested by the case manager; and (2) the case manager must, if notified by the DSA of a needed modification, convene a service planning team meeting in person or by videoconferencing to update the individual’s IPP to include the following: (E) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;”</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>‣ Establish time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(6)</p>	<p>COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The individual’s case manager must meet with the individual once per year to renew the individual’s IPC and IPP, and the individual or LAR may request a revision to the IPC and IPP at any time if a modification is needed.</p> <p>TAC 45.103, Definitions</p> <p>‣ (64) <i>"IPC period--The effective period of an enrollment IPC and a renewal IPC as follows: for an enrollment IPC, the period of time from the effective date of an enrollment IPC... until the first calendar day of the same month of the effective date in the following year; and for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC..."</i></p> <p>TAC §45.223, Renewal and Revision of an IPC</p> <p>‣ (c) <i>"An individual's case manager must: (1) at least annually, but no more than 90 calendar days before the end of the IPC period of the IPC being renewed, convene a service planning team meeting in which the service planning team: (D) develops: (i) a proposed renewal IPC; (ii) new IPPs; (iii) a new PAS/HAB plan;"</i></p> <p>CLASS Provider Manual, Section 2320, Renewal</p> <p>‣ <i>"The CLASS case manager must convene a SPT to develop, using person-centered planning processes, a renewal IPC in which the CLASS program services meet the following standards: are necessary to protect the individual's health and welfare in the community; address the individual's related condition; are not available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance or the individual's natural supports; prevent the individual's admission to an institution; are the most appropriate type and amount of CLASS program services to meet the individual's needs"</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(F). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p><i>"(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p><i>(1) notify the case manager of the needed modification; and</i></p> <p><i>(2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p><i>(m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following:</i></p> <p><i>(6) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;"</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(F). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>"(c) If a DSA becomes aware that a modification to a requirement described in subsection (b)(1) of this section is needed based on a specific assessed need of an individual:</i></p> <p><i>(1) the DSA must:</i></p> <p><i>(A) notify the case manager of the needed modification; and</i></p> <p><i>(B) provide the case manager with the information described in paragraph (2)(A) of this subsection as requested by the case manager; and</i></p> <p><i>(2) the case manager must, if notified by the DSA of a needed modification, convene a service planning team meeting in person or by videoconferencing to update the individual's IPP to include the following:</i></p> <p><i>(F) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The individual’s case manager must meet with the individual once per year to renew the individual’s IPC and IPP, and the individual or LAR may request a revision to the IPC and IPP at any time if a modification is needed.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The individual’s case manager must meet with the individual once per year to renew the individual’s IPC and IPP, and the individual or LAR may request a revision to the IPC and IPP at any time if a modification is needed.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>‣ Include informed consent of the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(7)</p>	<p>COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The individual or LAR must sign the IPC and IPC as evidence of their agreement.</p> <p>TAC §45.214, Development of Enrollment IPC</p> <p>‣ (c) <i>"The case manager must: (1) ensure that during the service planning team meeting required by subsection (a)(1) of this section the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by: (A) the individual or LAR;"</i></p> <p>TAC §45.223, Renewal and Revision of an IPC</p> <p>‣ (e) <i>"The case manager must: (2) ensure that new or revised IPPs are reviewed, signed and dated as evidence of agreement by: (A) the individual or LAR"</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(F). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p><i>"(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p><i>(1) notify the case manager of the needed modification; and</i></p> <p><i>(2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p><i>(m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following:</i></p> <p><i>(7) the individual's or LAR's signature on the IPP evidencing informed consent to the modification;"</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(F). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>"(c) If a DSA becomes aware that a modification to a requirement described in subsection (b)(1) of this section is needed based on a specific assessed need of an individual:</i></p> <p><i>(1) the DSA must:</i></p> <p><i>(A) notify the case manager of the needed modification; and</i></p> <p><i>(B) provide the case manager with the information described in paragraph (2)(A) of this subsection as requested by the case manager; and</i></p> <p><i>(2) the case manager must, if notified by the DSA of a needed modification, convene a service planning team meeting in person or by videoconferencing to update the individual's IPP to include the following:</i></p> <p><i>(G) the individual's or LAR's signature evidencing informed consent to the modification;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The individual or LAR must sign the IPC and IPC as evidence of their agreement.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The individual or LAR must sign the IPC and IPC as evidence of their agreement.</p>

Federal Rule	SFS/CFS (Residential)	Pre-Vocational Services (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p> ▸ Include assurances that interventions and supports will cause no harm to the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(8)</p>	<p>COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The case manager and SPT must ensure that services and supports on the individual’s service plan are necessary to protect the individual’s health and safety.</p> <p>CLASS Provider Manual, Section 2320, Renewal</p> <p> ▸ <i>“The CLASS case manager must convene a SPT to develop, using person-centered planning processes, a renewal IPC in which the CLASS program services meet the following standards: are necessary to protect the individual’s health and welfare in the community; are the most appropriate type and amount of CLASS program services to meet the individual’s needs”</i></p> <p>Remediation: HHSC has drafted new rules that bring settings where SFS and CFS are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(vi)(F). These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p><i>“(I) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p> <i>(1) notify the case manager of the needed modification; and</i></p> <p> <i>(2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p><i>(m) A case manager must, if notified in accordance with subsection (I)(1) of this section, convene a service planning team meeting to update the individual’s IPP to include the following:</i></p> <p> <i>(8) the support family agency or continued family agency’s assurance that the modification will cause the individual no harm.”</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules that bring group settings where prevocational services are provided into compliance with the requirement at 42 CFR §441.301(c)(4)(vi)(F). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §259.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>“(c) If a DSA becomes aware that a modification to a requirement described in subsection (b)(1) of this section is needed based on a specific assessed need of an individual:</i></p> <p> <i>(1) the DSA must:</i></p> <p> <i>(A) notify the case manager of the needed modification; and</i></p> <p> <i>(B) provide the case manager with the information described in paragraph (2)(A) of this subsection as requested by the case manager; and</i></p> <p> <i>(2) the case manager must, if notified by the DSA of a needed modification, convene a service planning team meeting in person or by videoconferencing to update the individual’s IPP to include the following:</i></p> <p> <i>(H) the program provider’s assurance that the modification will cause no harm to the individual;”</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, HHSC has determined that settings where SE is provided meet this requirement. Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The case manager and SPT must ensure that services and supports on the individual’s service plan are necessary to protect the individual’s health and safety.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, HHSC has determined that settings where EA is provided meet this requirement. Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. The case manager and SPT must ensure that services and supports on the individual’s service plan are necessary to protect the individual’s health and safety.</p>
<p>Home and community-based settings do not include the following: NF, IMD, ICF/IID; hospital; or any other locations that have qualities of an institutional setting.</p> <p>42 CFR §441.301(c)(5)</p>	<p>COMPLIANT</p> <p>Rationale: SFS and CFS are provided in a support family’s home, which is a typical residence in the community. An individual’s CLASS program services are suspended when the individual enters an institution.</p> <p>TAC §45.531, Support Family Requirements</p> <p> ▸ <i>(d) “The residence must be a typical residence in the neighborhood...”</i></p> <p>TAC §749.1003 HHSC Minimum Standards for Child Placing Agencies; Children’s Rights</p> <p> ▸ <i>(b)(1) “The following categories include the child’s rights...the right to good care and treatment that meets the child’s needs in the most family-like setting possible...”</i></p> <p>CLASS Provider Manual, Section 1300,Program Eligibility</p> <p> ▸ <i>“The individual resides in his or her own home or family home”</i></p> <p>TAC 45.504, Suspension of CLASS Program Services or CFC Services</p> <p> ▸ <i>“(a) [HHSC] suspends an individual’s CLASS Program services or CFC services if the individual:</i></p> <p> <i>(1) is under a temporary admission to one of the following facilities:</i></p> <p> <i>(A) an ICF/IID, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter (relating to Respite);</i></p> <p> <i>(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter;</i></p> <p> <i>(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;</i></p> <p> <i>(D) a residential child-care operation licensed or subject to being licensed by DFPS, unless it is a foster family home or a foster group home;</i></p> <p> <i>(E) a facility licensed or subject to being licensed by the Department of State Health Services;</i></p> <p> <i>(F) a facility operated by the Department of Assistive and Rehabilitative Services; or</i></p> <p> <i>(G) a residential facility operated by the Texas Youth Commission, a jail, or prison;”</i></p>	<p>COMPLIANT</p> <p>Rationale: An individual’s CLASS program services are suspended when the individual enters an institution.</p> <p>TAC 45.504, Suspension of CLASS Program Services or CFC Services</p> <p> ▸ <i>“(a) [HHSC] suspends an individual’s CLASS Program services or CFC services if the individual:</i></p> <p> <i>(1) is under a temporary admission to one of the following facilities:</i></p> <p> <i>(A) an ICF/IID, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter (relating to Respite);</i></p> <p> <i>(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter;</i></p> <p> <i>(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;</i></p> <p> <i>(D) a residential child-care operation licensed or subject to being licensed by DFPS, unless it is a foster family home or a foster group home;</i></p> <p> <i>(E) a facility licensed or subject to being licensed by the Department of State Health Services;</i></p> <p> <i>(F) a facility operated by the Department of Assistive and Rehabilitative Services; or</i></p> <p> <i>(G) a residential facility operated by the Texas Youth Commission, a jail, or prison;”</i></p>	<p>COMPLIANT</p> <p>Rationale: SE is provided in the individual’s own home, family home, or a community setting, which could include their place of employment. An individual’s CLASS program services are suspended when the individual enters an institution. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §45.103, Definitions</p> <p> ▸ <i>(117) “Supported employment -- Assistance provided to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed...”</i></p> <p>CLASS Provider Manual, Section 7241 Supported Employment</p> <p> ▸ <i>“...provides assistance to sustain competitive employment to an individual who...work from home, or perform in a work setting at which individuals without disabilities are employed”</i></p> <p>TAC 45.504, Suspension of CLASS Program Services or CFC Services</p> <p> ▸ <i>“(a) [HHSC] suspends an individual’s CLASS Program services or CFC services if the individual:</i></p> <p> <i>(1) is under a temporary admission to one of the following facilities:</i></p> <p> <i>(A) an ICF/IID, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter (relating to Respite);</i></p> <p> <i>(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter;</i></p> <p> <i>(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;</i></p> <p> <i>(D) a residential child-care operation licensed or subject to being licensed by DFPS, unless it is a foster family home or a foster group home;</i></p> <p> <i>(E) a facility licensed or subject to being licensed by the Department of State Health Services;</i></p> <p> <i>(F) a facility operated by the Department of Assistive and Rehabilitative Services; or</i></p> <p> <i>(G) a residential facility operated by the Texas Youth Commission, a jail, or prison;”</i></p>	<p>COMPLIANT</p> <p>Rationale: SE is provided in the individual’s own home, family home, or a community setting, which could include their place of employment. An individual’s CLASS program services are suspended when the individual enters an institution. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §45.103, Definitions</p> <p> ▸ <i>(43) “Employment assistance -- Assistance provided... to help the individual locate competitive employment in the community.”</i></p> <p>CLASS Provider Manual, Section 7243, Employment Assistance</p> <p> ▸ <i>“...to help the individual locate competitive employment in the community.”</i></p> <p>TAC 45.504, Suspension of CLASS Program Services or CFC Services</p> <p> ▸ <i>“(a) [HHSC] suspends an individual’s CLASS Program services or CFC services if the individual:</i></p> <p> <i>(1) is under a temporary admission to one of the following facilities:</i></p> <p> <i>(A) an ICF/IID, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter (relating to Respite);</i></p> <p> <i>(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter;</i></p> <p> <i>(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;</i></p> <p> <i>(D) a residential child-care operation licensed or subject to being licensed by DFPS, unless it is a foster family home or a foster group home;</i></p> <p> <i>(E) a facility licensed or subject to being licensed by the Department of State Health Services;</i></p> <p> <i>(F) a facility operated by the Department of Assistive and Rehabilitative Services; or</i></p> <p> <i>(G) a residential facility operated by the Texas Youth Commission, a jail, or prison;”</i></p>

Section 2. Deaf Blind Multiple Disabilities (DBMD) Waiver

All state rule citations for the DBMD systemic/internal assessment can be found at [40 TAC Chapter 42](#). The DBMD Policy Manual can be found at the [DBMD Program Manual](#).

HHSC assessed policies for all DBMD program services and determined that the following services are fully compliant with requirements of the HCBS Settings Rule at 42 CFR §441.301(c)(4): adaptive aids; audiology; behavioral support; dental treatment; dietary services; FMS; intervener services; minor home modifications; orientation and mobility; nursing; residential habilitation (transportation); respite²; therapies; and transition assistance services (TAS).

HHSC determined policy revisions are needed for the settings in which assisted living, day habilitation, SE and EA are provided. Licensed assisted living and licensed home health assisted living are residential services; day habilitation is delivered in non-residential congregate settings; and SE and EA are individualized services delivered in settings determined based on the individual’s needs and preferences.

Compliance determinations and planned remediation for these services are described in the table below. Compliance levels are indicated as follows:

² Respite may be provided in institutional settings including a NF or ICF/IID for no longer than 30 days in an individual’s service plan year. In responses to public comments on the [HCBS Settings Final Rule](#), CMS indicates that the delivery of some Medicaid HCBS, such as respite, is permitted in an institutional setting.

- “N/A” indicates that the corresponding requirement of the HCBS Settings Rule is not relevant to the specified waiver service.
- “Non-Compliant” indicates that state rules and policies contradict the HCBS Settings Rule.
- “Silent” indicates that state rules and policies do not address the corresponding requirement of the HCBS Settings Rule.
- “Partially compliant” indicates that existing state rules and policies address the corresponding requirement of the HCBS Settings Rule but do not fully comply with the federal rule requirement.
- “Compliant” indicates that existing state rules and policies address and meet the corresponding requirement of the HCBS Settings Rule.

HHSC plans to amend policies that are non-compliant, silent, or partially compliant. HHSC anticipates that the rules will become effective in January 2023. Provider manual revisions and updates to provider monitoring processes will be completed by March 2023.

Note that rule language provided in the table below is currently in draft form and is subject to change.

Federal Rule	Licensed Assisted Living (4-6 person) (Residential)	Licensed Home Health Assisted Living (1-3 Person Homes) (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including 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 individuals not receiving Medicaid HCBS.</p> <p>42 CFR §441.301(c)(4)(i)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered opportunities to integrate and participate in the community and has the right to control personal resources.</p> <p>TAC §42.404 related to Service Delivery</p> <p>▸ (g) "...offer an individual choices and opportunities for accessing and participating in community activities...including...experience available to peers without disabilities..."</p> <p>TAC §42.630(a)(13)(D) and (E), related to Residential Services</p> <p>▸ (a)(13)(D) "the ability to access and participate in community activities; and (E) the ability to move safely...within home and community settings."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (2) "...describes goals and objectives for each DBMD program service..."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...description of the needs and preferences identified by the individual..."</p> <p>▸ (3)(B) "...description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>TAC §553.267, Resident's Bill of Rights</p> <p>▸ (a)(3)(B) "participate in activities of social, religious, or community groups"</p> <p>TAC §553.267, Resident's Bill of Rights</p> <p>▸ (a)(3)(L) ".... the right to manage his or her financial affairs."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(1) The setting is integrated in and support the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</p> <p>(A) seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources; and</p> <p>(D) receive services in the community."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered opportunities to integrate and participate in the community and has the right to control personal resources.</p> <p>TAC §42.404, Service Delivery</p> <p>▸ (g) "...offer an individual choices and opportunities for accessing and participating in community activities...including...experience available to peers without disabilities..."</p> <p>TAC §42.630, Residential Services,</p> <p>▸ (a)(13)(D) "the ability to access and participate in community activities... (E) move safely...within home and community settings."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (2) "...describes goals and objectives for each DBMD program service..."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...description of the needs and preferences identified by the individual..."</p> <p>▸ (3)(B) "...description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>TAC §42.630, Residential Services</p> <p>▸ (a)(13)(C) "the ability to implement the individual's choices."</p> <p>TAC §42.501,Request for Assistance with Personal Funds Management</p> <p>▸ (b)(1) "...individual's rights and responsibilities regarding personal funds management..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(1) The setting is integrated in and support the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</p> <p>(A) seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources; and</p> <p>(D) receive services in the community."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered opportunities to integrate and participate in the community.</p> <p>TAC §42.404, Service Delivery</p> <p>▸ (g) "...offer an individual choices and opportunities for accessing and participating in community activities...including...experience available to peers without disabilities..."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (2) "...describes goals and objectives for each DBMD program service..."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...description of the needs and preferences identified by the individual..."</p> <p>▸ (3)(B) "...description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>TAC §42.501, Request for Assistance with Personal Funds Management</p> <p>▸ (b)(1) "...individual's rights and responsibilities regarding personal funds management..."</p> <p>Remediation: Although day habilitation is compliant with this requirement, HHSC will replace day habilitation with a new, fully HCBS compliant service called individualized skills and socialization. Individualized skills and socialization will be subject to the new rule to address this requirement, which will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(1) The setting is integrated in and support the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</p> <p>(A) seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources; and</p> <p>(D) receive services in the community."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered opportunities to integrate and participate in the community.</p> <p>TAC §42.404, Service Delivery</p> <p>▸ (g) "...offer an individual choices and opportunities for accessing and participating in community activities...including...experience available to peers without disabilities..."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (2) "...describes goals and objectives for each DBMD program service..."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...description of the needs and preferences identified by the individual..."</p> <p>▸ (3)(B) "...description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>TAC §42.501, related to Request for Assistance with Personal Funds Management</p> <p>▸ (b)(1) "...individual's rights and responsibilities regarding personal funds management..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(1) The setting is integrated in and support the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</p> <p>(A) seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources; and</p> <p>(D) receive services in the community."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered opportunities to integrate and participate in the community.</p> <p>TAC §42.404, Service Delivery</p> <p>▸ (g) "...offer an individual choices and opportunities for accessing and participating in community activities...including...experience available to peers without disabilities..."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (2) "...describes goals and objectives for each DBMD program service..."</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...description of the needs and preferences identified by the individual..."</p> <p>▸ (3)(B) "...description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>TAC §42.501, related to Request for Assistance with Personal Funds Management</p> <p>▸ (b)(1) "...individual's rights and responsibilities regarding personal funds management..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(1) The setting is integrated in and support the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</p> <p>(A) seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources; and</p> <p>(D) receive services in the community."</p>

Federal Rule	Licensed Assisted Living (4-6 person) (Residential)	Licensed Home Health Assisted Living (1-3 Person Homes) (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p> <p>42 CFR §441.301(c)(4)(ii)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies expect that the individual participates in setting selection. However, policies do not specify that the individual is offered choice of non-disability setting options.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "a description of the needs and preferences identified by the individual, LAR, or both."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which licensed assisted living is provided. The setting options are identified and documented in an individual's IPP and are based on the individual's needs, preferences, and, for settings in which licensed assisted living is provided, resources available for room and board."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies expect that the individual participates in setting selection. However, policies do not specify that the individual is offered choice of non-disability setting options.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "a description of the needs and preferences identified by the individual, LAR, or both."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which licensed assisted living is provided. The setting options are identified and documented in an individual's IPP and are based on the individual's needs, preferences, and, for settings in which licensed assisted living is provided, resources available for room and board."</p>	<p>SILENT</p> <p>Remediation: HHSC will replace day habilitation with a new, fully HCBS compliant service called individualized skills and socialization. Individualized skills and socialization will be subject to the new rule to address this requirement, which will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which licensed assisted living is provided. The setting options are identified and documented in an individual's IPP and are based on the individual's needs, preferences, and, for settings in which licensed assisted living is provided, resources available for room and board."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The service is provided in accordance with the individual's service plan and supports the individual to be self-employed, work from home, or perform in work setting.</p> <p>TAC §42.625, Employment Services</p> <p>▸ (e)(1)(B) "...transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting..."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which licensed assisted living is provided. The setting options are identified and documented in an individual's IPP and are based on the individual's needs, preferences, and, for settings in which licensed assisted living is provided, resources available for room and board."</p>	<p>COMPLIANT</p> <p>Rationale: The individual is offered choice of non-disability setting options to receive services in.</p> <p>TAC §42.625, Employment Services</p> <p>▸ (c)(1)(A) "identifying an individual's employment preferences... (B) work setting and work conditions...locating prospective employers offering employment"</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which licensed assisted living is provided. The setting options are identified and documented in an individual's IPP and are based on the individual's needs, preferences, and, for settings in which licensed assisted living is provided, resources available for room and board."</p>
<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p> <p>42 CFR §441.301(c)(4)(iii)</p>	<p>COMPLIANT</p> <p>Rationale: The individual has the right to privacy and to be treated with dignity and respect, including freedom from coercion and restraints.</p> <p>TAC §553.267, Rights</p> <p>▸ (a)(3) "be free from physical and mental abuse, including corporal punishment...be treated with respect...and recognition of his or her dignity..."</p> <p>TAC §42.401, Protection of Individual</p> <p>▸ (a)(3) "...safeguard an individual against... abuse, neglect, and exploitation..."</p> <p>TAC §42.406, Quality Assurance</p> <p>▸ (b)(1) "...identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation..."</p> <p>TAC §42.408, Protective Devices</p> <p>▸ (b) "...must not use a protective device to modify or control and individual's behavior, for disciplinary purposes..."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(3) The setting ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual has the right to privacy and to be treated with dignity and respect. However, policies do not specify that the individual has the right to privacy and to be free of coercion and restraints.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...description of the needs and preferences identified by the individual..."</p> <p>TAC §42.401, Protection of Individual</p> <p>▸ (a)(3) "...safeguard an individual against... abuse, neglect, and exploitation..."</p> <p>TAC §42.406, Quality Assurance</p> <p>▸ (b)(1) "...identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation..."</p> <p>TAC §42.408, Protective Devices</p> <p>▸ (b) "...must not use a protective device to modify or control and individual's behavior, for disciplinary purposes..."</p> <p>TAC §42.409, Restraints</p> <p>▸ (d)(1) "...not use restraints for disciplinary purposes, retaliation, coercion..."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(3) The setting ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Expects that the individual has the right to privacy and to be treated with dignity and respect. It does not clarify that the individual has the right to privacy and to be free of coercion and restraints.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...description of the needs and preferences identified by the individual..."</p> <p>TAC §42.401, Protection of Individual</p> <p>▸ (a)(3) "...safeguard an individual against... abuse, neglect, and exploitation..."</p> <p>TAC §42.406, Quality Assurance</p> <p>▸ (b)(1) "...identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation..."</p> <p>TAC §42.408, Protective Devices</p> <p>▸ (b) "...must not use a protective device to modify or control and individual's behavior, for disciplinary purposes..."</p> <p>Remediation: HHSC will replace day habilitation with a new, fully HCBS compliant service called individualized skills and socialization. Individualized skills and socialization will be subject to the new rule to address this requirement, which will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(3) The setting ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Expects that the individual has the right to privacy and to be treated with dignity and respect. It does not clarify that the individual has the right to privacy and to be free of coercion and restraints.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...description of the needs and preferences identified by the individual..."</p> <p>TAC §42.401, Protection of Individual</p> <p>▸ (a)(3) "...safeguard an individual against... abuse, neglect, and exploitation..."</p> <p>TAC §42.406, Quality Assurance</p> <p>▸ (b)(1) "...identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation..."</p> <p>TAC §42.408, Protective Devices</p> <p>▸ (b) "...must not use a protective device to modify or control and individual's behavior, for disciplinary purposes..."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(3) The setting ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Expects that the individual has the right to privacy and to be treated with dignity and respect. It does not clarify that the individual has the right to privacy and to be free of coercion and restraints.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...description of the needs and preferences identified by the individual..."</p> <p>TAC §42.401, Protection of Individual</p> <p>▸ (a)(3) "...safeguard an individual against... abuse, neglect, and exploitation..."</p> <p>TAC §42.406, Quality Assurance</p> <p>▸ (b)(1) "...identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation..."</p> <p>TAC §42.408, Protective Devices</p> <p>▸ (b) "...must not use a protective device to modify or control and individual's behavior, for disciplinary purposes..."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(3) The setting ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."</p>

Federal Rule	Licensed Assisted Living (4-6 person) (Residential)	Licensed Home Health Assisted Living (1-3 Person Homes) (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
In a provider-owned or controlled residential setting: The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. 42 CFR §441.301(c)(4)(vi)(A)	PARTIALLY COMPLIANT Rationale: Policies require that the individual has the right to live in the setting unless a transfer or discharge is warranted. However, policies do not specify lease requirements. TAC §553.267(a)(3)(X), Rights <ul style="list-style-type: none">▸ <i>(a)(3)(X) "...not be transferred or discharged unless...needs cannot be met...services are no longer needed... [due to] health and safety...provider ceases to operate or to participate in the program...resident fails to pay for services..."</i> TAC §42.630, Residential Services <ul style="list-style-type: none">▸ <i>(a)(9) "The program provider must have and implement written policies and procedures concerning room and board payment..."</i> Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.401, Residential Agreements. Draft rule: <i>(b)" An individual's program provider must ensure that an individual receiving licensed assisted living has a written residential agreement with the program provider.</i> <i>(7) a provision that:</i> <i>(A) the program provider and the individual or LAR agree that the residential agreement is a "lease" under Texas Property Code Chapter 92and that they are subject to state law governing residential tenancies, including Texas Property Code Chapters 24, 91, and 92 and the Texas Rules of Civil Procedure Rule 510; and</i> <i>(B) to the extent allowed by law, in the event of a conflict or inconsistency between any provision of the residential agreement and any provision of state statutory law, including Texas Property Code Chapters 91 and 92, the provision in the residential agreement governs;</i> <i>(8) a provision that the individual or LAR is not waiving any right or remedy provided to tenants under state law and is not agreeing to any notice period that is shorter than the notice period to which tenants are entitled under state law;"</i>	PARTIALLY COMPLIANT Rationale: The service is provided in a one-to-three-person residence that is owned or leased by one of residents. However, other individual(s) who reside in the setting may not have a lease or residential agreement in place that affords the same responsibilities and protections against eviction as those under the state's landlord/tenant laws. TAC §42.103, Definitions <ul style="list-style-type: none">▸ <i>(65) "Licensed home health assisted living--A service provided by a program provider that is a HCSSA in a residence for no more than three individuals, at least one of whom owns or leases the residence."</i> Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260. A DBMD program provider will be required to verify that individuals receiving licensed home health assisted living have a lease or residential agreement in place with the owner or landlord of the setting that provides the same responsibilities and protections against eviction that tenants have under the Texas Property Code.	N/A Rationale: This requirement is not relevant to day habilitation, because it is provided in non-residential settings.	N/A Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.	N/A Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.
In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit: <ul style="list-style-type: none">▸ Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. 42 CFR §441.301(c)(4)(vi)(B)(1)	SILENT Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. Draft rule: <i>(a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided:</i> <i>(3) a lock is installed on the individual's bedroom door at no cost to the individual, and that:</i> <i>(i) the lock is operable by the individual; and</i> <i>(ii) only the individual, a roommate of the individual, and staff designated by the program provider have keys to the individual's bedroom door;"</i>	SILENT Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. Draft rule: <i>(a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided:</i> <i>(3) a lock is installed on the individual's bedroom door at no cost to the individual, and that:</i> <i>(i) the lock is operable by the individual; and</i> <i>(ii) only the individual, a roommate of the individual, and staff designated by the program provider have keys to the individual's bedroom door;"</i>	N/A Rationale: This requirement is not relevant to day habilitation, because it is provided in non-residential settings.	N/A Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.	N/A Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.
In a provider-owned or controlled residential setting, each individual has privacy in their sleeping unit: <ul style="list-style-type: none">▸ Individuals sharing units have a choice of roommates in that setting. 42 CFR §441.301(c)(4)(vi)(B)(2)	SILENT Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. Draft rule: <i>(a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided:</i> <i>(1) an individual has privacy in the individual's bedroom;</i> <i>(2) an individual sharing a bedroom has a choice of roommates;"</i>	SILENT Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. Draft rule: <i>(a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided:</i> <i>(1) an individual has privacy in the individual's bedroom;</i> <i>(2) an individual sharing a bedroom has a choice of roommates;"</i>	N/A Rationale: This requirement is not relevant to day habilitation, because it is provided in non-residential settings.	N/A Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.	N/A Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.

Federal Rule	Licensed Assisted Living (4-6 person) (Residential)	Licensed Home Health Assisted Living (1-3 Person Homes) (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit: <ul style="list-style-type: none">Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. 42 CFR §441.301(c)(4)(vi)(B)(3)	COMPLIANT Rationale: The individual has the right to retain and use their personal possessions to decorate their living quarters. TAC §553.267, Rights <ul style="list-style-type: none">(a)(3)(S) "...retain and use personal possessions..."(a)(3)(U) "...retain and use personal property in his or her immediate living quarters and to have an individual locked area..." Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. Draft rule: (a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided: (4) an individual can furnish and decorate the individual's bedroom;"	PARTIALLY COMPLIANT Rationale: Policies require that the individual has the ability to exercise their choices. However, policies do not specify that the individual can exercise these choices regarding their living quarters. TAC §42.630, Residential Services <ul style="list-style-type: none">(a)(13)(C) "the ability to implement the individual's choices" Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. Draft rule: (a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided: (4) an individual can furnish and decorate the individual's bedroom;"	N/A Rationale: This requirement is not relevant to day habilitation, because it is provided in non-residential settings.	N/A Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.	N/A Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.
In a provider-owned or controlled residential setting, the following conditions must be met: <ul style="list-style-type: none">Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. 42 CFR §441.301(c)(4)(vi)(C)	PARTIALLY COMPLIANT Rationale: Policies require that the individual has choices and opportunities similar to peers without disabilities. However, policies do not specify that the individual has the right to control their own schedules and activities including access to food at any time. TAC §553.267, Rights <ul style="list-style-type: none">(a)(3)(E)(i) "has the right to make his/her own choices regarding personal affairs, care, benefits, and services." TAC §42.630, Residential Services <ul style="list-style-type: none">(a)(13)(C) "the ability to implement the individual's choices" TAC §42.404, Service Delivery <ul style="list-style-type: none">(g) "...offer an individual choices and opportunities for accessing and participating in community activities, including [...] experiences available to peers without disabilities..." Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. Draft rule: (a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided: (5) while in the residence, an individual has the freedom and support: (i) to control the individual's schedules and activities that are not part of the IPP for licensed assisted living; and (ii) to have access to food at any time;"	PARTIALLY COMPLIANT Rationale: Expects that the individual has choices and opportunities similar to peers without disabilities. It does not clarify that the individual has the right to control their own schedules and activities including access to food at any time. TAC §42.630, Residential Services <ul style="list-style-type: none">(a)(13)(C) "the ability to implement the individual's choices"(g) "...offer an individual choices and opportunities for accessing and participating in community activities, including [...] experiences available to peers without disabilities..." Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. Draft rule: (a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided: (5) while in the residence, an individual has the freedom and support: (i) to control the individual's schedules and activities that are not part of the IPP for licensed assisted living; and (ii) to have access to food at any time;"	PARTIALLY COMPLIANT Rationale: Policies require that the individual's needs, abilities and preferences are considered in the person-centered service planning process. However, they do not specify that the individual has the right to control their own schedules and activities including access to food at any time in a day habilitation setting. TAC §42.626, Habilitation <ul style="list-style-type: none">(4) "takes into account the needs and abilities of the individual in developing the emergency response plan" TAC §42.215, Development of Enrollment IPP <ul style="list-style-type: none">(3)(A) "...description of the needs and preferences identified by the individual..." TAC §42.404, Service Delivery <ul style="list-style-type: none">(g) "...offer an individual choices and opportunities for accessing and participating in community activities, including [...] experiences available to peers without disabilities..." Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet this requirement. The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization. Draft rule: (e) "The setting in which on-site individualized skills and socialization is provided: (1) allows an individual to: (A) control the individual's schedule and activities related to on-site individualized skills and socialization; (B) have access to the individual's food at any time;"	N/A Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. SE is provided in non-residential settings where an individual may control their daily schedules, including accessing food, to the same degree as individual not receiving Medicaid HCBS. This includes when receiving SE in a work environment where the individual must follow the work site's policies and procedures. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services. TAC §42.215, Development of Enrollment IPP <ul style="list-style-type: none">(3)(A) "...description of the needs and preferences identified by the individual..." TAC §42.404, Service Delivery <ul style="list-style-type: none">(g) "...offer an individual choices and opportunities for accessing and participating in community activities, including [...] experiences available to peers without disabilities..."	N/A Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. EA is provided in non-residential settings where an individual may control their daily schedules, including accessing food, to the same degree as individual not receiving Medicaid HCBS. This includes when receiving SE in a work environment where the individual must follow the work site's policies and procedures. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services. TAC §42.215, Development of Enrollment IPP <ul style="list-style-type: none">(3)(A) "...description of the needs and preferences identified by the individual..." TAC §42.404, Service Delivery <ul style="list-style-type: none">(g) "...offer an individual choices and opportunities for accessing and participating in community activities, including [...] experiences available to peers without disabilities..."
In a provider-owned or controlled residential setting, the following conditions must be met: <ul style="list-style-type: none">Individuals are able to have visitors of their choosing at any time. 42 CFR §441.301(c)(4)(vi)(D)	NON-COMPLIANT Rationale: ALF licensing rules state that the individual can have visitors "at any reasonable hour" and do not specify that the individual can have visitors of their choosing "at any time." TAC §553.267, Rights <ul style="list-style-type: none">(a)(3)(J) "Each resident in the assisted living facility has the right to: unrestricted communication, including personal visitation with any person of the resident's choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour" TAC §42.630, Residential Services <ul style="list-style-type: none">(a)(13)(C) "the ability to implement the individual's choices." Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. For DBMD providers, this new rule language will supersede the non-compliant language. Draft rule: (a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided: (6) an individual may have visitors of the individual's choosing at any time;"	NON-COMPLIANT Rationale: Expects that the individual has the right to exercise choices. It does not clarify that the individual can have visitors of their choosing "at any time." TAC §42.630, Residential Services <ul style="list-style-type: none">(a)(13)(C) "the ability to implement the individual's choices." Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings. For DBMD providers, this new rule language will supersede the non-compliant language. Draft rule: (a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided: (6) an individual may have visitors of the individual's choosing at any time;"	NON-COMPLIANT Rationale: This requirement is not relevant to day habilitation because it is provided in non-residential settings. However, policies are silent regarding an individual's ability to have visitors at any time while in a day habilitation setting. Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet this requirement. The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization. Draft rule: (e) "The setting in which on-site individualized skills and socialization is provided: (1) allows an individual to: (C) receive visitors of their choosing at any time;"	N/A Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services. However, HHSC has determined that settings where SE is provided are compliant with this requirement. SE is provided in non-residential settings where an individual may receive visitors to the same degree as individuals not receiving Medicaid HCBS. This includes when receiving SE at a place of employment, where the individual must follow the employer's policies and procedures regarding visitation. TAC §42.625, Employment Services <ul style="list-style-type: none">(e)(1)(A) "...supported employment... consists of... making employment adaptations, supervising, and providing training related to an individual's assessed needs;(e)(1)(B) "transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting;"	N/A Rationale: This requirement is not relevant to EA because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services. However, HHSC has determined that settings where EA is provided are compliant with this requirement. EA is provided in non-residential settings where an individual may receive visitors to the same degree as individuals not receiving Medicaid HCBS. This includes when receiving EA at a place of employment, where the individual must follow the employer's policies and procedures regarding visitation. TAC §42.625, Employment Services <ul style="list-style-type: none">(c)(1)(A) "...employment assistance... consists of... identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;"(c)(1)(B) "locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements..."

Federal Rule	Licensed Assisted Living (4-6 person) (Residential)	Licensed Home Health Assisted Living (1-3 Person Homes) (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>► The setting is physically accessible to the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(E)</p>	<p>COMPLIANT</p> <p>Rationale: The settings are physically accessible to the individual.</p> <p>TAC §553.100, General Requirements</p> <p>► <i>(k) "An assisted living facility must comply with the plan review and inspection requirements of the Texas Accessibility Standards..."</i></p> <p>TAC §42.630, Residential Services</p> <p>► <i>(c)(4)(A) "...A residence in which licensed home health assisted living is provided must: be accessible to and usable by the individuals receiving services in the residence..."</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided: (7) the residence is physically accessible to the individual."</i></p>	<p>COMPLIANT</p> <p>Rationale: The settings are physically accessible to the individual.</p> <p>TAC §42.630, Residential Services</p> <p>► <i>(c)(4)(A) "...A residence in which licensed home health assisted living is provided must: be accessible to and usable by the individuals receiving services in the residence..."</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living and licensed home health assisted living are provided: (7) the residence is physically accessible to the individual."</i></p>	<p>COMPLIANT</p> <p>Rationale: This requirement is not relevant to day habilitation because it is provided in non-residential settings. However, HHSC has determined that settings where day habilitation is provided meet this requirement. Policies require that day habilitation is provided in a setting that is accessible to the individual.</p> <p>TAC §42.626, Day Habilitation</p> <p>► <i>(b)(1)(A)(i) "...day habilitation: is provided in a non-residential setting...that: is accessible to and usable by the individual"</i></p> <p>Remediation: Although remediation is not required for this criterion, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet this requirement. The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>HHSC anticipates rules for individualized skills and socialization will become effective in November 2022.</p> <p>Provider manual revisions and updates to provider monitoring processes will be completed by March 2023.</p> <p>Draft rule:</p> <p><i>(e) "The setting in which on-site individualized skills and socialization is provided: (2) is physically accessible and free of hazards to an individual."</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, HHSC has determined that settings where SE is provided meet this requirement.</p> <p>SE is provided in non-residential settings that may include the individual's own home or family home, the greater community, or place of work. SE provides employment adaptations to ensure the work setting is accessible for the individual.</p> <p>TAC §42.625, Employment Services</p> <p>► <i>(e)(1)(A) "...supported employment... consists of... making employment adaptations, supervising, and providing training related to an individual's assessed needs;</i></p> <p>► <i>(e)(1)(B) "transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, HHSC has determined that settings where EA is provided meet this requirement.</p> <p>EA is provided in non-residential settings that may include the individual's own home or family home, the greater community, or place of work. EA includes identifying the individual's requirements for a work setting and work conditions.</p> <p>TAC §42.625, Employment Services</p> <p>► <i>(c)(1)(A) "...employment assistance... consists of... identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;"</i></p> <p>► <i>(c)(1)(B) "locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements..."</i></p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>► Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D) is supported by a specific assessed need and justified in the person-centered service plan.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(1)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan. However, policies do not specify that modifications be supported by a specific assessed need.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>► <i>(3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p><i>(b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must: (1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and (2) document on the individual's IPP: (A) a description of the specific and individualized assessed need that justifies the modification;"</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan. However, policies do not specify that modifications be supported by a specific assessed need.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>► <i>(3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p><i>(b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must: (1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and (2) document on the individual's IPP: (A) a description of the specific and individualized assessed need that justifies the modification;"</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: This requirement is not relevant to day habilitation services, because they are provided in non-residential settings. However, any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>► <i>(3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</i></p> <p>Remediation: Although remediation is not required for this criterion, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet this requirement. The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p><i>(f) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (e)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification. (1) The program provider must: (A) notify the case manager of the needed modification; and (B) provide the case manager the information described in paragraph (2)(A) of this subsection as requested by the case manager. (2) A case manager must, if notified by the program provider of a needed modification, convene a service planning team meeting to revise the individual's IPP and document on the individual's IPP: (A) a description of the specific and individualized assessed need that justifies the modification;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>► <i>(3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>► <i>(3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</i></p>

Federal Rule	Licensed Assisted Living (4-6 person) (Residential)	Licensed Home Health Assisted Living (1-3 Person Homes) (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>▸ Document the positive interventions and supports used prior to any modifications to the person-centered plan.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(2)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan. However, policies do not specify that positive interventions used prior to any modifications must be documented in the person-centered service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule: (b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</p> <p>(1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</p> <p>(2) document on the individual's IPP:</p> <p>(B) a description of any positive interventions and supports that have been tried but did not work;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan. However, policies do not specify that positive interventions used prior to any modifications must be documented in the person-centered service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule: (b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</p> <p>(1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</p> <p>(2) document on the individual's IPP:</p> <p>(B) a description of any positive interventions and supports that have been tried but did not work;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: This requirement is not relevant to day habilitation services, because they are provided in non-residential settings. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>Remediation: Although remediation is not required for this criterion, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet this requirement. The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule: (f) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (e)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the case manager of the needed modification; and</p> <p>(B) provide the case manager the information described in paragraph (2)(A) of this subsection as requested by the case manager.</p> <p>(2) A case manager must, if notified by the program provider of a needed modification, convene a service planning team meeting to revise the individual's IPP and document on the individual's IPP:</p> <p>(B) a description of the positive interventions and supports that were tried but did not work;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>▸ Document less intrusive methods of meeting the need that have been tried but did not work.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(3)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan. However, policies do not specify that less intrusive methods that have been tried must be documented in the person-centered service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule: (b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</p> <p>(1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</p> <p>(2) document on the individual's IPP:</p> <p>(C) a description of any less intrusive methods of meeting the need that have been tried but did not work;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan. However, policies do not specify that less intrusive methods that have been tried must be documented in the person-centered service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. 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Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</p> <p>Remediation: Although remediation is not required for this criterion, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet this requirement. The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule: (f) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (e)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the case manager of the needed modification; and</p> <p>(B) provide the case manager the information described in paragraph (2)(A) of this subsection as requested by the case manager.</p> <p>(2) A case manager must, if notified by the program provider of a needed modification, convene a service planning team meeting to revise the individual's IPP and document on the individual's IPP:</p> <p>(C) a description of the less intrusive methods of meeting the need that were tried but did not work;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <p>▸ (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. 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Federal Rule	Licensed Assisted Living (4-6 person) (Residential)	Licensed Home Health Assisted Living (1-3 Person Homes) (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none"> Include a clear description of the condition that is directly proportionate to the specific assessed need. <p>42 CFR §441.301(c)(4)(vi)(F)(4)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. However, policies do not specify that a clear description of the condition that is directly proportionate to the specific assessed need be documented in the person-centered service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <ul style="list-style-type: none"> (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..." <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule: (b) If an individual’s service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must: (1) revise the individual’s IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and (2) document on the individual’s IPP: (D) a description of the condition that is directly proportionate to the specific assessed need;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. However, policies do not specify that a clear description of the condition that is directly proportionate to the specific assessed need be documented in the person-centered service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <ul style="list-style-type: none"> (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..." <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. 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Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <ul style="list-style-type: none"> (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..." <p>Remediation: Although remediation is not required for this criterion, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet this requirement. The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule: (f) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (e)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual’s program provider of the needed modification. (1) The program provider must: (A) notify the case manager of the needed modification; and (B) provide the case manager the information described in paragraph (2)(A) of this subsection as requested by the case manager. (2) A case manager must, if notified by the program provider of a needed modification, convene a service planning team meeting to revise the individual’s IPP and document on the individual’s IPP: (D) a description of the condition that is directly proportionate to the specific assessed need;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <ul style="list-style-type: none"> (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..." 	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <ul style="list-style-type: none"> (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..."
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none"> Include regular collection and review of data to measure the ongoing effectiveness of the modification. <p>42 CFR §441.301(c)(4)(vi)(F)(5)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. However, policies do not specify that regular collection and review of data to measure the ongoing effectiveness of the modification be documented in the person-centered service plan.</p> <p>TAC §42.215, Development of Enrollment IPP</p> <ul style="list-style-type: none"> (3)(A) "...ensure the enrollment IPP includes: a description of the needs and preferences identified by the individual, LAR, or both; a description of the services and supports the individual requires to continue living in a community-based setting..." <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. 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The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule: (f) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (e)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual’s program provider of the needed modification. (1) The program provider must: (A) notify the case manager of the needed modification; and (B) provide the case manager the information described in paragraph (2)(A) of this subsection as requested by the case manager. (2) A case manager must, if notified by the program provider of a needed modification, convene a service planning team meeting to revise the individual’s IPP and document on the individual’s IPP: (E) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. 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<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>► Establish time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(6)</p>	<p>COMPLIANT</p> <p>Rationale: Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan. The individual's case manager must meet with the individual once per year to renew the individual's IPC and IPP, and the individual or LAR may request a revision to the IPC and IPP at any time if a modification is needed.</p> <p>TAC §42.103, Definitions</p> <p>► (62) <i>IPC period--The effective period of an enrollment IPC and a renewal IPC as follows: for an enrollment IPC, the period of time from the effective date of the enrollment IPC... through the last calendar day of the 11th month after the month in which enrollment occurred; and for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC...</i></p> <p>TAC §42.223, Renewal and Revision of an IPP and IPC</p> <p>► (a)(1) <i>"Beginning the effective date of an individual's IPC... a case manager must meet with the individual and LAR in person... to: review whether... services are being provided in accordance with the IPC and IPP; review the individual's progress toward achieving the goals and outcomes described in the IPP for each service listed on the individual's IPC; determine if the services are meeting the individual's needs;"</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b) <i>If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</i></p> <p>(1) <i>revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</i></p> <p>(2) <i>document on the individual's IPP:</i></p> <p>(F) <i>the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;"</i></p>	<p>COMPLIANT</p> <p>Rationale: Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan. 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Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>The individual's case manager must meet with the individual once per year to renew the individual's IPC and IPP, and the individual or LAR may request a revision to the IPC and IPP at any time if a modification is needed.</p> <p>TAC §42.103, Definitions</p> <p>► (62) <i>IPC period--The effective period of an enrollment IPC and a renewal IPC as follows: for an enrollment IPC, the period of time from the effective date of the enrollment IPC... through the last calendar day of the 11th month after the month in which enrollment occurred; and for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC...</i></p> <p>TAC §42.223, Renewal and Revision of an IPP and IPC</p> <p>► (a)(1) <i>"Beginning the effective date of an individual's IPC... a case manager must meet with the individual and LAR in person... to: review whether... services are being provided in accordance with the IPC and IPP; review the individual's progress toward achieving the goals and outcomes described in the IPP for each service listed on the individual's IPC; determine if the services are meeting the individual's needs;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>The individual's case manager must meet with the individual once per year to renew the individual's IPC and IPP, and the individual or LAR may request a revision to the IPC and IPP at any time if a modification is needed.</p> <p>TAC §42.103, Definitions</p> <p>► (62) <i>IPC period--The effective period of an enrollment IPC and a renewal IPC as follows: for an enrollment IPC, the period of time from the effective date of the enrollment IPC... through the last calendar day of the 11th month after the month in which enrollment occurred; and for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC...</i></p> <p>TAC §42.223, Renewal and Revision of an IPP and IPC</p> <p>► (a)(1) <i>"Beginning the effective date of an individual's IPC... a case manager must meet with the individual and LAR in person... to: review whether... services are being provided in accordance with the IPC and IPP; review the individual's progress toward achieving the goals and outcomes described in the IPP for each service listed on the individual's IPC; determine if the services are meeting the individual's needs;"</i></p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>► Include informed consent of the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(7)</p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b) <i>If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</i></p> <p>(1) <i>revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</i></p> <p>(2) <i>document on the individual's IPP:</i></p> <p>(G) <i>the individual's or LAR's signature on the IPP evidencing informed consent to the modification;"</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b) <i>If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</i></p> <p>(1) <i>revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</i></p> <p>(2) <i>document on the individual's IPP:</i></p> <p>(G) <i>the individual's or LAR's signature on the IPP evidencing informed consent to the modification;"</i></p>	<p>SILENT</p> <p>Rationale: This requirement is not relevant to day habilitation, because it is provided in non-residential settings.</p> <p>Remediation: Although remediation is not required for this criterion, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet this requirement. The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p>(f) <i>"If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (e)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</i></p> <p>(1) <i>The program provider must:</i></p> <p>(A) <i>notify the case manager of the needed modification; and</i></p> <p>(B) <i>provide the case manager the information described in paragraph (2)(A) of this subsection as requested by the case manager.</i></p> <p>(2) <i>A case manager must, if notified by the program provider of a needed modification, convene a service planning team meeting to revise the individual's IPP and document on the individual's IPP:</i></p> <p>(G) <i>the individual's or LAR's signature on the IPP evidencing informed consent to the modification;</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	Licensed Assisted Living (4-6 person) (Residential)	Licensed Home Health Assisted Living (1-3 Person Homes) (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>‣ Include assurances that interventions and supports will cause no harm to the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(8)</p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p><i>(b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</i></p> <p><i>(1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</i></p> <p><i>(2) document on the individual's IPP:</i></p> <p><i>(H) the program provider's assurance that the modification will cause the individual no harm."</i></p>	<p>SILENT</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all DBMD program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p><i>(b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</i></p> <p><i>(1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</i></p> <p><i>(2) document on the individual's IPP:</i></p> <p><i>(H) the program provider's assurance that the modification will cause the individual no harm."</i></p>	<p>SILENT</p> <p>Rationale: This requirement is not relevant to day habilitation, because it is provided in non-residential settings.</p> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet this requirement. The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule §260.503, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p><i>(f) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (e)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</i></p> <p><i>(1) The program provider must:</i></p> <p><i>(A) notify the case manager of the needed modification; and</i></p> <p><i>(B) provide the case manager the information described in paragraph (2)(A) of this subsection as requested by the case manager.</i></p> <p><i>(2) A case manager must, if notified by the program provider of a needed modification, convene a service planning team meeting to revise the individual's IPP and document on the individual's IPP:</i></p> <p><i>(H) the program provider's assurance that the modification will cause the individual no harm.</i></p> <p><i>(3) After the service planning team revises the IPP as required by paragraph (2) of this subsection, the individualized skills and socialization provider may implement the modifications."</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>Home and community-based settings do not include the following: NF, IMD, ICF/IID; hospital; or any other locations that have qualities of an institutional setting.</p> <p>42 CFR §441.301(c)(5)</p>	<p>COMPLIANT</p> <p>Rationale: Licensed assisted living is provided in an ALF that is owned by the program provider.</p> <p>TAC §42.103, Definitions</p> <p>‣ <i>(64) "Licensed assisted living--A service provided by a program provider in an ALF that is owned by the program provider."</i></p> <p>TAC §42.630, Residential Services</p> <p>‣ <i>(b)(1) "...serve no more than six individuals in a single residence."</i></p> <p>TAC §42.104, Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC</p> <p>‣ <i>(a) "The Deaf Blind with Multiple Disabilities (DBMD) Program is a Medicaid waiver program. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program."</i></p>	<p>COMPLIANT</p> <p>Rationale: Licensed home health assisted living is provided in a residence for no more than three individuals</p> <p>TAC §42.103, Definitions</p> <p>‣ <i>(65) "Licensed home health assisted living--A service provided by a program provider that is a HCSSA in a residence for no more than three individuals, at least one of whom owns or leases the residence."</i></p> <p>TAC §42.630, Residential Services</p> <p>‣ <i>(c)(1) "...serve no more than three individuals in a single residence."</i></p> <p>TAC §42.104, Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC</p> <p>‣ <i>(a) "The Deaf Blind with Multiple Disabilities (DBMD) Program is a Medicaid waiver program. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program."</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require day habilitation is provided outside the individual's home in a non-residential setting. However, they do not clarify that the setting is integrated and maximizes participation in the community.</p> <p>TAC §42.626, Day Habilitation</p> <p>‣ <i>(b) "Day habilitation...is provided in a non-residential setting separate from the individual's own or family home or the residence in which the individual receives licensed assisted living or licensed home health assisted living"</i></p> <p>TAC §42.104, Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC</p> <p>‣ <i>(a) "The Deaf Blind with Multiple Disabilities (DBMD) Program is a Medicaid waiver program. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program."</i></p> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. HHSC has drafted rules for individualized skills and socialization that specify where the service will be provided. The new rule to address this requirement will be added at TAC Title 26, Chapter 260, Rule §260.503, Description of Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p><i>(d) An individualized skills and socialization provider must ensure that On-site individualized skills and socialization:</i></p> <p><i>(1) is provided in a building or a portion of a building that is owned or leased by an individualized skills and socialization provider;"</i></p> <p>...</p> <p><i>(e) "An individualized skills and socialization provider must ensure that off-site individualized skills and socialization:</i></p> <p><i>(2) is provided in a community setting chosen by the individual from among available community setting options;"</i></p>	<p>COMPLIANT</p> <p>Rationale: SE is provided in the individual's own home, or the greater community, including in a work setting. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §42.625, Employment Services</p> <p>‣ <i>(e)(1)(B) "...to support the individual to be self-employed, work from home, or perform in a work setting..."</i></p> <p>TAC §42.104, Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC</p> <p>‣ <i>(a) "The Deaf Blind with Multiple Disabilities (DBMD) Program is a Medicaid waiver program. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program."</i></p>	<p>COMPLIANT</p> <p>Rationale: EA is provided in the individual's own home, or the greater community, including in a work setting. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>§42.625, Employment Services</p> <p>‣ <i>(c)(1)(D) "...to help the individual locate competitive employment in the community..."</i></p> <p>TAC §42.104, Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC</p> <p>‣ <i>(a) "The Deaf Blind with Multiple Disabilities (DBMD) Program is a Medicaid waiver program. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program."</i></p>

Section 3. Home and Community-based Services (HCS) Waiver

All state rule citations for the HCS program can be found at [40 TAC Chapter 9, subchapter D](#). Additional policy information can be found in the [HCS Handbook](#) and [HCS Billing Guidelines](#).

HHSC assessed policies for all HCS program services and determined that the following services are fully compliant with requirements of the HCBS Settings Rule at 42 CFR §441.301(c)(4): adaptive aids; audiology; behavioral support; CRT; dental treatment; dietary services; FMS; minor home modifications; nursing; respite³; social work; supported home living (transportation); therapies; and TAS.

HHSC determined that policy revisions are needed for 3-person and 4-person group homes; host home/companion care settings; and settings where day habilitation, SE and EA are provided. 3-person group homes, 4-person group homes and host home/companion care are provider-owned/controlled residential settings. Day habilitation is delivered in non-residential congregate settings. SE and EA are individualized services delivered in settings determined based on the individual’s needs and preferences.

Compliance determinations and planned remediation for these services are described in the table below. Compliance levels are indicated as follows:

- “N/A” indicates that the corresponding requirement of the HCBS Settings Rule is not relevant to the specified waiver service.
- “Non-Compliant” indicates that state rules and policies contradict the HCBS Settings Rule.
- “Silent” indicates that state rules and policies do not address the corresponding requirement of the HCBS Settings Rule.
- “Partially compliant” indicates that existing state rules and policies address the corresponding requirement of the HCBS Settings Rule but do not fully comply with the federal rule requirement.
- “Compliant” indicates that existing state rules and policies address and meet the corresponding requirement of the HCBS Settings Rule.

HHSC plans to amend policies that are non-compliant, silent, or partially compliant. HHSC anticipates program rules will become effective in December 2022 and individualized skills and socialization rules will become effective in November 2022. HHSC anticipates updates to the program handbook, billing guidelines and provider monitoring processes will be completed by March 2023.

Note that rule language provided in the table below is currently in draft form and is subject to change.

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
The setting is integrated and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive settings, engage in the community, and receive services in the community, to the same degree of access an individual not receiving HCBS services has. 42 CFR §441.301(c)(4)(i)	COMPLIANT Rationale: The individual has opportunities to access and participate in the greater community. TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(a)(1) "...individual...exercising the same rights and responsibilities by people without disabilities..."</i>▸ <i>(b)(22) "...choose from the same services that are available to all community members..."</i> TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(b)(1) "...to manage, be trained to manage, or have assistance in managing financial affairs..."</i>▸ <i>(b)(31) "...to possess and to use money in personal and individualized ways or learn to do so..."</i>▸ <i>(b)(32) "...to access all financial records..."</i> Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings. Draft rule: <i>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</i> <i>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</i> <i>(A) seek employment and work in a competitive integrated setting;</i> <i>(B) engage in community life;</i> <i>(C) control personal resources; and</i> <i>(D) receive services in the community. "</i>	COMPLIANT Rationale: The individual has opportunities to access and participate in the greater community. TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(a)(1) "...individual...exercising the same rights and responsibilities by people without disabilities..."</i>▸ <i>(b)(22) "...choose from the same services that are available to all community members..."</i> TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(b)(1) "...to manage, be trained to manage, or have assistance in managing financial affairs..."</i>▸ <i>(b)(31) "...to possess and to use money in personal and individualized ways or learn to do so..."</i>▸ <i>(b)(32) "...to access all financial records..."</i> Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings. Draft rule: <i>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</i> <i>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</i> <i>(A) seek employment and work in a competitive integrated setting;</i> <i>(B) engage in community life;</i> <i>(C) control personal resources; and</i> <i>(D) receive services in the community."</i>	COMPLIANT Rationale: The individual has opportunities to access and participate in the greater community. TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(a)(1) "...individual...exercising the same rights and responsibilities by people without disabilities..."</i>▸ <i>(b)(22) "...choose from the same services that are available to all community members..."</i> TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(b)(1) "...to manage, be trained to manage, or have assistance in managing financial affairs..."</i>▸ <i>(b)(31) "...to possess and to use money in personal and individualized ways or learn to do so..."</i>▸ <i>(b)(32) "...to access all financial records..."</i> Remediation: Although day habilitation is compliant with this requirement, HHSC will replace day habilitation with a new, fully HCBS compliant service called individualized skills and socialization. Individualized skills and socialization will be subject to the new rule to address this requirement, which will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings. Draft rule: <i>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</i> <i>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</i> <i>(A) seek employment and work in a competitive integrated setting;</i> <i>(B) engage in community life;</i> <i>(C) control personal resources; and</i> <i>(D) receive services in the community."</i>	COMPLIANT Rationale: The individual has opportunities to access and participate in the greater community. TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(a)(1) "...individual...exercising the same rights and responsibilities by people without disabilities..."</i>▸ <i>(b)(22) "...choose from the same services that are available to all community members..."</i> TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(b)(1) "...to manage, be trained to manage, or have assistance in managing financial affairs..."</i>▸ <i>(b)(31) "...to possess and to use money in personal and individualized ways or learn to do so..."</i>▸ <i>(b)(32) "...to access all financial records..."</i> Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings. Draft rule: <i>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</i> <i>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</i> <i>(A) seek employment and work in a competitive integrated setting;</i> <i>(B) engage in community life;</i> <i>(C) control personal resources; and</i> <i>(D) receive services in the community. "</i>	COMPLIANT Rationale: The individual has opportunities to access and participate in the greater community. EA provides assistance to help the individual locate paid competitive employment in the community. TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(a)(1) "...individual...exercising the same rights and responsibilities by people without disabilities..."</i>▸ <i>(b)(22) "...choose from the same services that are available to all community members..."</i> TAC §9.173, Certification Principles: Rights of Individuals <ul style="list-style-type: none">▸ <i>(b)(1) "...to manage, be trained to manage, or have assistance in managing financial affairs..."</i>▸ <i>(b)(31) "...to possess and to use money in personal and individualized ways or learn to do so..."</i>▸ <i>(b)(32) "...to access all financial records..."</i> HCS Billing Guidelines, Section 4800 <ul style="list-style-type: none">▸ <i>"Employment assistance means assistance provided to an individual to help the individual locate paid competitive employment in the community or self-employment and consists of individualized, person-directed activities to develop and implement strategies for achieving the individual's desired employment outcome, including more suitable employment for individuals who are employed."</i> Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings. Draft rule: <i>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</i> <i>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</i> <i>(A) seek employment and work in a competitive integrated setting;</i> <i>(B) engage in community life;</i> <i>(C) control personal resources; and</i> <i>(D) receive services in the community. "</i>

³ Respite may be provided in institutional settings including a NF or ICF/IID for no longer than 30 days in an individual’s service plan year. In responses to public comments on the [HCBS Settings Final Rule](#), CMS indicates that the delivery of some Medicaid HCBS, such as respite, is permitted in an institutional setting.

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p> <p>42 CFR §441.301(c)(4)(ii)</p>	<p>COMPLIANT</p> <p>Rationale: The individual is offered a choice of setting options, including choices of non-disability specific settings.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(16) "...live in normative residential living environment..."</p> <p>▸ (b)(22) "...choose from the same services that are available to all community members..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(4) "The program provider must... ensure that each applicant or individual, or LAR, chooses where the individual or applicant will reside from available options..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which residential support, supervised living, or host home/companion care is provided. The setting options are identified and documented in an individual's PDP and are based on the individual's needs, preferences, and, for settings in which residential support, supervised living, or host home/companion care is provided, resources available for room and board."</p>	<p>COMPLIANT</p> <p>Rationale: The individual is offered a choice of setting options, including choices of non-disability specific settings.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(16) "...live in normative residential living environment..."</p> <p>▸ (b)(22) "...choose from the same services that are available to all community members..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(4) "The program provider must... ensure that each applicant or individual, or LAR, chooses where the individual or applicant will reside from available options..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which residential support, supervised living, or host home/companion care is provided. The setting options are identified and documented in an individual's PDP and are based on the individual's needs, preferences, and, for settings in which residential support, supervised living, or host home/companion care is provided, resources available for room and board."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered a choice of setting options. However, policies do not specify that the individual is offered choice of non-disability specific settings.</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(28)(E) "...ensure that day habilitation is provided in accordance with the individual's PDP, IPC, implementation plan...including...training and support activities that promote the individual's integration and participation in the community"</p> <p>Remediation: HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule for all HCS program services. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which residential support, supervised living, or host home/companion care is provided. The setting options are identified and documented in an individual's PDP and are based on the individual's needs, preferences, and, for settings in which residential support, supervised living, or host home/companion care is provided, resources available for room and board."</p>	<p>COMPLIANT</p> <p>Rationale: Adheres to the requirement as the setting offers individual choices of non-disability setting options to receive services in.</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(45)(A) "...supported employment is assistance provided to an individual who, because of a disability, requires ongoing support to be self-employed, work from home, or perform in a work setting at which persons with disabilities are employed...to sustain competitive employment...in accordance with the individual's PDP, IPC, and implementation plan..."</p> <p>▸ (a)(45)(B) "...supported employment... consists of... transporting an individual to support the individual to be self-employed, work from home, or perform in a work setting..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which residential support, supervised living, or host home/companion care is provided. The setting options are identified and documented in an individual's PDP and are based on the individual's needs, preferences, and, for settings in which residential support, supervised living, or host home/companion care is provided, resources available for room and board."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered a choice of setting options. However, policies do not specify that the individual is offered choice of non-disability specific settings.</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(44)(B) "...employment assistance... consists of... identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions... locating prospective employers... transporting an individual to help the individual locate competitive employment in the community..."</p> <p>Remediation: HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule for all HCS program services. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which residential support, supervised living, or host home/companion care is provided. The setting options are identified and documented in an individual's PDP and are based on the individual's needs, preferences, and, for settings in which residential support, supervised living, or host home/companion care is provided, resources available for room and board."</p>
<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p> <p>42 CFR §441.301(c)(4)(iii)</p>	<p>COMPLIANT</p> <p>Rationale: The setting ensures the individual's rights to privacy, dignity, and respect, and to be free of coercion and restraint.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</p> <p>▸ (b)(15) "...be free from the use of unauthorized restraints..."</p> <p>▸ "(b)(26) "...to live free from abuse, neglect, or exploitation in a healthful, comfortable, and safe environment..."</p> <p>TAC §9.172, Certification Principles: Mission, Development, and Philosophy</p> <p>▸ (2) "ensure that each individual's humanity and dignity is respected..."</p> <p>▸ (3) "...ensure that the rights of the individual, as exercised by the individual or the LAR, are protected..."</p> <p>▸ (4) "encourage the individual to... participate in making choices..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule for all HCS program services. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</p> <p>(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."</p>	<p>COMPLIANT</p> <p>Rationale: The setting ensures the individual's rights to privacy, dignity, and respect, and to be free of coercion and restraint.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</p> <p>▸ (b)(15) "...be free from the use of unauthorized restraints..."</p> <p>▸ "(b)(26) "...to live free from abuse, neglect, or exploitation in a healthful, comfortable, and safe environment..."</p> <p>TAC §9.172, Certification Principles: Mission, Development, and Philosophy</p> <p>▸ (2) "ensure that each individual's humanity and dignity is respected..."</p> <p>▸ (3) "...ensure that the rights of the individual, as exercised by the individual or the LAR, are protected..."</p> <p>▸ (4) "encourage the individual to... participate in making choices..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule for all HCS program services. 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The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</p> <p>(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."</p>	<p>COMPLIANT</p> <p>Rationale: The setting ensures the individual's rights to privacy, dignity, and respect, and to be free of coercion and restraint.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</p> <p>▸ (b)(15) "...be free from the use of unauthorized restraints..."</p> <p>▸ "(b)(26) "...to live free from abuse, neglect, or exploitation in a healthful, comfortable, and safe environment..."</p> <p>TAC §9.172, Certification Principles: Mission, Development, and Philosophy</p> <p>▸ (2) "ensure that each individual's humanity and dignity is respected..."</p> <p>▸ (3) "...ensure that the rights of the individual, as exercised by the individual or the LAR, are protected..."</p> <p>▸ (4) "encourage the individual to... participate in making choices..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule for all HCS program services. 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A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</p> <p>(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."</p>	<p>COMPLIANT</p> <p>Rationale: The setting ensures the individual's rights to privacy, dignity, and respect, and to be free of coercion and restraint.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</p> <p>▸ (b)(15) "...be free from the use of unauthorized restraints..."</p> <p>▸ "(b)(26) "...to live free from abuse, neglect, or exploitation in a healthful, comfortable, and safe environment..."</p> <p>TAC §9.172, Certification Principles: Mission, Development, and Philosophy</p> <p>▸ (2) "ensure that each individual's humanity and dignity is respected..."</p> <p>▸ (3) "...ensure that the rights of the individual, as exercised by the individual or the LAR, are protected..."</p> <p>▸ (4) "encourage the individual to... participate in making choices..."</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to explicitly address requirements of the HCBS Settings Rule for all HCS program services. 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Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled setting:</p> <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p> <p>42 CFR §441.301(c)(4)(vi)(A)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual has the right to live in the setting unless a transfer or discharge is warranted. However, policies do not specify requirements for lease agreements.</p> <p>TAC §9.178, Certification Principles: Quality Assurance</p> <p>▸ <i>(g) "...provider must make available all records, reports, and other information related to the delivery of... services..."</i></p> <p>▸ <i>(k)(4) "At least annually, the program provider must: review the reasons for terminating... services... must not charge...room and board amount that exceeds an amount determined ... maintain documentation demonstrating... room and board charge...determined in accordance..."</i></p> <p>▸ <i>(r)(1) "a program provider must report the death of an individual..."</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.503, Residential Agreements.</p> <p>Draft rule:</p> <p><i>(b) "An individual's program provider must ensure that:</i></p> <p><i>(1) an individual living in a three-person residence or four-person residence or LAR has a written residential agreement with the program provider;"</i></p> <p><i>(c) "The residential agreement required by subsection (b) of this section must include:</i></p> <p><i>(7) a provision that:</i></p> <p><i>(A) the program provider or service provider of host home/companion care and the individual or LAR agree that the residential agreement is a "lease" under Texas Property Code Chapter 92 and that they are subject to state law governing residential tenancies, including Texas Property Code Chapters 24, 91, and 92 and Texas Rules of Civil Procedure Rule 510; and</i></p> <p><i>(B) to the extent allowed by law, in the event of a conflict or inconsistency between any provision of the residential agreement and any provision of state statutory law, including Texas Property Code Chapters 91 and 92, the provision in the residential agreement governs;</i></p> <p><i>(8) a provision that the individual or LAR is not waiving any right or remedy provided to tenants under state law and is not agreeing to any notice period that is shorter than the notice period to which tenants are entitled under state law;"</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual has the right to live in the setting unless a transfer or discharge is warranted. 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Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because EA is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <p>▸ Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(1)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The setting allows the individual to lock their bedroom door.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p> <p>▸ <i>(b)(44) "...to have a lock on the inside of the individual's bedroom door..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery.</p> <p>▸ <i>(a)(23) "...the individual lives in a home that is a typical residence within the community..."</i></p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p><i>(1) an individual has privacy in the individual's bedroom;</i></p> <p><i>...</i></p> <p><i>(4) a lock is installed on the individual's bedroom door at no cost to the individual and that:</i></p> <p><i>(A) the lock is operable by the individual; and</i></p> <p><i>(B) only the individual, a roommate of the individual, and staff designated by the program provider have keys to the individual's bedroom door;"</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The setting allows the individual to lock their bedroom door.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p> <p>▸ <i>(b)(44) "...to have a lock on the inside of the individual's bedroom door..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery.</p> <p>▸ <i>(a)(23) "...the individual lives in a home that is a typical residence within the community..."</i></p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p><i>(1) an individual has privacy in the individual's bedroom;</i></p> <p><i>...</i></p> <p><i>(4) a lock is installed on the individual's bedroom door at no cost to the individual and that:</i></p> <p><i>(A) the lock is operable by the individual; and</i></p> <p><i>(B) only the individual, a roommate of the individual, and staff designated by the program provider have keys to the individual's bedroom door;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to day habilitation, because it is provided in non-residential settings.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping unit:</p> <p>▸ Individuals sharing units have a choice of roommates in that setting.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(2)</p>	<p>COMPLIANT</p> <p>Rationale: The setting allows the individual choice of roommates.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p> <p>▸ <i>(b)(27) "...participate in decisions regarding the individual's living environment, including... other individuals residing in the residence..."</i></p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p><i>(1) an individual has privacy in the individual's bedroom;</i></p> <p><i>(2) an individual has the option not to share a bedroom with a roommate;</i></p> <p><i>(3) an individual sharing a bedroom has a choice of roommates;"</i></p>	<p>COMPLIANT</p> <p>Rationale: The setting allows the individual choice of roommates.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p> <p>▸ <i>(b)(27) "...participate in decisions regarding the individual's living environment, including... other individuals residing in the residence..."</i></p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p><i>(1) an individual has privacy in the individual's bedroom;</i></p> <p><i>(2) an individual has the option not to share a bedroom with a roommate;</i></p> <p><i>(3) an individual sharing a bedroom has a choice of roommates;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to day habilitation, because it is provided in non-residential settings.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <p>▸ Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(3)</p>	<p>COMPLIANT</p> <p>Rationale: The setting allows the individual to furnish and decorate their bedroom and living areas.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p> <p>▸ <i>(b)(16) "...to live in a normative residential living environment..."</i></p> <p>▸ <i>(b)(27) "...participate in decisions regarding the individual's living environment, including... other individuals residing in the residence..."</i></p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p><i>(5) an individual can furnish and decorate the individual's bedroom;"</i></p>	<p>COMPLIANT</p> <p>Rationale: The setting allows the individual to furnish and decorate their bedroom and living areas.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p> <p>▸ <i>(b)(16) "...to live in a normative residential living environment..."</i></p> <p>▸ <i>(b)(27) "...participate in decisions regarding the individual's living environment, including... other individuals residing in the residence..."</i></p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p><i>(5) an individual can furnish and decorate the individual's bedroom;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to day habilitation, because it is provided in non-residential settings.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>▸ Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p> <p>42 CFR §441.301(c)(4)(vi)(C)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The setting allows the individual to make choices regarding their delivery of services.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p> <p>TAC §9.178, Certification Principles: Quality Assurance</p> <p>▸ <i>(b) "... personalized service delivery based upon the choices made by each individual or LAR and those choices that are available to persons without an intellectual disability or other disability..."</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p><i>(6) while in the residence, an individual has the freedom and support:</i></p> <p><i>(A) to control the individual's schedule and activities that are not part of the implementation plan; and</i></p> <p><i>(B) to have access to food at any time."</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The setting allows the individual to make choices regarding their delivery of services.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p> <p>TAC §9.178, Certification Principles: Quality Assurance</p> <p>▸ <i>(b) "... personalized service delivery based upon the choices made by each individual or LAR and those choices that are available to persons without an intellectual disability or other disability..."</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p><i>(6) while in the residence, an individual has the freedom and support:</i></p> <p><i>(A) to control the individual's schedule and activities that are not part of the implementation plan; and</i></p> <p><i>(B) to have access to food at any time."</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the setting allows the individual to make choices. However, they do not specify that the individual has access to food at any time in a day habilitation setting.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights...exercised by people without disabilities..."</i></p> <p>▸ <i>(b)(6) "...participate in decisions regarding the individual's living environment, including location, furnishings, other individuals residing in the residence and moves to other residential locations..."</i></p> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(C). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p><i>(d) The setting in which on-site individualized skills and socialization is provided:</i></p> <p><i>(1) allows an individual to:</i></p> <p><i>(A) control the individual's schedule and activities related to on-site individualized skills and socialization;</i></p> <p><i>(B) have access to the individual's food at any time;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because it is provided in non-residential settings. SE is provided in non-residential settings where an individual may control their daily schedules, including accessing food, to the same degree as individual not receiving Medicaid HCBS. This includes when receiving EA in a work environment where the individual must follow the work site's policies and procedures. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because it is provided in non-residential settings. EA is provided in non-residential settings where an individual may control their daily schedules, including accessing food, to the same degree as individual not receiving Medicaid HCBS. This includes when receiving EA in a work environment where the individual must follow the work site's policies and procedures. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(a)(1) "...exercising the same rights and responsibilities exercised by people without disabilities..."</i></p>

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <ul style="list-style-type: none"> Individuals are able to have visitors of their choosing at any time. <p>42 CFR §441.301(c)(4)(vi)(D)</p>	<p>COMPLIANT</p> <p>Rationale: The setting allows the individual to have visitors.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(9) "...to receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals..." (b)(10) "...to have privacy in visitation with family and other visitors..." <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 565.5, Rights of Individuals.</p> <p>Draft rule:</p> <p>(b) "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:</p> <p>(9) receive visitors of their choosing at any time;"</p>	<p>COMPLIANT</p> <p>Rationale: The setting allows the individual to have visitors.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(9) "...to receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals..." (b)(10) "...to have privacy in visitation with family and other visitors..." <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 565.5, Rights of Individuals.</p> <p>Draft rule:</p> <p>(b) "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:</p> <p>(9) receive visitors of their choosing at any time;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: HHSC has determined that day habilitation settings are partially compliant with this requirement. The setting allows the individual to have visitors. Policies do not specify that an individual can receive visitors at any time.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(9) "...to receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals..." (b)(10) "...to have privacy in visitation with family and other visitors..." <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(D). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p>(d) The setting in which on-site individualized skills and socialization is provided:</p> <p>(1) allows an individual to:</p> <p>(C) receive visitors of their choosing at any time;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. However, HHSC has determined that SE settings are compliant with this requirement. SE is provided in non-residential settings where an individual may receive visitors to the same degree as individuals not receiving Medicaid HCBS. This includes when receiving EA at a place of employment, where the individual must follow the employer's policies and procedures regarding visitation. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(9) "...to receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals..." (b)(10) "...to have privacy in visitation with family and other visitors..." 	<p>N/A</p> <p>Rationale: Expects that the setting allows the individual to have visitors. However, HHSC has determined that EA settings are compliant with this requirement. EA is provided in non-residential settings where an individual may receive visitors to the same degree as individuals not receiving Medicaid HCBS. This includes when receiving EA at a place of employment, where the individual must follow the employer's policies and procedures regarding visitation. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(9) "...to receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals..." (b)(10) "...to have privacy in visitation with family and other visitors..."
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <ul style="list-style-type: none"> The setting is physically accessible to the individual. <p>42 CFR §441.301(c)(4)(vi)(E)</p>	<p>COMPLIANT</p> <p>Rationale: The setting is physically accessible to the individual.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(2) "...program provider must protect and promote...rights of the individual...access public accommodations..." <p>TAC §9.178, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none"> (c) "...based on the individual's needs, the environment is healthy, comfortable, safe, appropriate..." <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 565.23, Residential Requirements.</p> <p>Draft rule:</p> <p>(a) "This applies to all three-person and four-person residences and host home/companion care settings unless otherwise specified.</p> <p>(b) A program provider must ensure:</p> <p>(18) the interior and exterior of the home:</p> <p>(A) is free of accumulation of waste and trash;</p> <p>(B) is accessible and free of hazards to an individual; and</p> <p>(C) does not compromise the health or safety of an individual."</p>	<p>COMPLIANT</p> <p>Rationale: The setting is physically accessible to the individual.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(2) "...program provider must protect and promote...rights of the individual...access public accommodations..." <p>TAC §9.178, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none"> (c) "...based on the individual's needs, the environment is healthy, comfortable, safe, appropriate..." <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 565.23, Residential Requirements.</p> <p>Draft rule:</p> <p>(a) "This applies to all three-person and four-person residences and host home/companion care settings unless otherwise specified.</p> <p>(b) A program provider must ensure:</p> <p>(18) the interior and exterior of the home:</p> <p>(A) is free of accumulation of waste and trash;</p> <p>(B) is accessible and free of hazards to an individual; and</p> <p>(C) does not compromise the health or safety of an individual."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. However, HHSC has determined that day habilitation settings are compliant with this requirement because they are physically accessible to the individual.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(2) "...program provider must protect and promote...rights of the individual...access public accommodations..." <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(E). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p>(d) The setting in which on-site individualized skills and socialization is provided:</p> <p>(2) is physically accessible and free of hazards to an individual"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. However, SE is provided in non-residential settings that may include the individual's own home or family home, the greater community, or place of work. SE provides employment adaptations to ensure the work setting is accessible for the individual. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(2) "...program provider must protect and promote...rights of the individual...access public accommodations..." <p>HCS Program Billing Guidelines, Section 4700, Supported Employment</p> <ul style="list-style-type: none"> 4710 "Supported employment includes employment adaptations, supervision, training related to an individual's assessed needs..." 	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is provided in non-residential settings. However, EA is provided in non-residential settings that may include the individual's own home or family home, the greater community, or place of work. EA includes identifying the individual's requirements for a work setting and work conditions. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none"> (b)(2) "...program provider must protect and promote...rights of the individual...access public accommodations..." <p>HCS Program Billing Guidelines, Section 4800, Supported Employment</p> <ul style="list-style-type: none"> 4810 "Employment assistance means assistance provided to an individual to help the individual locate paid competitive employment in the community or self-employment and consists of individualized, person-directed activities to develop and implement strategies for achieving the individual's desired employment."

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D) is supported by a specific assessed need and justified in the person-centered service plan.</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>▸ Identify a specific and individualized assessed need.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(1)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual’s service plan be based on an assessed need. However, policies do not specify that modifications be supported by a specific assessed need.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>▸ <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>▸ <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must:</p> <p>(21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</p> <p>(A) a description of the specific and individualized assessed need that justifies the modification;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual’s service plan be based on an assessed need. However, policies do not specify that modifications be supported by a specific assessed need.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>▸ <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>▸ <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must:</p> <p>(21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</p> <p>(A) a description of the specific and individualized assessed need that justifies the modification;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: This requirement is not relevant to day habilitation because it is provided in non-residential settings. However, policies require that the individual’s service plan be based on an assessed need.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>▸ <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>▸ <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(1). The new rule to address this requirement will be added at TAC Title 26, Chapter 263, Rule 263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the service coordinator of the needed modification; and</p> <p>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</p> <p>(2) A service coordinator must:</p> <p>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</p> <p>(i) a description of the specific and individualized assessed need that justifies the modification;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual’s service plan be based on an assessed need.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>▸ <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>▸ <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual’s service plan be based on an assessed need.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>▸ <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>▸ <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p>

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>▸ Document the positive interventions and supports used prior to any modifications to the person-centered plan.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(2)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints. However, policies do not specify that positive interventions and supports used prior to modifications be documented in the person-centered service plan.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>▸ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>▸ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must:</p> <p>(21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</p> <p>(B) a description of the positive interventions and supports that were tried but did not work;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints. However, policies do not specify that positive interventions and supports used prior to modifications be documented in the person-centered service plan.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>▸ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>▸ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must:</p> <p>(21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</p> <p>(B) a description of the positive interventions and supports that were tried but did not work;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to day habilitation because it is provided in non-residential settings. However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>▸ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>▸ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(2). The new rule to address this requirement will be added at TAC Title 26, Chapter 263, Rule 263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the service coordinator of the needed modification; and</p> <p>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</p> <p>(2) A service coordinator must:</p> <p>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</p> <p>(ii) a description of the positive interventions and supports that were tried but did not work;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>▸ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>▸ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making around modifications to their rights and or any use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>▸ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>▸ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p>

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>‣ Document less intrusive methods of meeting the need that have been tried but did not work.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(3)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints. However, policies do not specify that less intrusive methods that have been tried and did not work be documented in the person-centered service plan.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must: (21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following: (C) a description of the less intrusive methods of meeting the need that were tried but did not work;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints. However, policies do not specify that less intrusive methods that have been tried and did not work be documented in the person-centered service plan.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. 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The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(3). The new rule to address this requirement will be added at TAC Title 26, Chapter 263, Rule 263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must: (A) notify the service coordinator of the needed modification; and (B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</p> <p>(2) A service coordinator must: (A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following: (iii) a description of the less intrusive methods of meeting the need that were tried but did not work;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p>

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>‣ Include a clear description of the condition that is directly proportionate to the specific assessed need.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(4)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints. However, policies do not specify that a clear description of the condition that is directly proportionate to the specific assessed need be documented in the person-centered service plan.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must:</p> <p>(21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</p> <p>(D) a description of the condition that is directly proportionate to the specific assessed need;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints. 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However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. 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The new rule to address this requirement will be added at TAC Title 26, Chapter 263, Rule 263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the service coordinator of the needed modification; and</p> <p>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</p> <p>(2) A service coordinator must:</p> <p>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</p> <p>(iv) a description of the condition that is directly proportionate to the specific assessed need;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p>

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>- Include regular collection and review of data to measure the ongoing effectiveness of the modification.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(5)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints. However, policies do not specify that the person-centered plan include regular collection and review of data to measure the ongoing effectiveness of the intervention.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>› <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>› <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>› <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>› <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. 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However, policies do not specify that the person-centered plan include regular collection and review of data to measure the ongoing effectiveness of the intervention.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>› <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>› <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>› <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>› <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must:</p> <p>(21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</p> <p>(E) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>› <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>› <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>› <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>› <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(5). The new rule to address this requirement will be added at TAC Title 26, Chapter 263, Rule 263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>HHSC anticipates rules for individualized skills and socialization will become effective in November 2022.</p> <p>Draft rule:</p> <p>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the service coordinator of the needed modification; and</p> <p>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</p> <p>(2) A service coordinator must:</p> <p>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</p> <p>(v) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>› <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>› <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>› <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>› <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>› <i>(b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</i></p> <p>› <i>(b)(5) "to be informed of... any restrictions affecting the individual's rights..."</i></p> <p>› <i>(b)(6) "...to participate in decisions..."</i></p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>› <i>(a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</i></p>

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>- Establish time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(6)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints. However, policies do not specify that the person-centered service plan must include time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must:</p> <p>(21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</p> <p>(F) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;"</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints. However, policies do not specify that the person-centered service plan must include time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. 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The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(6). The new rule to address this requirement will be added at TAC Title 26, Chapter 263, Rule 263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the service coordinator of the needed modification; and</p> <p>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</p> <p>(2) A service coordinator must:</p> <p>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</p> <p>(vi) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>‣ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>‣ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>‣ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>‣ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p>

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>- Include informed consent of the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(7)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual be informed of any changes to the person-centered service plan, but do not specify that informed consent is required.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(4) "...to be informed both orally and in writing of all the... services available and rules pertaining to the individual's enrollment and participation in the program... including those related to the use of restraint..."</p> <p>▸ (b)(5) "to be informed of... any restrictions affecting the individual's rights..."</p> <p>▸ (b)(6) "...to participate in decisions..."</p> <p>TAC §9.174, Certification Principles: Service Delivery</p> <p>▸ (a)(13) "...provided in an individualized manner and are based on the results of assessments of the individual's... strengths... personal goals... needs"</p> <p>Remediation: HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. 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The new rule to address this requirement will be added at TAC Title 26, Chapter 263, Rule 263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p>Draft rule:</p> <p>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the service coordinator of the needed modification; and</p> <p>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</p> <p>(2) A service coordinator must:</p> <p>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</p> <p>(vii) the individual's or LAR's signature evidencing informed consent to the modification;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is provided in non-residential settings. 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<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>- Include assurances that interventions and supports will cause no harm to the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(8)</p>	<p>COMPLIANT</p> <p>Rationale: Policies require that interventions and supports are safe and cause no harm to the individual.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(26) "...to live free from abuse, neglect, or exploitation in a healthful, comfortable, and safe environment"</p> <p>Remediation: Although current policies comply with this requirement, HHSC has drafted new rules to address HCBS Settings Rule requirements for all HCS program services, including adding requirements for residential settings. 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Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that interventions and supports are safe and cause no harm to the individual.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <p>▸ (b)(26) "...to live free from abuse, neglect, or exploitation in a healthful, comfortable, and safe environment"</p>

Federal Rule	3-Person Home/ 4-Person Home (Residential)	Host Home/ Companion Care (Residential)	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
Home and community-based settings do not include the following: NF, IMD, ICF/IID; hospital; or any other locations that have qualities of an institutional setting. 42 CFR §441.301(c)(5)	COMPLIANT Rationale: The setting resembles a typical residence within the community where services are provided. TAC §9.155(a)(5) related to (related to the Eligibility Criteria) ‣ "...not reside in an ICF/IID, a nursing facility...assisted living facility licensed...a setting in which two or more dwellings...create a residential area distinguishable from other areas..." TAC §9.174(a)(23) related to Certification Principles: Service Delivery ‣ "...individual lives in a home...typical residence within the community..."	COMPLIANT Rationale: The setting resembles a typical residence within the community where services are provided. TAC §9.155(a)(5) related to (related to the Eligibility Criteria) ‣ "...not reside in an ICF/IID, a nursing facility...assisted living facility licensed...a setting in which two or more dwellings...create a residential area distinguishable from other areas..." TAC §9.174(a)(23) related to Certification Principles: Service Delivery ‣ "...individual lives in a home...typical residence within the community..."	SILENT Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. HHSC has drafted rules for individualized skills and socialization that specify where the service will be provided. The new rule to address this requirement will be added at TAC Title 26, Chapter 263, Rule 263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization. Draft rule: <i>(c) On-site individualized skills and socialization: (1) is provided in a building or a portion of a building that is owned or leased by an individualized skills and socialization provider;"</i> ... <i>(f) Off-site individualized skills and socialization: (2) is provided in a community setting chosen by the individual from among available community setting options;</i>	COMPLIANT Rationale: SE is provided in the individual’s own home, or the greater community, including in a work setting. TAC §9.174(a)(45) related to Certification Principles: Service Delivery ‣ "...ongoing support to be self-employed, work from home, or perform in a work setting at which persons without disabilities are employed..."	COMPLIANT Rationale: SE is provided in the individual’s own home, or the greater community, including in a work setting. TAC §9.174(a)(44) related to Certification Principles: Service Delivery ‣ "...help the individual locate competitive employment in the community..."

Section 4. Medically Dependent Children Program (MDCP)

TAC rules for the MDCP program can be found at [1 TAC Chapter 353, Subchapter M](#). Additional policy information can be found at:

- [STAR Kids Managed Care Contract](#)
- [STAR Health Managed Care Contract](#)
- [STAR Kids Handbook](#)
- [STAR Kids Program Support Unit Operational Procedures Handbook](#)
- [Uniform Managed Care Manual](#)
- [Uniform Managed Care Manual, Chapter 16.2 STAR Health MDCP Policy](#)

MDCP services are provided in an individual’s own home or family home, including a foster home,⁴ or in the community. MDCP recipients who are in state conservatorship may reside in a foster care setting. These recipients may receive MDCP services in the foster care setting in which they live. Although foster care settings are not residential settings funded by a Medicaid HCBS waiver or the Medicaid state plan, HHSC has assessed policies for foster care homes to ensure there are no conflicts with requirements of the HCBS Settings Rule (as directed by CMS in June 2022 feedback on HHSC’s STP). Please see the foster care policy assessment in Section 8 of this appendix.

Compliance Determination

HHSC assessed policies for all MDCP services and determined that policies for all services are compliant with requirements of the HCBS Settings Rule at 42 CFR §441.301(c)(4): adaptive aids; EA; FMS; flexible family support services; minor home modifications; respite⁵; SE; and TAS.

The table below describes the compliance determinations for policies regarding host family settings,⁶ which provide MDCP respite services, and for SE and EA services. SE and EA are individualized services and service settings are determined based on the individual’s needs and preferences.

Although HHSC has determined that MDCP policies comply with the HCBS Settings Rule, HHSC is amending managed care contracts to provide additional specificity regarding the services subject to the HCBS Settings Rule. HHSC will also amend the STAR Kids Handbook to bolster compliance with person-centered planning requirements in the HCBS Settings Rule.

HHSC anticipates contract amendments will become effective in September 2022 and handbook changes will become effective by March 2023.

Note that contract and handbook language provided in the table below is currently in draft form and is subject to change.

⁴ An agency foster home is required to ensure the rights of children which includes the right to privacy, including sending and receiving unopened mail, making and receiving phone calls, keeping a personal journal, and having visitors, unless the child’s best interest, appropriate professionals, or court order necessitates restrictions. Children in care must participate in childhood activities as much as possible. During service planning, any decision making regarding the child’s need for supervision must include discussions on how normalcy for the child can be achieved.

⁵ Respite may be provided in institutional settings including a NF or ICF/IID for no longer than 30 days in an individual’s service plan year. In responses to public comments on the [HCBS Settings Final Rule](#), CMS indicates that the delivery of some Medicaid HCBS, such as respite, is permitted in an institutional setting.

⁶ A host family in MDCP must be a foster home verified by a child-placing agency. The host family must provide services in a residence that the host family owns or leases. The residence must be a typical residence in the neighborhood and must meet the needs of the individual. The host family must ensure that the individual participates in age-appropriate community activities; and the host family home environment is healthy and safe for the individual.

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p> <p>42 CFR §441.301(c)(4)(i)</p>	<p><u>COMPLIANT</u></p> <p>Rationale: Host family settings are integrated in the community and policies require that an individual in a host family setting has the opportunity to participate in the community.</p> <p>STAR Kids Managed Care Contract, <u>Section 8.3.2</u>, MDCP STAR Kids Covered Services</p> <p>▸ <i>"The host family must ensure that the individual participates in age-appropriate community activities..."</i></p> <p>STAR Kids <u>Managed Care Contract</u>, Section 8.3.2, MDCP STAR Kids Covered Services (pp. 8-227 – 8-228)</p> <p>▸ <i>"The host family must ensure that the individual participates in age-appropriate community activities; and the host family home environment is healthy and safe for the individual. The host family must provide services in a residence that the host family owns or leases. The residence must be a typical residence in the neighborhood and must meet the needs of the individual."</i></p> <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications"</i> <p>Draft handbook language:</p> <p><i>The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</i></p> <ul style="list-style-type: none"><i>The setting provides opportunities for members to seek employment and work in competitive, integrated settings.</i><i>The setting provides opportunities for members to engage in community life.</i><i>The setting provides opportunities for members to control personal resources.</i><i>The setting provides opportunities for recipients to receive services in the community. "</i>	<p><u>COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR §441.301(c)(4). SE is provided in the individual's own home, family home or in the community, including in a work environment. SE provides the individual with support to work in competitive, integrated settings.</p> <p>STAR Kids <u>Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</i> <p>STAR <u>Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)."</i><i>"Community-Based Services must also be made available to Members to assure maintenance of the highest level of functioning possible in the least restrictive setting."</i> <p>STAR Kids <u>Managed Care Contract</u>, Definitions (page 17)</p> <ul style="list-style-type: none"><i>"Supported Employment means assistance provided, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed."</i> <p>STAR Kids Handbook, <u>Section 3300</u>, Service Planning</p> <ul style="list-style-type: none"><i>"Each STAR Kids managed care organization (MCO) must create and regularly update a comprehensive person-centered individual service plan (ISP) for each STAR Kids member. The purpose of the ISP is to articulate assessment findings, short and long-term goals, service needs, and member preferences."</i> <p>STAR <u>Health Managed Care Contract</u>, Definitions (page 17)</p> <ul style="list-style-type: none"><i>"Supported Employment means assistance provided, in order to sustain competitive employment, to an MDCP enrolled Member who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed."</i> <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications"</i> <p>Draft handbook language:</p> <p><i>The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</i></p> <ul style="list-style-type: none"><i>The setting provides opportunities for members to seek employment and work in competitive, integrated settings.</i><i>The setting provides opportunities for members to engage in community life.</i><i>The setting provides opportunities for members to control personal resources.</i><i>The setting provides opportunities for recipients to receive services in the community. "</i>	<p><u>COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR §441.301(c)(4). EA is provided in the individual's own home, family home or in the community, including in a work environment. EA provides the individual with support to obtain competitive, integrated employment.</p> <p>STAR Kids <u>Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</i> <p>STAR <u>Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)."</i><i>"Community-Based Services must also be made available to Members to assure maintenance of the highest level of functioning possible in the least restrictive setting."</i> <p>STAR Kids <u>Managed Care Contract</u>, Definitions (page 17)</p> <p>▸ <i>"Employment Assistance means assistance provided to an individual to help the individual locate paid employment in the community."</i></p> <p>STAR Kids Handbook, <u>Section 3300</u>, Service Planning</p> <ul style="list-style-type: none"><i>"Each STAR Kids managed care organization (MCO) must create and regularly update a comprehensive person-centered individual service plan (ISP) for each STAR Kids member. The purpose of the ISP is to articulate assessment findings, short and long-term goals, service needs, and member preferences."</i> <p>STAR <u>Health Managed Care Contract</u>, Definitions (page 8)</p> <p>▸ <i>"Employment Assistance means assistance provided to an MDCP enrolled Member to help them locate paid employment in the community."</i></p> <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications"</i> <p>Draft handbook language:</p> <p><i>The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</i></p> <ul style="list-style-type: none"><i>The setting provides opportunities for members to seek employment and work in competitive, integrated settings.</i><i>The setting provides opportunities for members to engage in community life.</i><i>The setting provides opportunities for members to control personal resources.</i><i>The setting provides opportunities for recipients to receive services in the community."</i>

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
<p>The setting is selected by the individual from among setting options, including non-disability specific settings, and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p> <p>42 CFR §441.301(c)(4)(ii)</p>	<p><u>COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). Policies for foster care homes require that the individual have the opportunity to visit and consider a potential placement.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p><u>STAR Kids Managed Care Contract</u>, Section 8.3.2, MDCP STAR Kids Covered Services (pp. 8-227 – 8-228)</p> <ul style="list-style-type: none">"The host family must ensure that the individual participates in age-appropriate community activities; and the host family home environment is healthy and safe for the individual. The host family must provide services in a residence that the host family owns or leases. The residence must be a typical residence in the neighborhood and must meet the needs of the individual." <p>TAC <u>§749.1251</u>, Foster Care Placement</p> <ul style="list-style-type: none">(a) "A child over six months of age must visit the foster home at least once before placement.(b) "There must be a meaningful interval between the pre-placement visit and the placement. This interval must be at least sufficient to allow a child and foster parents to have privacy, an opportunity to discuss and consider placement, and to have their questions, opinions, and concerns addressed." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The setting is selected by the member from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board."	<p><u>COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). SE provides the individual assistance to work in competitive integrated settings. The service is provided in integrated settings.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Kids Handbook, <u>Section 4920</u>, Supported Employment</p> <ul style="list-style-type: none">"An integrated setting is a setting typically found in the community in which members interact with people without disabilities, other than service providers, to the same extent that people without disabilities in comparable positions interact with other people without disabilities." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The setting is selected by the member from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board."	<p><u>COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). EA provides the individual assistance to obtain employment in integrated settings. The service is provided in integrated settings.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Kids Handbook, <u>Section 4910</u>, Employment Assistance</p> <ul style="list-style-type: none">"Employment assistance (EA) is provided to a member receiving Medically Dependent Children Program (MDCP) services to help the individual locate paid employment in the community and includes: identifying a member's employment preferences, job skills, and requirements for a work setting and work conditions; locating prospective employers offering employment compatible with a member's identified preferences, skills and requirements;" <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The setting is selected by the member from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board."
<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p> <p>42 CFR §441.301(c)(4)(iii)</p>	<p><u>COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>TAC <u>§749.1003</u>, Children's Rights</p> <ul style="list-style-type: none">(b)(1)(B) "...Safety and care, including... The right to be free from abuse, neglect, and exploitation..."(b)(3)(E) "...Living a normal life, including... The right to privacy..." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The setting ensures a member's rights of privacy, dignity and respect, and freedom from coercion and restraint."	<p><u>COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The setting ensures a member's rights of privacy, dignity and respect, and freedom from coercion and restraint."	<p><u>COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The setting ensures a member's rights of privacy, dignity and respect, and freedom from coercion and restraint."

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
<p>The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p> <p>42 CFR §441.301(c)(4)(iv)</p>	<p>COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39 (pg. 8-175)</p> <ul style="list-style-type: none">"A Member's need for Community-Based Services to assist with activities of daily living and instrumental activities of daily living must be considered as important as needs related to a medical condition." <p><u>STAR Kids Managed Care Contract</u>, Section 8.3.2, MDCP STAR Kids Covered Services (pp. 8-227 – 8-228)</p> <ul style="list-style-type: none">"The host family must ensure that the individual participates in age-appropriate community activities; and the host family home environment is healthy and safe for the individual. The host family must provide services in a residence that the host family owns or leases. The residence must be a typical residence in the neighborhood and must meet the needs of the individual." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The setting optimizes, but does not regiment, the member’s individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact."	<p>COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). SE provides the individual assistance to work in competitive integrated settings, based on the individual's needs, strengths and preferences identified in the person-centered planning process. SE supports the individual to be self-employed or work in a competitive, integrated community setting.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39 (pg. 8-175)</p> <ul style="list-style-type: none">"A Member's need for Community-Based Services to assist with activities of daily living and instrumental activities of daily living must be considered as important as needs related to a medical condition." <p>STAR Kids Handbook, <u>Section 4920</u>, Supported Employment</p> <ul style="list-style-type: none">"SE services include: assistance provided to a member to sustain competitive employment and who, because of a disability, requires intensive, ongoing support to be self-employed, work from home or perform in a work setting at which individuals without disabilities are employed; employment adaptations, supervision and training related to a member's assessed need;" <p>STAR Kids Handbook, <u>Section 4920</u>, Supported Employment</p> <ul style="list-style-type: none">"An integrated setting is a setting typically found in the community in which members interact with people without disabilities, other than service providers, to the same extent that people without disabilities in comparable positions interact with other people without disabilities." <p>STAR Kids Handbook, <u>Section 3300</u>, Service Planning</p> <ul style="list-style-type: none">"Each STAR Kids managed care organization (MCO) must create and regularly update a comprehensive person-centered individual service plan (ISP) for each STAR Kids member. The purpose of the ISP is to articulate assessment findings, short and long-term goals, service needs, and member preferences." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The setting optimizes, but does not regiment, the member’s individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact."	<p>COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). EA provides the individual assistance to obtain employment in competitive integrated settings, based on the individual's needs, strengths and preferences identified in the person-centered planning process. EA supports the individual to become self-employed or find work in a competitive, integrated community setting.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Health Managed Care <u>Contract, Section 8.1.39</u> (pg. 8-175)</p> <ul style="list-style-type: none">"A Member's need for Community-Based Services to assist with activities of daily living and instrumental activities of daily living must be considered as important as needs related to a medical condition." <p>STAR Kids Handbook, <u>Section 3300</u>, Service Planning</p> <ul style="list-style-type: none">"Each STAR Kids managed care organization (MCO) must create and regularly update a comprehensive person-centered individual service plan (ISP) for each STAR Kids member. The purpose of the ISP is to articulate assessment findings, short and long-term goals, service needs, and member preferences." <p>STAR Kids Handbook, <u>Section 4910</u>, Employment Assistance</p> <ul style="list-style-type: none">"Employment assistance...includes: identifying a member's employment preferences, job skills, and requirements for a work setting and work conditions; locating prospective employers offering employment compatible with a member's identified preferences, skills and requirements;" <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The setting optimizes, but does not regiment, the member’s individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact."

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
<p>The setting facilitates individual choice regarding services and supports, and who provides them.</p> <p>42 CFR §441.301(c)(4)(v)</p>	<p>COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). The person-centered planning process considers the individual’s choices regarding services and supports, and service providers.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Kids Handbook, <u>Section 3300</u>, Service Planning</p> <ul style="list-style-type: none">"Each STAR Kids managed care organization (MCO) must create and regularly update a comprehensive person-centered individual service plan (ISP) for each STAR Kids member. The purpose of the ISP is to articulate assessment findings, short and long-term goals, service needs, and member preferences." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The settings facilities member choice regarding services and supports, and who provides them."	<p>COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). The person-centered planning process considers the individual’s choices regarding services and supports, and service providers.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Kids Handbook, <u>Section 3300</u>, Service Planning</p> <ul style="list-style-type: none">"Each STAR Kids managed care organization (MCO) must create and regularly update a comprehensive person-centered individual service plan (ISP) for each STAR Kids member. The purpose of the ISP is to articulate assessment findings, short and long-term goals, service needs, and member preferences." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The settings facilities member choice regarding services and supports, and who provides them."	<p>COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). The person-centered planning process considers the individual's choices regarding services and supports, and service providers.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Kids Handbook, <u>Section 3300</u>, Service Planning</p> <ul style="list-style-type: none">"Each STAR Kids managed care organization (MCO) must create and regularly update a comprehensive person-centered individual service plan (ISP) for each STAR Kids member. The purpose of the ISP is to articulate assessment findings, short and long-term goals, service needs, and member preferences." <p>No remediation activities are required.</p> <p>However, HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The settings facilities member choice regarding services and supports, and who provides them."
<p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p> <p>42 CFR §441.301(c)(4)(vi)(A)</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to host family settings, because host families are foster families for children and youth. In addition, host families provide out-of-home respite, which is limited to 29 days per individual service plan year.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <ul style="list-style-type: none">Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. <p>42 CFR §441.301(c)(4)(vi)(B)(1)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale:</p> <p>STAR Kids Managed Care Contract, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p>STAR Health Managed Care Contract, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</p> <ul style="list-style-type: none">Each member has privacy in their sleeping or living unit:<ul style="list-style-type: none">Units have entrance doors lockable by the member, with only appropriate staff having keys to doors;"	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping unit:</p> <ul style="list-style-type: none">Individuals sharing units have a choice of roommates in that setting. <p>42 CFR §441.301(c)(4)(vi)(B)(2)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale:</p> <p>STAR Kids Managed Care Contract, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p>STAR Health Managed Care Contract, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications"</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Each member has privacy in their sleeping or living unit:</i><ul style="list-style-type: none"><i>The member sharing units have a choice of roommates in that setting;"</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <ul style="list-style-type: none">Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. <p>42 CFR §441.301(c)(4)(vi)(B)(3)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale:</p> <p>STAR Kids Managed Care Contract, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p>STAR Health Managed Care Contract, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications"</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Each member has privacy in their sleeping or living unit:</i><ul style="list-style-type: none"><i>The member has the freedom to furnish and decorate their sleeping or living units within the lease or other agreement."</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p> <p>42 CFR §441.301(c)(4)(vi)(C)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: An individual who receives Medicaid HCBS in a host family setting has the freedom and support to control their schedules and activities, including access to food, to the same extent as individuals not receiving Medicaid HCBS.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p><u>STAR Kids Managed Care Contract</u>, Section 8.3.2, MDCP STAR Kids Covered Services (pp. 8-227 – 8-228)</p> <p>▸ "The host family must ensure that the individual participates in age-appropriate community activities; and the host family home environment is healthy and safe for the individual. The host family must provide services in a residence that the host family owns or leases. The residence must be a typical residence in the neighborhood and must meet the needs of the individual."</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>The member has the freedom and support to control their own schedules and activities, and has access to food at any time."</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, SE is provided in integrated settings, including a work environment, where the individual has freedom and support to control their schedules and access food to the same extent as individuals not receiving Medicaid HCBS.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Kids Handbook, <u>Section 4920</u>, Supported Employment</p> <ul style="list-style-type: none">"An integrated setting is a setting typically found in the community in which members interact with people without disabilities, other than service providers, to the same extent that people without disabilities in comparable positions interact with other people without disabilities."	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, EA is provided in integrated settings, including a work environment, where the individual has freedom and support to control their schedules and access food to the same extent as individuals not receiving Medicaid HCBS.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Kids Handbook, <u>Section 4910</u>, Employment Assistance</p> <ul style="list-style-type: none">"Employment assistance (EA) is provided to a member receiving Medically Dependent Children Program (MDCP) services to help the individual locate paid employment in the community and includes: identifying a member's employment preferences, job skills, and requirements for a work setting and work conditions; locating prospective employers offering employment compatible with a member's identified preferences, skills and requirements;"
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>Individuals are able to have visitors of their choosing at any time.</p> <p>42 CFR §441.301(c)(4)(vi)(D)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: This requirement is not relevant to host family settings, because host families are not provider-owned or controlled residential settings. However, an individual who receives Medicaid HCBS in a host family setting may have visitors, to the same extent as individuals not receiving Medicaid HCBS.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.3.2, MDCP STAR Kids Covered Services (pp. 8-227 – 8-228)</p> <p>▸ "The host family must ensure that the individual participates in age-appropriate community activities; and the host family home environment is healthy and safe for the individual. The host family must provide services in a residence that the host family owns or leases. The residence must be a typical residence in the neighborhood and must meet the needs of the individual."</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>The member is able to have visitors of their choosing at any time."</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is provided an individualized service in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, SE is provided in integrated settings, including a work environment, where the individual may have visitors to the same extent as individuals not receiving Medicaid HCBS. Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)."	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, EA is provided in integrated settings, including a work environment, where the individual may have visitors to the same extent as individuals not receiving Medicaid HCBS. Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)."

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The setting is physically accessible to the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(E)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). The host family residence is required to meet the needs of the individual.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p><u>STAR Kids Managed Care Contract</u>, Section 8.3.2, MDCP STAR Kids Covered Services (pp. 8-227 – 8-228)</p> <p>► "The host family must ensure that the individual participates in age-appropriate community activities; and the host family home environment is healthy and safe for the individual. The host family must provide services in a residence that the host family owns or leases. The residence must be a typical residence in the neighborhood and must meet the needs of the individual."</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>The setting is physically accessible to the member."</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). SE is provided in non-residential settings that may include the individual's own home or family home, the greater community, or place of work. SE provides employment adaptations to ensure the work setting is accessible for the individual.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Kids Handbook, <u>Section 4920</u>, Supported Employment</p> <ul style="list-style-type: none">"SE services include: assistance provided to a member to sustain competitive employment and who, because of a disability, requires intensive, ongoing support to be self-employed, work from home or perform in a work setting at which individuals without disabilities are employed; employment adaptations, supervision and training related to a member's assessed need;"	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4). EA is provided in non-residential settings that may include the individual's own home or family home, the greater community, or place of work. EA includes identifying the individual's requirements for a work setting and work conditions.</p> <p><u>STAR Kids Managed Care Contract</u>, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p><u>STAR Health Managed Care Contract</u>, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p>STAR Kids Handbook, <u>Section 4910</u>, Employment Assistance</p> <ul style="list-style-type: none">"Employment assistance (EA) is provided to a member receiving Medically Dependent Children Program (MDCP) services to help the individual locate paid employment in the community and includes: identifying a member's employment preferences, job skills, and requirements for a work setting and work conditions; locating prospective employers offering employment compatible with a member's identified preferences, skills and requirements;"
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Identify a specific and individualized assessed need. <p>42 CFR §441.301(c)(4)(vi)(F)(1)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: This requirement is not relevant to host family settings, because host families are not provider-owned or controlled residential settings. However, Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Identify a specific and individualized assessed need;"</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Document the positive interventions and supports used prior to any modifications to the person-centered plan. <p>42 CFR §441.301(c)(4)(vi)(F)(2)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Document the positive interventions and supports used prior to any modifications to the person-centered service plan;"</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Document less intrusive methods of meeting the need that have been tried but did not work. <p>42 CFR §441.301(c)(4)(vi)(F)(3)</p>	<p>N/A</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications”</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Document less intrusive methods of meeting the need that have been tried but did not work;”</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Include a clear description of the condition that is directly proportionate to the specific assessed need. <p>42 CFR §441.301(c)(4)(vi)(F)(4)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications”</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Include a clear description of the condition that is directly proportionate to the specific assessed need”</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Include regular collection and review of data to measure the ongoing effectiveness of the modification. <p>42 CFR N/A441.301(c)(4)(vi)(F)(5)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications”</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Include regular collection and review of data to measure the ongoing effectiveness of the modification;”</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Establish time limits for periodic reviews to determine if the modification is still necessary or can be terminated. <p>42 CFR §441.301(c)(4)(vi)(F)(6)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications”</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;”</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Include informed consent of the individual. <p>42 CFR §441.301(c)(4)(vi)(F)(7)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications”</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Include the informed consent of the member or LAR;”</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Include assurances that interventions and supports will cause no harm to the individual. <p>42 CFR §441.301(c)(4)(vi)(F)(8)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure all MDCP services are delivered in settings that comply with 42 CFR 441.301(c)(4).</p> <p>Remediation: HHSC is amending the STAR Kids and STAR Health managed care contracts to further specify that all settings where MDCP services are provided must meet requirements at 42 CFR §441.301(c)(4). HHSC is also adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language:</p> <p><i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>Respite</i><i>flexible family support services</i><i>Employment Assistance</i><i>Supported Employment</i><i>Adaptive Aids</i><i>Minor Home Modifications”</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to host family settings that provide MDCP respite:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Include an assurance that interventions and supports will cause no harm to the member.”</i>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p><u>N/A</u></p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	Host Family Setting (Residential)	SE Services (Non-Residential)	EA Services (Non-Residential)
Home and community-based settings do not include the following: NF, IMD, ICF/IID; hospital; or any other locations that have qualities of an institutional setting. In home services are not provided in institutional settings. 42 CFR §441.301(c)(5)	COMPLIANT Rationale: MDCP eligibility requires members to be living at home or home environment. A host family must provide services in a residence that the host family owns or leases. The residence must be a typical residence in the neighborhood and must meet the needs of the individual. TAC §353.1155, Medically Dependent Children Program <ul style="list-style-type: none"><i>(a)(1)(G) "...live in: the individual's home; or an agency foster home as defined in Texas Human Resource Code, §42.002"</i> <u>STAR Kids Managed Care Contract</u> , Section 8.1.36, Covered Community-Based Services (p. 8-188) <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</i> <u>STAR Health Managed Care Contract</u> , Section 8.1.39, Covered Community-Based Services (p. 8-189) <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)."</i> SK Handbook, <u>Section 4711</u> , In-Home Respite <ul style="list-style-type: none"><i>"In-home respite is not limited to the individual's place of residence. Respite may also be provided in other community settings, which could include the park, the respite provider's home or a home of the individual's relative."</i> <u>UMCM Chapter 16.2</u> , STAR Health MDCP Policy, Section III, B. MDCP Services (p. 3) <ul style="list-style-type: none"><i>"42 C.F.R. §441.301(b)(1)(ii) requires that MDCP services may not be provided to a Member who is admitted to a hospital or is a resident of a NF or ICF/IID."</i> STAR Kids Handbook, Section 1560, Living Arrangement <ul style="list-style-type: none"><i>"Managed care organization (MCO) service coordinators must confirm that the applicant or member, if under age 18, lives with a family member such as a parent, guardian, grandparent or sibling, as defined in the <u>Glossary</u>."</i>	COMPLIANT Rationale: MDCP eligibility requires members to be living at home or home environment. SE is not provided in institutional settings. TAC §353.1155, Medically Dependent Children Program <ul style="list-style-type: none"><i>(a)(1)(G) "...live in: the individual's home; or an agency foster home as defined in Texas Human Resource Code, §42.002"</i> <u>STAR Kids Managed Care Contract</u> , Section 8.1.36, Covered Community-Based Services (p. 8-188) <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</i> <u>STAR Health Managed Care Contract</u> , Section 8.1.39, Covered Community-Based Services (p. 8-189) <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)."</i> SK Handbook, <u>Section 4711</u> , In-Home Respite <ul style="list-style-type: none"><i>"In-home respite is not limited to the individual's place of residence. Respite may also be provided in other community settings, which could include the park, the respite provider's home or a home of the individual's relative."</i> <u>UMCM Chapter 16.2</u> , STAR Health MDCP Policy, Section III, B. MDCP Services (p. 3) <ul style="list-style-type: none"><i>"42 C.F.R. §441.301(b)(1)(ii) requires that MDCP services may not be provided to a Member who is admitted to a hospital or is a resident of a NF or ICF/IID."</i> STAR Kids Handbook, Section 1560, Living Arrangement <ul style="list-style-type: none"><i>"Managed care organization (MCO) service coordinators must confirm that the applicant or member, if under age 18, lives with a family member such as a parent, guardian, grandparent or sibling, as defined in the <u>Glossary</u>."</i>	COMPLIANT Rationale: MDCP eligibility requires members to be living at home or home environment. EA is not provided in institutional settings. TAC §353.1155, Medically Dependent Children Program <ul style="list-style-type: none"><i>(a)(1)(G) "...live in: the individual's home; or an agency foster home as defined in Texas Human Resource Code, §42.002"</i> <u>STAR Kids Managed Care Contract</u> , Section 8.1.36, Covered Community-Based Services (p. 8-188) <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</i> <u>STAR Health Managed Care Contract</u> , Section 8.1.39, Covered Community-Based Services (p. 8-189) <ul style="list-style-type: none"><i>"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)."</i> SK Handbook, <u>Section 4711</u> , In-Home Respite <ul style="list-style-type: none"><i>"In-home respite is not limited to the individual's place of residence. Respite may also be provided in other community settings, which could include the park, the respite provider's home or a home of the individual's relative."</i> <u>UMCM Chapter 16.2</u> , STAR Health MDCP Policy, Section III, B. MDCP Services (p. 3) <ul style="list-style-type: none"><i>"42 C.F.R. §441.301(b)(1)(ii) requires that MDCP services may not be provided to a Member who is admitted to a hospital or is a resident of a NF or ICF/IID."</i> STAR Kids Handbook, Section 1560, Living Arrangement <ul style="list-style-type: none"><i>"Managed care organization (MCO) service coordinators must confirm that the applicant or member, if under age 18, lives with a family member such as a parent, guardian, grandparent or sibling, as defined in the <u>Glossary</u>."</i>

Section 5. Texas Home Living (TxHmL)

TAC rules for the TxHmL program can be found at [40 TAC Chapter 9, Subchapter N](#). Additional policy information is available in the TxHmL Billing Guidelines. The TxHmL Program does not have its own handbook or policy manual; instead, it follows guidance in the [HCS Handbook](#).

HHSC assessed policies for all TxHmL program services and determined that the following services are fully compliant with requirements of the HCBS Settings Rule at 42 CFR §441.301(c)(4): adaptive aids; audiology; behavioral support; CRT; dental treatment; dietary services; FMS; minor home modifications; nursing; respite⁷; social work; supported home living (transportation); therapies; and TAS.

HHSC determined that policy revisions are needed for settings where day habilitation, SE and EA are provided. Day habilitation is provided in provider-owned and controlled non-residential settings. SE and EA are individualized services and service settings are determined based on the individual’s needs and preferences. Compliance determinations and planned remediation for these services are described in the table below.

Compliance levels are indicated as follows:

- “N/A” indicates that the corresponding requirement of the HCBS Settings Rule is not relevant to the specified waiver service.
- “Non-Compliant” indicates that state rules and policies contradict the HCBS Settings Rule.
- “Silent” indicates that state rules and policies do not address the corresponding requirement of the HCBS Settings Rule.
- “Partially compliant” indicates that existing state rules and policies address the corresponding requirement of the HCBS Settings Rule but do not fully comply with the federal rule requirement.
- “Compliant” indicates that existing state rules and policies address and meet the corresponding requirement of the HCBS Settings Rule.

HHSC plans to amend policies that are non-compliant, silent, or partially compliant. HHSC anticipates program rules will become effective in December 2022 and individualized skills and socialization rules will become effective in November 2022. Updates to the handbook, billing guidelines, and provider monitoring processes will be completed by March 2023.

Note that rule language provided in the table below is currently in draft form and is subject to change.

⁷ Respite may be provided in institutional settings including a NF or ICF/IID for no longer than 30 days in an individual’s service plan year. In responses to public comments on the [HCBS Settings Final Rule](#), CMS indicates that the delivery of some Medicaid HCBS, such as respite, is permitted in an institutional setting.

Federal Rule	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including 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 individuals not receiving Medicaid HCBS.</p> <p>42 CFR §441.301(c)(4)(i)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual has opportunities to access and participate in the community and expect that the setting allows the individual to access their personal resources. However, policies do not specify that the individual has the ability to control their personal resources.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">(b) "...skills necessary to live successfully in the community and participate in home and community life...individualized activities consistent with achieving...outcomes identified..." <p>TAC §9.578, Program Provider Certification Principles: Service Delivery</p> <ul style="list-style-type: none">(k) "...offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community."(l) "...offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary..."(m) "...offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary..." <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">(a)(4) "...assist the individual to manage the individual's financial affairs..."(a)(8) "...provide the individual or LAR access to... records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services..." <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. In addition, HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(i). These rules will apply to the new individualized skills and socialization service. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual:</p> <p>(A) to seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources;</p> <p>(D) receive services in the community.”</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual has opportunities to access and participate in the community and expect that the setting allows the individual to access their personal resources. However, policies do not specify that the individual has the ability to control their personal resources.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">(b) "...skills necessary to live successfully in the community and participate in home and community life...individualized activities consistent with achieving...outcomes identified..." <p>TAC §9.578, Program Provider Certification Principles: Service Delivery</p> <ul style="list-style-type: none">(k) "...offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community."(l) "...offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary..."(m) "...offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary..." <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">(a)(4) "...assist the individual to manage the individual's financial affairs..."(a)(8) "...provide the individual or LAR access to... records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services..." <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(i). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual:</p> <p>(A) to seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources;</p> <p>(D) receive services in the community.”</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual has opportunities to access and participate in the community and expect that the setting allows the individual to access their personal resources. However, policies do not specify that the individual has the ability to control their personal resources.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">(b) "...skills necessary to live successfully in the community and participate in home and community life...individualized activities consistent with achieving...outcomes identified..." <p>TAC §9.578, Program Provider Certification Principles: Service Delivery</p> <ul style="list-style-type: none">(k) "...offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community."(l) "...offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary..."(m) "...offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary..." <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">(a)(4) "...assist the individual to manage the individual's financial affairs..."(a)(8) "...provide the individual or LAR access to... records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services..." <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(i). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual:</p> <p>(A) to seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources;</p> <p>(D) receive services in the community.”</p>
<p>The setting is selected by the individual from among setting options, including non-disability specific settings, and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p> <p>42 CFR §441.301(c)(4)(ii)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered choice of setting options. However, they do not specify that the individual is offered choice of non-disability setting options to receive services in.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">(c) "...services in a group setting other than the individual's home..." <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. In addition, HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(ii). These rules will apply to the new individualized skills and socialization service. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings. The setting options are identified and documented in an individual's PDP and are based on the individual's needs and preferences.”</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered choice of setting options, including non-disability setting options.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">(e)(1)(A) "...self-employed, work from home, or perform in a work setting in which individuals without disabilities are employed..." <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">(e)(4) "does not include sheltered work or other similar types of vocational services furnished in specialized facilities..." <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(ii). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings. The setting options are identified and documented in an individual's PDP and are based on the individual's needs and preferences.”</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered choice of non-disability setting options to receive services in.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">(d)(1) "...assistance provided to an individual to help the individual locate competitive employment in the community." <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">(d)(2)(A) "...identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions..." <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(ii). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(2) The setting is selected by an individual from among setting options, including non-disability specific settings. The setting options are identified and documented in an individual's PDP and are based on the individual's needs and preferences.”</p>
<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p> <p>42 CFR §441.301(c)(4)(iii)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The setting must ensure the individual's ability to exercise their rights. However, policies do not specify that the setting provides the individual with the same basic rights that individuals without disabilities have.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">(a)(3) "assist the individual to access public accommodations or services available to all citizens..."(a)(11) "...ensure the individual is free from unnecessary restraints..."(a)(14) "...free from abuse, neglect, or exploitation..."(a)(15) "...individualized assistance...in exercising the individual's rights and self-advocacy..."(a)(16) "...privacy during treatment and care of personal needs..." <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. In addition, HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(iii). These rules will apply to the new individualized skills and socialization service. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.”</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The setting must ensure the individual's ability to exercise their rights. However, policies do not specify that the setting provides the individual with the same basic rights that individuals without disabilities have.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">(a)(3) "assist the individual to access public accommodations or services available to all citizens..."(a)(11) "...ensure the individual is free from unnecessary restraints..."(a)(14) "...free from abuse, neglect, or exploitation..."(a)(15) "...individualized assistance...in exercising the individual's rights and self-advocacy..."(a)(16) "...privacy during treatment and care of personal needs..." <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(iii). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.”</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The setting must ensure the individual's ability to exercise their rights. However, policies do not specify that the setting provides the individual with the same basic rights that individuals without disabilities have.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">(a)(3) "assist the individual to access public accommodations or services available to all citizens..."(a)(11) "...ensure the individual is free from unnecessary restraints..."(a)(14) "...free from abuse, neglect, or exploitation..."(a)(15) "...individualized assistance...in exercising the individual's rights and self-advocacy..."(a)(16) "...privacy during treatment and care of personal needs..." <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(iii). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.”</p>

Federal Rule	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p> <p>42 CFR §441.301(c)(4)(iv)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the setting maximizes the individual’s autonomy and independence in making life choices. However, policies do not specify that the setting optimizes individual initiative and independence in making life choices and who they interact with.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none"><i>(b) "...skills necessary to live successfully in the community and participate in home and community life...individualized activities consistent with achieving...outcomes identified..."</i> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none"><i>(a)(3) "assist the individual to access public accommodations or services available to all citizens..."</i><i>(a)(11) "...ensure the individual is free from unnecessary restraints..."</i><i>(a)(14) "...free from abuse, neglect, or exploitation..."</i><i>(a)(15) "...individualized assistance...in exercising the individual's rights and self-advocacy..."</i><i>(a)(16) "...privacy during treatment and care of personal needs..."</i> <p>TAC §9.578, Program Provider Certification Principles: Service Delivery</p> <ul style="list-style-type: none"><i>(k) "...offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual’s choice and the routines of other members of the community..."</i><i>(l) "...offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary..."</i><i>(m) "...offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. In addition, HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(iv). These rules will apply to the new individualized skills and socialization service. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual’s PDP.</i> <i>(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.”</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the setting maximizes the individual’s autonomy and independence in making life choices. However, policies do not specify that the setting optimizes individual initiative and independence in making life choices and who they interact with.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none"><i>(b) "...skills necessary to live successfully in the community and participate in home and community life...individualized activities consistent with achieving...outcomes identified..."</i> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none"><i>(a)(3) "assist the individual to access public accommodations or services available to all citizens..."</i><i>(a)(11) "...ensure the individual is free from unnecessary restraints..."</i><i>(a)(14) "...free from abuse, neglect, or exploitation..."</i><i>(a)(15) "...individualized assistance...in exercising the individual's rights and self-advocacy..."</i><i>(a)(16) "...privacy during treatment and care of personal needs..."</i> <p>TAC §9.578, Program Provider Certification Principles: Service Delivery</p> <ul style="list-style-type: none"><i>(k) "...offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual’s choice and the routines of other members of the community..."</i><i>(l) "...offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary..."</i><i>(m) "...offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary..."</i> <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(iv). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual’s PDP.</i> <i>(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.”</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the setting maximizes the individual’s autonomy and independence in making life choices. However, policies do not specify that the setting optimizes individual initiative and independence in making life choices and who they interact with.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none"><i>(b) "...skills necessary to live successfully in the community and participate in home and community life...individualized activities consistent with achieving...outcomes identified..."</i> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none"><i>(a)(3) "assist the individual to access public accommodations or services available to all citizens..."</i><i>(a)(11) "...ensure the individual is free from unnecessary restraints..."</i><i>(a)(14) "...free from abuse, neglect, or exploitation..."</i><i>(a)(15) "...individualized assistance...in exercising the individual’s rights and self-advocacy..."</i><i>(a)(16) "...privacy during treatment and care of personal needs..."</i> <p>TAC §9.578, Program Provider Certification Principles: Service Delivery</p> <ul style="list-style-type: none"><i>(k) "...offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual’s choice and the routines of other members of the community..."</i><i>(l) "...offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary..."</i><i>(m) "...offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary..."</i> <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(iv). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual’s PDP.</i> <i>(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.”</i></p>
<p>The setting facilitates individual choice regarding services and supports, and who provides them.</p> <p>42 CFR §441.301(c)(4)(v)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual have choice regarding who provides their services and supports. However, policies do not specify that the setting facilitates choice regarding services and supports.</p> <p>TAC §9.567, Process for Enrollment,</p> <ul style="list-style-type: none"><i>(n) "...the service coordinator must review the proposed IPC with potential program providers selected by the individual..."</i> <p>TAC §9.578, Program Provider Certification Principles: Service Delivery</p> <ul style="list-style-type: none"><i>(k) "...offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual’s choice and the routines of other members of the community..."</i><i>(l) "...offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary..."</i><i>(m) "...offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. In addition, HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirement at 42 CFR §441.301(c)(4)(v). These rules will apply to the new individualized skills and socialization service. The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual’s PDP.</i> <i>(5) The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports.”</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual have choice regarding who provides their services and supports. However, policies do not specify that the setting facilitates choice regarding services and supports.</p> <p>TAC §9.567, Process for Enrollment,</p> <ul style="list-style-type: none"><i>(n) "...the service coordinator must review the proposed IPC with potential program providers selected by the individual..."</i> <p>TAC §9.578, Program Provider Certification Principles: Service Delivery</p> <ul style="list-style-type: none"><i>(k) "...offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual’s choice and the routines of other members of the community..."</i><i>(l) "...offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary..."</i><i>(m) "...offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary..."</i> <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(v). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual’s PDP.</i> <i>(5) The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports.”</i></p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual have choice regarding who provides their services and supports. However, policies do not specify that the setting facilitates choice regarding services and supports.</p> <p>TAC §9.567, Process for Enrollment,</p> <ul style="list-style-type: none"><i>(n) "...the service coordinator must review the proposed IPC with potential program providers selected by the individual..."</i> <p>TAC §9.578, Program Provider Certification Principles: Service Delivery</p> <ul style="list-style-type: none"><i>(k) "...offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual’s choice and the routines of other members of the community..."</i><i>(l) "...offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary..."</i><i>(m) "...offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary..."</i> <p>Remediation: HHSC has drafted new rules that bring all settings where TxHmL program services are provided into compliance with the HCBS settings requirements at 42 CFR §441.301(c)(4)(v). The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p><i>“(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual’s PDP.</i> <i>(5) The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports.”</i></p>
<p>In a provider-owned or controlled residential setting:</p> <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p> <p>42 CFR §441.301(c)(4)(vi)(A)</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to day habilitation because it is provided in non-residential settings.</p> <p>However, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>

Federal Rule	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <ul style="list-style-type: none">- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. <p>42 CFR §441.301(c)(4)(vi)(B)(1)</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to day habilitation because it is provided in non-residential settings.</p> <p>However, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping unit:</p> <ul style="list-style-type: none">- Individuals sharing units have a choice of roommates in that setting. <p>42 CFR §441.301(c)(4)(vi)(B)(2)</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to day habilitation because it is provided in non-residential settings.</p> <p>However, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <ul style="list-style-type: none">- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. <p>42 CFR §441.301(c)(4)(vi)(B)(3)</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to day habilitation because it is provided in non-residential settings.</p> <p>However, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <ul style="list-style-type: none">- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. <p>42 CFR §441.301(c)(4)(vi)(C)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual has choices and opportunities similar to individuals without disabilities.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a) "...assist the individual...in understanding the requirement... participation in the TxHmL Program...in planning service provision and any changes to the plan for service...exercising the individual's rights and exercising self-advocacy..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(C). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p><i>(d) The setting in which on-site individualized skills and socialization is provided:</i></p> <p><i>(1) allows an individual to:</i></p> <p><i>(A) control the individual's schedule and activities related to on-site individualized skills and socialization;</i></p> <p><i>(B) have access to the individual's food at any time;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <ul style="list-style-type: none">- Individuals are able to have visitors of their choosing at any time. <p>42 CFR §441.301(c)(4)(vi)(D)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Day habilitation is provided in non-residential settings where an individual may receive visitors to the same degree as individuals not receiving Medicaid HCBS.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a) "...exercising the individual's rights and exercising self-advocacy..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(D). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p><i>(d) The setting in which on-site individualized skills and socialization is provided:</i></p> <p><i>(1) allows an individual to:</i></p> <p><i>(C) receive visitors of their choosing at any time;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, HHSC has determined that SE settings are compliant with this requirement. SE is provided in non-residential settings where an individual may receive visitors to the same degree as individuals not receiving Medicaid HCBS. This includes when receiving SE at a place of employment, where the individual must follow the employer's policies and procedures regarding visitation.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a) "...exercising the individual's rights and exercising self-advocacy..."</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, HHSC has determined that EA settings are compliant with this requirement. EA is provided in non-residential settings where an individual may receive visitors to the same degree as individuals not receiving Medicaid HCBS. This includes when receiving SE at a place of employment, where the individual must follow the employer's policies and procedures regarding visitation.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a) "...exercising the individual's rights and exercising self-advocacy..."</i>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <ul style="list-style-type: none">- The setting is physically accessible to the individual. <p>42 CFR §441.301(c)(4)(vi)(E)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require day habilitation services to be delivered in a setting that supports the individual to live successfully in the community.</p> <p>TAC §9.555, Description of TxHmL Program Serviceshttps://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=5&ti=40&pt=1&ch=9&sch=N&rl=Y</p> <ul style="list-style-type: none">• <i>(h) "Minor home modifications are physical adaptations to the individual's home..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(E). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p><i>(d) The setting in which on-site individualized skills and socialization is provided:</i></p> <p><i>(2) is physically accessible and free of hazards to an individual"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. SE is provided in non-residential settings that may include the individual's own home or family home, the greater community, or place of work. SE provides employment adaptations to ensure the work setting is accessible for the individual. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">• <i>(e)(2)(A) "making employment adaptations...related to an individual's assessed needs..."</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. EA is provided in non-residential settings that may include the individual's own home or family home, the greater community, or place of work. EA includes identifying the individual's requirements for a work setting and work conditions. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>TAC §9.555, Description of TxHmL Services</p> <ul style="list-style-type: none">• <i>(d)(2)(A) "Employment assistance... consists of... identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions; (B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements..."</i>

Federal Rule	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D) is supported by a specific assessed need and justified in the person-centered service plan.</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Identify a specific and individualized assessed need. <p>42 CFR §441.301(c)(4)(vi)(F)(1)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual’s service plan be based on an assessed need.</p> <p>TAC §9.555, Description of TxHmL Program Services</p> <ul style="list-style-type: none">• <i>(b) "...individualized activities consistent with achieving the outcomes identified in the individual PDP..."</i> <p>TAC §9.567, Process for Enrollment</p> <ul style="list-style-type: none">• <i>(k) "...chooses participation in the TxHmL Program...must compile and maintain information necessary to process...determine or validate a determination..."</i> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• <i>(a)(1) "...the service planning team and the program provider...review... the PDP and IPC to determine...individual outcomes and services...remain relevant...in responses to changes in...needs...and outcomes..."</i> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a)(16) "...provide the individual privacy during treatment and care of personal needs..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(1). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p><i>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</i></p> <p><i>(1) The program provider must:</i></p> <p><i>(A) notify the service coordinator of the needed modification; and</i></p> <p><i>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</i></p> <p><i>(2) A service coordinator must:</i></p> <p><i>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</i></p> <p><i>(i) a description of the specific and individualized assessed need that justifies the modification;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual’s service plan be based on an assessed need.</p> <p>TAC §9.567, Process for Enrollment</p> <ul style="list-style-type: none">• <i>(k) "...chooses participation in the TxHmL Program...must compile and maintain information necessary to process...determine or validate a determination"</i> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• <i>(a)(1) "...the service planning team and the program provider...review... the PDP and IPC to determine...individual outcomes and services...remain relevant...in responses to changes in...needs...and outcomes..."</i> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a)(16) "...provide the individual privacy during treatment and care of personal needs..."</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual’s service plan be based on an assessed need.</p> <p>TAC §9.567, Process for Enrollment</p> <ul style="list-style-type: none">• <i>(k) "...chooses participation in the TxHmL Program...must compile and maintain information necessary to process...determine or validate a determination"</i> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• <i>(a)(1) "...the service planning team and the program provider...review... the PDP and IPC to determine...individual outcomes and services...remain relevant...in responses to changes in...needs...and outcomes..."</i> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a)(16) "...provide the individual privacy during treatment and care of personal needs..."</i>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Document the positive interventions and supports used prior to any modifications to the person-centered plan. <p>42 CFR §441.301(c)(4)(vi)(F)(2)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• <i>(a)(1) "...the service planning team and the program provider...review... the PDP and IPC to determine...individual outcomes and services...remain relevant...in responses to changes in...needs...and outcomes..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(2). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p><i>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</i></p> <p><i>(1) The program provider must:</i></p> <p><i>(A) notify the service coordinator of the needed modification; and</i></p> <p><i>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</i></p> <p><i>(2) A service coordinator must:</i></p> <p><i>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</i></p> <p><i>(ii) a description of the positive interventions and supports that were tried but did not work;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• <i>(a)(1) "...the service planning team and the program provider...review... the PDP and IPC to determine...individual outcomes and services...remain relevant...in responses to changes in...needs...and outcomes..."</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed and participates in decision-making regarding modifications to their rights and or the use of restraints.</p> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• <i>(a)(1) "...the service planning team and the program provider...review... the PDP and IPC to determine...individual outcomes and services...remain relevant...in responses to changes in...needs...and outcomes..."</i>

Federal Rule	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Document less intrusive methods of meeting the need that have been tried but did not work. <p>42 CFR §441.301(c)(4)(vi)(F)(3)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Policies require that less intrusive interventions of meeting the individual’s needs be documented in the individual’s behavior support plan.</p> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• (a)(1) "...the service planning team and the program provider...review... the PDP and IPC to determine...individual outcomes and services...remain relevant...in responses to changes in...needs...and outcomes." <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• (k)(1-11) "...allowance for the decrease in the use of intervention techniques...for revision of the behavioral support plan when the desired behavior is not displayed or techniques are not effective...consideration of the effects of techniques...review...to determine the effectiveness of the program...techniques..." <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(3). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the service coordinator of the needed modification; and</p> <p>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</p> <p>(2) A service coordinator must:</p> <p>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</p> <p>(iii) a description of the less intrusive methods of meeting the need that were tried but did not work;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Policies require that less intrusive interventions of meeting the individual’s needs be documented in the individual’s behavior support plan.</p> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• (a)(1) "...the service planning team and the program provider...review... the PDP and IPC to determine...individual outcomes and services...remain relevant...in responses to changes in...needs...and outcomes." <p>TAC §9.580, Certification Principles: Quality Assurance</p> <p>(k)(1-11) "...allowance for the decrease in the use of intervention techniques...for revision of the behavioral support plan when the desired behavior is not displayed or techniques are not effective...consideration of the effects of techniques...review...to determine the effectiveness of the program...techniques..."</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, any modifications to the individual’s service delivery that infringe on the individual’s rights must be based on an assessed need and documented in the individual’s service plan. Policies require that less intrusive interventions of meeting the individual’s needs be documented in the individual’s behavior support plan.</p> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• (a)(1) "...the service planning team and the program provider...review... the PDP and IPC to determine...individual outcomes and services...remain relevant...in responses to changes in...needs...and outcomes." <p>TAC §9.580, Certification Principles: Quality Assurance</p> <p>(k)(1-11) "...allowance for the decrease in the use of intervention techniques...for revision of the behavioral support plan when the desired behavior is not displayed or techniques are not effective...consideration of the effects of techniques...review...to determine the effectiveness of the program...techniques..."</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Include a clear description of the condition that is directly proportionate to the specific assessed need. <p>42 CFR §441.301(c)(4)(vi)(F)(4)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that a modification to the individual’s service plan be based on an assessed need.</p> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• (a)(1) "...revisions to the PDP and the IPC in response to changes..."• (c)(1)(B) "...must be re-administered every three years after an individual’s enrollment and every third year thereafter unless... changes in the individual’s functional skills or behavior occur; or the individual’s skills and behavior..." <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(4). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</p> <p>(1) The program provider must:</p> <p>(A) notify the service coordinator of the needed modification; and</p> <p>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</p> <p>(2) A service coordinator must:</p> <p>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</p> <p>(iv) a description of the condition that is directly proportionate to the specific assessed need;"</p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE, because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that a modification to the individual’s service plan be based on an assessed need.</p> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• (a)(1) "...revisions to the PDP and the IPC in response to changes..."• (c)(1)(B) "...must be re-administered every three years after an individual’s enrollment and every third year thereafter unless... changes in the individual’s functional skills or behavior occur; or the individual’s skills and behavior..."	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that a modification to the individual’s service plan be based on an assessed need.</p> <p>TAC §9.568, Revisions and Renewals of Individual IPC, LOC, LON for Enrolled Individuals</p> <ul style="list-style-type: none">• (a)(1) "...revisions to the PDP and the IPC in response to changes..."• (c)(1)(B) "...must be re-administered every three years after an individual’s enrollment and every third year thereafter unless... changes in the individual’s functional skills or behavior occur; or the individual’s skills and behavior..."

Federal Rule	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Include regular collection and review of data to measure the ongoing effectiveness of the modification. <p>42 CFR N/A441.301(c)(4)(vi)(F)(5)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require ongoing review of the delivery of services. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none">▸ (23) <i>"...to be evaluated as needed, but at least annually, to determine the individual's strengths, needs, preferences, and appropriateness of the implementation plan..."</i> <p>TAC §9.582, Compliance with TxHmL Program Principles for LIDDAs</p> <ul style="list-style-type: none">• (b) <i>"...conducts a compliance review at least annually of each LIDDA participating in the TxHmL Program."</i> <p>TAC §9.583, TxHmL Program Principles for LIDDAS</p> <ul style="list-style-type: none">• (e) <i>"...maintain for each individual for an IPC year...documentation of the activities performed...other pertinent information related to...individual..."</i>• (h)(1) <i>"...a service coordinator: initiates, coordinates, and facilitates the person-directed planning process... including: scheduling service planning team meetings..."</i>• (h)(4) <i>"...coordinates and monitors the delivery of... services."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(5). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p>(e) <i>"If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</i></p> <p><i>(1) The program provider must:</i></p> <p><i>(A) notify the service coordinator of the needed modification; and</i></p> <p><i>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</i></p> <p><i>(2) A service coordinator must:</i></p> <p><i>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</i></p> <p><i>(v) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because SE is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require ongoing review of the delivery of services. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §9.582, Compliance with TxHmL Program Principles for LIDDAs</p> <ul style="list-style-type: none">• (b) <i>"...conducts a compliance review at least annually of each LIDDA participating in the TxHmL Program."</i> <p>TAC §9.583, TxHmL Program Principles for LIDDAS</p> <ul style="list-style-type: none">• (e) <i>"...maintain for each individual for an IPC year...documentation of the activities performed...other pertinent information related to...individual..."</i>• (h)(1) <i>"...a service coordinator: initiates, coordinates, and facilitates the person-directed planning process... including: scheduling service planning team meetings..."</i>• (h)(4) <i>"...coordinates and monitors the delivery of... services."</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA, because EA is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require ongoing review of the delivery of services. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §9.582, Compliance with TxHmL Program Principles for LIDDAs</p> <ul style="list-style-type: none">• (b) <i>"...conducts a compliance review at least annually of each LIDDA participating in the TxHmL Program."</i> <p>TAC §9.583, TxHmL Program Principles for LIDDAS</p> <ul style="list-style-type: none">• (e) <i>"...maintain for each individual for an IPC year...documentation of the activities performed...other pertinent information related to...individual..."</i>• (h)(1) <i>"...a service coordinator: initiates, coordinates, and facilitates the person-directed planning process... including: scheduling service planning team meetings..."</i>• (h)(4) <i>"...coordinates and monitors the delivery of... services."</i>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Establish time limits for periodic reviews to determine if the modification is still necessary or can be terminated. <p>42 CFR §441.301(c)(4)(vi)(F)(6)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require ongoing review of the delivery of services. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none">▸ (23) <i>"...to be evaluated as needed, but at least annually, to determine the individual's strengths, needs, preferences, and appropriateness of the implementation plan..."</i> <p>TAC §9.576, HHSC Survey of a Program Provider</p> <ul style="list-style-type: none">• (b) <i>"...conducts an on-site certification review of the program provider...annually, to evaluate evidence of the program provider's compliance..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(6). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p>(e) <i>"If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</i></p> <p><i>(1) The program provider must:</i></p> <p><i>(A) notify the service coordinator of the needed modification; and</i></p> <p><i>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</i></p> <p><i>(2) A service coordinator must:</i></p> <p><i>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</i></p> <p><i>(vi) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require ongoing review of the delivery of services. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none">▸ (23) <i>"...to be evaluated as needed, but at least annually, to determine the individual's strengths, needs, preferences, and appropriateness of the implementation plan..."</i> <p>TAC §9.576, HHSC Survey of a Program Provider</p> <ul style="list-style-type: none">• (b) <i>"...conducts an on-site certification review of the program provider...annually, to evaluate evidence of the program provider's compliance..."</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require ongoing review of the delivery of services. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §9.173, Certification Principles: Rights of Individuals</p> <ul style="list-style-type: none">▸ (23) <i>"...to be evaluated as needed, but at least annually, to determine the individual's strengths, needs, preferences, and appropriateness of the implementation plan..."</i> <p>TAC §9.576, HHSC Survey of a Program Provider</p> <ul style="list-style-type: none">• (b) <i>"...conducts an on-site certification review of the program provider...annually, to evaluate evidence of the program provider's compliance..."</i>

Federal Rule	Day Habilitation (Non-Residential)	SE (Non-Residential)	EA (Non-Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Include informed consent of the individual. <p>42 CFR §441.301(c)(4)(vi)(F)(7)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is informed of any changes to their service plan, including restrictions to rights made. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §9.580, Certification Principles Quality Assurance</p> <ul style="list-style-type: none">• <i>(a)(5) "...any changes to the plan for service provision if changes become necessary...ensure any restriction...approved by the individual's service planning team before the imposition of the restriction..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(7). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p><i>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</i></p> <p><i>(1) The program provider must:</i></p> <p><i>(A) notify the service coordinator of the needed modification; and</i></p> <p><i>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</i></p> <p><i>(2) A service coordinator must:</i></p> <p><i>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</i></p> <p><i>(vii) the individual's or LAR's signature evidencing informed consent to the modification;"</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed of any changes to their service plan, including restrictions to rights made. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §9.580, Certification Principles Quality Assurance</p> <p><i>(a)(5) "...any changes to the plan for service provision if changes become necessary...ensure any restriction...approved by the individual's service planning team before the imposition of the restriction..."</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is informed of any changes to their service plan, including restrictions to rights made. Any modifications to the individual's service delivery that infringe on the individual's rights must be based on an assessed need and documented in the individual's service plan.</p> <p>TAC §9.580, Certification Principles Quality Assurance</p> <p><i>(a)(5) "...any changes to the plan for service provision if changes become necessary...ensure any restriction...approved by the individual's service planning team before the imposition of the restriction..."</i></p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>Include assurances that interventions and supports will cause no harm to the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(8)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that the individual is free from harm.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a)(14) "...ensure that the individual is free from abuse, neglect, or exploitation..."</i> <p>TAC §9.579, Certification Principles: Qualified Personnel</p> <ul style="list-style-type: none">• <i>(f) "The program provider must prevent: conflicts of interest...financial impropriety...abuse, neglect, or exploitation...threats of harm or danger..."</i> <p>Remediation: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. The on-site component of individualized skills and socialization will be delivered in a provider-owned or controlled group setting. HHSC has drafted rules for individualized skills and socialization, which will require that on-site services meet the requirement at 42 CFR §441.301(c)(4)(vi)(F)(8). The new rule to address this requirement will be added at TAC Title 26, Chapter 262, Rule 262.2005, Description of On-Site and Off-Site Individualized Skills and Socialization.</p> <p><i>Draft rule:</i></p> <p><i>(e) "If an individualized skills and socialization provider becomes aware that a modification to a requirement described in subsection (d)(1) of this section is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must inform the individual's program provider of the needed modification.</i></p> <p><i>(1) The program provider must:</i></p> <p><i>(A) notify the service coordinator of the needed modification; and</i></p> <p><i>(B) provide the service coordinator the information described in paragraph (2)(A) of this subsection as requested by the service coordinator.</i></p> <p><i>(2) A service coordinator must:</i></p> <p><i>(A) if notified by the program provider of a needed modification, convene a service planning team meeting to update the individual's PDP to include the following:</i></p> <p><i>(viii) the program provider's assurance that the modification will cause no harm to the individual.</i></p> <p><i>(3) After the service planning team updates the PDP as required by subsection (d) of this section, the individualized skills and socialization provider may implement the modifications."</i></p>	<p>N/A</p> <p>Rationale: This requirement is not relevant to SE because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is free from harm.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a)(14) "...ensure that the individual is free from abuse, neglect, or exploitation..."</i> <p>TAC §9.579, Certification Principles: Qualified Personnel</p> <ul style="list-style-type: none">• <i>(f) "The program provider must prevent: conflicts of interest...financial impropriety...abuse, neglect, or exploitation...threats of harm or danger..."</i>	<p>N/A</p> <p>Rationale: This requirement is not relevant to EA because it is an individualized service provided in non-residential settings. Services are delivered in community settings and individuals are not grouped or clustered together for the purpose of receiving services.</p> <p>However, policies require that the individual is free from harm.</p> <p>TAC §9.580, Certification Principles: Quality Assurance</p> <ul style="list-style-type: none">• <i>(a)(14) "...ensure that the individual is free from abuse, neglect, or exploitation..."</i> <p>TAC §9.579, Certification Principles: Qualified Personnel</p> <ul style="list-style-type: none">• <i>(f) "The program provider must prevent: conflicts of interest...financial impropriety...abuse, neglect, or exploitation...threats of harm or danger..."</i>
<p>Home and community-based settings do not include the following: NF, IMD, ICF/IID; hospital; or any other locations that have qualities of an institutional setting.</p> <p>42 CFR §441.301(c)(5)</p>	<p>COMPLIANT</p> <p>Rationale: Day habilitation is not provided in an institutional setting.</p> <p>TAC §9.554(a) related to Description of TxHmL Program</p> <ul style="list-style-type: none">• <i>"It provides community-based services and supports to...individuals who live in their own homes or...family homes."</i> <p>However, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization.</p>	<p>COMPLIANT</p> <p>Rationale: SE is provided in the individual's own home, or the greater community, including in a work setting.</p> <p>TAC §9.554(a) related to Description of TxHmL Program</p> <ul style="list-style-type: none">• <i>"It provides community-based services and supports to...individuals who live in their own homes or...family homes."</i>	<p>COMPLIANT</p> <p>Rationale: EA is provided in the individual's own home, or the greater community, including in a work setting.</p> <p>TAC §9.554(a) related to Description of TxHmL Program</p> <ul style="list-style-type: none">• <i>"It provides community-based services and supports to...individuals who live in their own homes or...family homes."</i>

Section 6. Youth Empowerment Services (YES) Waiver

Policies for the YES Waiver Program can be found at:

- The original approved 1915(c) waiver and subsequent amendments can be found on the [YES webpage](#).
- Rules for YES Waiver Program are at [26 TAC §307](#). Rules for licensed child placing agencies and foster homes verified by child placing agencies can be found at [26 TAC §749](#).
- YES Waiver Policy Manual: The YES Waiver Policy and Procedure Manual outlines operational guidance, requirements, and specific procedures LMHAs, LBHAs, and CWP’s must follow to operate under the YES Waiver, and can be found on the [YES webpage](#).

YES Waiver recipients who are in state conservatorship may reside in a foster care setting. These recipients may receive YES Waiver services in the foster care setting in which they live. Although foster care settings are not residential settings funded by a Medicaid HCBS waiver or the Medicaid state plan, HHSC has assessed policies for foster care homes to ensure there are no conflicts with requirements of the HCBS Settings Rule (as directed by CMS in June 2022 feedback on HHSC’s STP). Please see the foster care policy assessment in Section 8 of this appendix.

HHSC assessed policies for all YES Waiver services and determined that the following services are fully compliant with requirements of the HCBS Settings Rule at 42 CFR §441.301(c)(4): adaptive aids; community living supports; family supports; employment assistance; minor home modifications; non-medical transportation; paraprofessional services; respite; specialized therapies; supportive family-based alternatives; and transition services.

Compliance Determination

HHSC has determined that all YES Waiver services are compliant with the HCBS Settings Rule. All program services are delivered in the individual’s home or in public places, except for supportive family-based alternatives. As indicated in the crosswalk below, HHSC has determined that supportive family-based alternatives comply with applicable HCBS Settings Rule requirements. In addition, as of June 2021, no Waiver participant has ever received supportive family-based alternatives.

Supportive Family-Based Alternatives

Supportive family-based alternatives are designed to provide therapeutic support to the Waiver participant and to model appropriate behaviors for the individual’s family, with an objective of the individual returning to live with their own family and community. The individual leaves their own home temporarily (for less than 90 days) to live in a foster home verified by a HHSC licensed child-placing agency. The service must be authorized by HHSC prior to the provision of the service and can be authorized for a maximum of only 90 consecutive or cumulative days per year. The settings requirements in the approved 1915(c) waiver application specify that the foster home must be in a typical residence in the community and the environment must assure the community integration, health, safety, and welfare of the Waiver participant. The waiver also requires that the service include facilitation of inclusion in community activities, participation in leisure activities, and development of socially valued behaviors.

If this service is provided in the future, HHSC will require that pre-authorization requests for supportive family-based alternatives include an affirmative statement that the setting meets all requirements of the federal HCBS settings regulations, in addition to waiver and program setting requirements. As part of the audit process for the YES Waiver, HHSC will monitor compliance by reviewing service delivery documentation, including service name and description; service location; individual’s response to the service; individual’s progress; and a summary of activities, meals, and behaviors during the service.

Federal Rule	Supportive Family-Based Alternatives (Home and Community-Based Service provided in a YES contracted foster care home)	Remediation
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including 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 individuals not receiving Medicaid HCBS. 42 CFR §441.301(c)(4)(i)	COMPLIANT Rationale: YES Waiver Policy Manual §7000.26: Supportive Family-Based Alternatives <i>"The [supportive family-based alternative] home must be located in a typical residence in the community and provide an environment that assures community integration, health, safety and welfare of the Waiver participant."</i> Link: https://hhs.texas.gov/doing-business-hhs/provider-portals/behavioral-health-services-providers/youth-empowerment-services-waiver-providers Links: <ul style="list-style-type: none">• 26(TAC), Part 1, Chapter 749, Subchapters A and O: §749.3; §749.3021-§749.3041<ul style="list-style-type: none">▸ Subchapter A▸ Subchapter O• 26 (TAC), Part 1, Chapter 750, Subchapter A: §750.3<ul style="list-style-type: none">▸ Subchapter A	No remediation activities are required.
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 42 CFR §441.301(c)(4)(ii)	COMPLIANT Rationale: YES Waiver Policy Manual, Section 1000 : YES Waiver Overview <ul style="list-style-type: none">• <i>"YES participants have access to an array of services coordinated and delivered by the participant’s choice of Comprehensive Waiver Provider (CWP)."</i> YES Waiver Policy Manual, Section 5000 : Wraparound Provider Organization Responsibilities <ul style="list-style-type: none">• <i>"Services and supports are being implemented and provided in accordance with the Wraparound Plan and continue to meet the participant's reason for referral, needs, goals, and preferences."</i> Links: <ul style="list-style-type: none">• 26 (TAC), Part 1, Chapter 749, Subchapters A and O: §749.3; §749.3021-§749.3041<ul style="list-style-type: none">▸ Subchapter A▸ Subchapter O• 26 (TAC), Part 1, Chapter 750, Subchapter A: §750.3<ul style="list-style-type: none">▸ Subchapter A	No remediation activities are required.
The setting ensures an individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR §441.301(c)(4)(iii)	COMPLIANT Rationale: YES Waiver Policy Manual, Section 3600 : Confidentiality <ul style="list-style-type: none">• <i>"Staff must consider the participant’s privacy and confidentiality rights and preferences to the greatest extent possible when determining locations for services. To accommodate service delivery in various environments such as homes, schools, homeless shelters, or street locations, the entity must have policies and procedures addressing confidentiality and safety considerations when services are provided in a community-based setting."</i> YES Waiver Policy Manual, Section 3400 : Use of Restraints and Restrictive Interventions <ul style="list-style-type: none">• <i>"Providers shall not use more force than is necessary to prevent imminent harm and shall ensure the safety, well-being, and dignity of Waiver participants who are personally restrained, including attention for personal needs. The effects of the intervention in relation to the participant's health and welfare must always be considered."</i> Links: <ul style="list-style-type: none">• 26 (TAC), Part 1, Chapter 749, Subchapters A and O: §749.3; §749.3021-§749.3041<ul style="list-style-type: none">▸ Subchapter A▸ Subchapter O• 26 (TAC), Part 1, Chapter 750, Subchapter A: §750.3<ul style="list-style-type: none">▸ Subchapter A	No remediation activities are required.

Federal Rule	Supportive Family-Based Alternatives (Home and Community-Based Service provided in a YES contracted foster care home)	Remediation
The setting optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. 42 CFR §441.301(c)(4)(iv)	COMPLIANT Rationale: YES Waiver Policy Manual, Section 7000.13 : Supportive Family-Based Alternatives (SFBA) <ul style="list-style-type: none">"The support family must include at least one adult living in the home and no more than four non-related individuals may live in the home. The [SFBA] home must be located in a typical residence in the community and provide an environment that assures community integration, health, safety and welfare of the Waiver participant...Services may include:<ul style="list-style-type: none">age and individually appropriate guidance regarding and/or assistance with the activities of daily living and instrumental activities of daily living (ambulating, bathing, dressing, eating, getting in and out of bed, grooming, personal hygiene, money management, toileting, communicating, performing household chores, and managing medications);securing and providing transportation;reinforcement of counseling, therapy, and related activities;assistance with medications and performance of tasks delegated by a registered nurse or physician;supervision of the participant for safety and security;facilitating inclusion in community activities, social interaction, use of natural supports, participation in leisure activities, and development of socially valued behaviors; orassistance in accessing community and school resources." Links: <ul style="list-style-type: none">26 (TAC), Part 1, Chapter 749, Subchapters A and O: §749.3; §749.3021-§749.3041<ul style="list-style-type: none">Subchapter ASubchapter O26 (TAC), Part 1, Chapter 750, Subchapter A: §750.3<ul style="list-style-type: none">Subchapter A	No remediation activities are required.
The setting facilitates individual choice regarding services and supports, and who provides them. 42 CFR §441.301(c)(4)(v)	COMPLIANT Rationale: YES Waiver Policy Manual, Section 2600 : Participant Rights and Responsibilities <ul style="list-style-type: none">"Participants in the YES Waiver have guaranteed rights and responsibilities. These rights include:<ul style="list-style-type: none">choice of community-based services rather than institutional care;choice of Wraparound Provider Organization (WPO);choice of service providers;choice of CFT members and option to add members at any time; andoption to file complaints and request Fair Hearings in accordance with [POLICY 1100 COMPLAINTS AND FAIR HEARINGS]." Links: <ul style="list-style-type: none">26 (TAC), Part 1, Chapter 749, Subchapters A and O: §749.3; §749.3021-§749.3041<ul style="list-style-type: none">Subchapter ASubchapter O26 (TAC), Part 1, Chapter 750, Subchapter A: §750.3<ul style="list-style-type: none">Subchapter A	No remediation activities are required.

Section 7. STAR+PLUS HCBS

Policies for the STAR+PLUS HCBS program can be found at:

- [1115 Demonstration Waiver](#)
- TAC rules for the STAR+PLUS HCBS program are at [1 TAC Chapter 353](#)
- TAC rules for ALFs are at [26 TAC Chapter 553](#).
- Medicaid managed care contracts:
 - [Uniform Managed Care Contract \(UMCC\)](#)
 - [STAR+PLUS Expansion Contract](#)
 - [STAR+PLUS MRSA Contract](#)
 - [Medicare-Medicaid Dual Demonstration \(MMDD\) Contract](#)
- [Uniform Managed Care Manual](#)
- [STAR+PLUS Handbook](#)

HHSC assessed policies for all STAR+PLUS HCBS program services and determined that policies for all services comply with requirements of the HCBS Settings Rule at 42 CFR §441.301(c)(4): assisted living, adult foster care, personal assistance services, nursing services, physical therapy, occupational therapy, speech pathology services, adaptive aids, medical supplies, dental services, minor home modifications, emergency response systems, home delivered meals, transition assistance services, financial management services, cognitive rehabilitation therapy, SE, EA and respite.⁸

Although HHSC has determined that policies comply with the HCBS Settings Rule, HHSC is amending managed care contracts to provide additional specificity regarding the services subject to the HCBS Settings Rule. This includes adding credentialing requirements for ALF and AFC settings to meet requirements at 42 CFR §441.301(c)(4)(vi) as a condition of contracting or credentialing with an MCO. HHSC will also amend the STAR+PLUS Handbook to bolster compliance with person-centered planning requirements in the HCBS Settings Rule.

HHSC anticipates contract amendments will become effective in September 2022 and handbook changes will become effective in March 2023.

Note that contract and handbook language provided in the table below is currently in draft form and is subject to change.

⁸ Respite may be provided in institutional settings including a NF or ICF/IID for no longer than 30 days in an individual’s service plan year. In responses to public comments on the [HCBS Settings Final Rule](#), CMS indicates that the delivery of some Medicaid HCBS, such as respite, is permitted in an institutional setting.

Federal Rule	Assisted Living Facilities (Residential)	Adult Foster Care (Residential)
<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p> <p>42 CFR §441.301(c)(4)(i)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered opportunities to access and participate in the community and has the right to control personal resources. Employment assistance and supported employment services are available to support individuals in ALF settings to obtain competitive, integrated employment. Medicaid managed care contracts require that settings comply with requirements at 42 CFR §441.301(c)(4).</p> <p>TAC §553.26Z, Rights</p> <p>▶ (a)(2) "A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted..."</p> <p>▶ (a)(3) "Each resident in the assisted living facility has the right to: participate in activities of social, religious, or community groups unless the participation interferes with the rights of others;"</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>STAR+PLUS Handbook <u>Section 7250</u>, Assisted Living Services</p> <p>▶ "ALFs must: allow the member to manage his or her finances and/or trust funds. The facility must provide assistance to the member in managing his or her finances only if the member requests assistance in writing;"</p> <p>STAR+PLUS Handbook, <u>Section 7220</u> Description of Services</p> <p>▶ "Social and recreational activities include: organizing activities that require group and member-initiated activities; providing opportunities to interact with other people; providing interaction, cultural enrichment, educational or recreational activities, and other social activities on site or in the community in a planned program to meet the social needs and interests of the members; providing four scheduled social activities per week; and posting a monthly social or recreational activity at least one week in advance."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</p> <ul style="list-style-type: none">• Respite• Nursing• Physical Therapy• Occupational Therapy• Cognitive Rehabilitation Therapy• Speech Therapy• Supported Employment• Employment Assistance• Support Consultation• Assisted living• Adult Foster Care" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">• The setting provides opportunities for the member to seek employment and work in competitive, integrated settings.• The setting provides opportunities for the member to engage in community life.• The setting provides opportunities for the member to control personal resources.• The setting provides opportunities for recipients to receive services in the community."	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual is offered opportunities to access and participate in the community and has the right to control personal resources. Employment assistance and supported employment services are available to support individuals in AFC settings to obtain competitive, integrated employment.</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>STAR+PLUS Handbook, <u>Appendix XXIV</u>, Minimum Standards for STAR+PLUS AFC Homes and Home Providers; Resident Rights and Responsibilities</p> <p>▶ "The AFC home provider must: allow the resident to manage his finances or trust funds. The AFT home provider must assist the resident in managing his finances only if the resident requests assistance in writing."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</p> <ul style="list-style-type: none">• CFC PAS• CFC Habilitation• Respite• Nursing• Physical Therapy• Occupational Therapy• Cognitive Rehabilitation Therapy• Speech Therapy• Supported Employment• Employment Assistance• Support Consultation• Assisted living• Adult Foster Care" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">• The setting provides opportunities for the member to seek employment and work in competitive, integrated settings.• The setting provides opportunities for the member to engage in community life.• The setting provides opportunities for the member to control personal resources.• The setting provides opportunities for recipients to receive services in the community."

Federal Rule	Assisted Living Facilities (Residential)	Adult Foster Care (Residential)
<p>The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p> <p>42 CFR §441.301(c)(4)(ii)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The MCO service coordinator is responsible for presenting the individual with a choice of setting options, including non-disability settings such as housing options available through the Section 811 Project Rental Assistance (PRA) Program. The MCO must ensure the individual has a choice of at least two ALFs within specified distance or travel time requirements. The member may choose an assisted living apartment setting, which is an efficiency, one-bedroom or two-bedroom apartment. Services authorized on the person-centered service plan, including assisted living services, are based on the individual’s needs, preferences, and goals. The MCO service coordinator is responsible for assisting the individual to identify resources and community supports to help meet the member’s needs.</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▸ <i>"HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</i></p> <p>UMCC, Section 8.3.2.8, Section 811 rental assistance project (p. 8-235)</p> <p>▸ <i>"The MCO Service Coordinator must coordinate with the Section 811 Project Rental Assistance (PRA) Program point of contact on an ongoing basis, as needed, in accordance with their role as the 811 Service Coordinator for Members with disabilities exiting a Nursing Facility and receiving services from the Section 811 PRA program."</i></p> <p>UMCC, Section 8.2.6.9, Medicaid Member Advocates (p. 8-209)</p> <p>▸ <i>"Member Advocates are also responsible for helping or referring Members to community resources that are available to meet Members’ needs if services are not available from the MCO as Covered Services."</i></p> <p>STAR+PLUS Handbook, Section 7250, Assisted Living Services - Standards for Operation</p> <p>▸ <i>"The MCO discusses residential options with the member, allowing the member to choose his or her preference."</i></p> <p>STAR+PLUS Handbook Section 7211, Assisted Living Services – Housing Options in Licensed Personal Care Facilities</p> <p>▸ <i>"The assisted living (AL) apartment may be an efficiency or one or two-bedroom apartment, and each apartment must have a private bath and cooking facilities."</i></p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>CFC PAS</i><i>CFC Habilitation</i><i>Respite</i><i>Nursing</i><i>Physical Therapy</i><i>Occupational Therapy</i><i>Cognitive Rehabilitation Therapy</i><i>Speech Therapy</i><i>Supported Employment</i><i>Employment Assistance</i><i>Support Consultation</i><i>Assisted living</i><i>Adult Foster Care"</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</i></p> <ul style="list-style-type: none"><i>The setting is selected by the member from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board."</i>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The MCO service coordinator is responsible for presenting the individual with a choice of setting options, including non-disability settings such as housing options available through the Section 811 Project Rental Assistance (PRA) Program. The MCO service coordinator provides information about potential AFC homes and coordinates visits to the homes for the individual. Services authorized on the person-centered service plan, including AFC, are based on the individual’s needs, preferences, and goals. The MCO service coordinator is responsible for assisting the individual to identify resources and community supports to help meet the member’s needs.</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▸ <i>"HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</i></p> <p>UMCC, Section 8.3.2.8, Section 811 rental assistance project (p. 8-235)</p> <p>▸ <i>"The MCO Service Coordinator must coordinate with the Section 811 Project Rental Assistance (PRA) Program point of contact on an ongoing basis, as needed, in accordance with their role as the 811 Service Coordinator for Members with disabilities exiting a Nursing Facility and receiving services from the Section 811 PRA program."</i></p> <p>UMCC, Section 8.2.6.9, Medicaid Member Advocates (p. 8-209)</p> <p>▸ <i>"Member Advocates are also responsible for helping or referring Members to community resources that are available to meet Members’ needs if services are not available from the MCO as Covered Services."</i></p> <p>STAR+PLUS Handbook Section 7123, Adult Foster Care - MCO Responsibilities</p> <p>▸ <i>"The managed care organization (MCO) responsibilities include: providing information to interested applicants about potential adult foster care (AFC) homes and coordinating visits to the homes;"</i></p> <p>STAR+PLUS Handbook Section 7142, Adult Foster Care – Service Planning</p> <p>▸ <i>"The managed care organization (MCO) must assess whether other resources in the community should be used to meet specialized needs of the member. Use of those resources must be documented in the member’s plan of care."</i></p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</i></p> <ul style="list-style-type: none"><i>CFC PAS</i><i>CFC Habilitation</i><i>Respite</i><i>Nursing</i><i>Physical Therapy</i><i>Occupational Therapy</i><i>Cognitive Rehabilitation Therapy</i><i>Speech Therapy</i><i>Supported Employment</i><i>Employment Assistance</i><i>Support Consultation</i><i>Assisted living</i><i>Adult Foster Care"</i> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</i></p> <p><i>The setting is selected by the member from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board."</i></p>

Federal Rule	Assisted Living Facilities (Residential)	Adult Foster Care (Residential)
<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p> <p>42 CFR §441.301(c)(4)(iii)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Rules for all ALFs state that a resident has the right to be treated with dignity, respect and freedom from coercion. STAR+PLUS HCBS program policies specify that assisted living services promote the privacy and dignity of the individual.</p> <p>TAC §553.267(a)(2) and (3)(E), related to Residents’ Bill of Rights</p> <ul style="list-style-type: none">▶ (a)(2) "A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights."▶ (a)(3)(A) "Each resident in the facility has the right to be free from physical and mental abuse, including corporal punishment or physical and chemical restraints that are... not required to treat the resident’s medical symptoms."▶ (a)(3)(E) "Each resident in the assisted living facility has the right to: be treated with respect, consideration, and recognition of his or her dignity and individuality." <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <ul style="list-style-type: none">▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p>STAR+PLUS Handbook, Section 7210, Assisted Living Services - Introduction</p> <ul style="list-style-type: none">▶ The purpose of AL services is to promote the availability of appropriate services for elderly and disabled persons in a home-like environment to enhance the dignity, independence, individuality, privacy, choice and decision-making ability of the individual. The personal care facility must provide each individual a separate living unit to guarantee their privacy, dignity and independence." <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</p> <ul style="list-style-type: none">• CFC PAS• CFC Habilitation• Respite• Nursing• Physical Therapy• Occupational Therapy• Cognitive Rehabilitation Therapy• Speech Therapy• Supported Employment• Employment Assistance• Support Consultation• Assisted living• Adult Foster Care" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">• The setting ensures a member’s rights of privacy, dignity and respect, and freedom from coercion and restraint."	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies require that AFC providers treat each resident with dignity and respect. A resident has the right to be free from abuse, restraint and intimidation to name a few.</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <ul style="list-style-type: none">▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p>STAR+PLUS Handbook, Section 7111, Adult Foster Care - Purpose</p> <ul style="list-style-type: none">▶ The purpose of the STAR+PLUS Home and Community Based Services (HCBS) program adult foster care (AFC) is to promote the availability of appropriate services in a home-like environment for members who are aging and who have disabilities to enhance the dignity, independence, individuality, privacy, choice and decision-making ability of a member.▶ The STAR+PLUS HCBS program requires each AFC member to have enough living space to guarantee his or her privacy, dignity and independence. <p>STAR+PLUS Handbook, Section 7113, Adult Foster Care Services</p> <ul style="list-style-type: none">▶ "AFC services, with the exception of 24-hour supervision... are provided on an 'as needed’ basis, with the flexibility to meet the member’s needs in the least restrictive way possible." <p>STAR+PLUS Handbook Appendix XXIV, "Minimum Standards for STAR+PLUS AFC Homes and Home Providers"</p> <ul style="list-style-type: none">▶ "The AFC home provider must: treat each resident with dignity and respect. The home provider must guarantee certain basic rights to each resident living in his home. Such rights include the right to privacy, humane care and environment, safety of personal possessions and funds, receipt of visitors, confidentiality of personal records, freedom of religion, freedom from physical or mental abuse, including corporal punishment or physical or chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the resident’s medical symptoms, freedom from neglect and exploitation, freedom from financial exploitation, and the right to voice grievances without retribution or intimidation." <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</p> <ul style="list-style-type: none">• CFC PAS• CFC Habilitation• Respite• Nursing• Physical Therapy• Occupational Therapy• Cognitive Rehabilitation Therapy• Speech Therapy• Supported Employment• Employment Assistance• Support Consultation• Assisted living• Adult Foster Care" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">• The setting ensures a member’s rights of privacy, dignity and respect, and freedom from coercion and restraint."
<p>The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p> <p>42 CFR §441.301(c)(4)(iv)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The setting and services provided must support the individual’s independence in making personal choices. The purpose of assisted living services is to promote or enhance the individual’s choice and decision-making ability.</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <ul style="list-style-type: none">▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p>STAR+PLUS Handbook, Section 1120, Values</p> <ul style="list-style-type: none">▶ The principles and practices that form the foundation for the STAR+PLUS Home and Community Based Services (HCBS) program are based on the following values: Members receive services based on their choices and ongoing assessment of their medical and functional needs... The service delivery system is accessible to the member, responsive to his or her needs and preferences, and flexible in honoring choices regarding living arrangement, services and mode of service delivery... Services must support the member's efforts to retain or regain as much independence as possible in the activities of daily living (ADLs), living arrangement and other areas of personal choice, and in meeting any goals. <p>STAR+PLUS Handbook, Section 7210, Assisted Living Services - Introduction</p> <ul style="list-style-type: none">▶ "Services must support the member's efforts to retain or regain as much independence as possible in the activities of daily living (ADLs), living arrangement and other areas of personal choice, and in meeting any goals. Individuals and members are provided the education, support and services needed to support the member's efforts to remain in or return to the community."▶ "The purpose of AL services is to promote the availability of appropriate services for elderly and disabled persons in a home-like environment to enhance the dignity, independence, individuality, privacy, choice and decision-making ability of the individual." <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</p> <ul style="list-style-type: none">• CFC PAS• CFC Habilitation• Respite• Nursing• Physical Therapy• Occupational Therapy• Cognitive Rehabilitation Therapy• Speech Therapy• Supported Employment• Employment Assistance• Support Consultation• Assisted living• Adult Foster Care" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</p> <p>The setting optimizes, but does not regiment, the member’s individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact."</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The setting and services provided must support the individual’s independence in making personal choices. The purpose of adult foster care is to promote or enhance the individual’s individuality, choice and decision-making ability.</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <ul style="list-style-type: none">▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p>STAR+PLUS Handbook, Section 1120, Values</p> <ul style="list-style-type: none">▶ The principles and practices that form the foundation for the STAR+PLUS Home and Community Based Services (HCBS) program are based on the following values: Members receive services based on their choices and ongoing assessment of their medical and functional needs... The service delivery system is accessible to the member, responsive to his or her needs and preferences, and flexible in honoring choices regarding living arrangement, services and mode of service delivery... Services must support the member's efforts to retain or regain as much independence as possible in the activities of daily living (ADLs), living arrangement and other areas of personal choice, and in meeting any goals. <p>STAR+PLUS Handbook, Section 7111, Adult Foster Care - Purpose</p> <ul style="list-style-type: none">▶ "Services must support the member's efforts to retain or regain as much independence as possible in the activities of daily living (ADLs), living arrangement and other areas of personal choice, and in meeting any goals. Individuals and members are provided the education, support and services needed to support the member's efforts to remain in or return to the community."▶ "The purpose of the STAR+PLUS Home and Community Based Services (HCBS) program adult foster care (AFC) is to promote the availability of appropriate services in a home-like environment for members who are aging and who have disabilities to enhance the dignity, independence, individuality, privacy, choice and decision-making ability of a member." <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</p> <ul style="list-style-type: none">• CFC PAS• CFC Habilitation• Respite• Nursing• Physical Therapy• Occupational Therapy• Cognitive Rehabilitation Therapy• Speech Therapy• Supported Employment• Employment Assistance• Support Consultation• Assisted living• Adult Foster Care" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</p> <p>The setting optimizes, but does not regiment, the member’s individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact."</p>

Federal Rule	Assisted Living Facilities (Residential)	Adult Foster Care (Residential)
<p>The setting facilitates individual choice regarding who provides services.</p> <p>42 CFR §441.301(c)(4)(v)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The MCO must ensure the individual has a choice of at least two ALFs within specified distance or travel time requirements. The member may choose an apartment setting or a non-apartment setting in which to receive assisted living services.</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▸ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>UMCC, Section 8.1.3.2, Access to Network Providers (p. 8-70)</p> <p>▸ "STAR+PLUS MCOs must ensure that 90 percent of Members in every county must have a choice of at least two Assisted Living Facilities (ALF) within specified distance or travel time requirements... of each Member depending on whether county of residence is classified as Metro, Micro or Rural."</p> <p>STAR+PLUS Handbook, Section 7250, Assisted Living Services - Standards for Operation</p> <p>▸ "The MCO discusses residential options with the member, allowing the member to choose his or her preference."</p> <p>STAR+PLUS Handbook, Section 7222, Initial Responsibilities for Members Residing in ALFs</p> <p>▸ "The managed care organization (MCO) is responsible for helping the applicant or member select an assisted living facility (ALF) that can meet his or her needs."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</p> <ul style="list-style-type: none">CFC PASCFC HabilitationRespiteNursingPhysical TherapyOccupational TherapyCognitive Rehabilitation TherapySpeech TherapySupported EmploymentEmployment AssistanceSupport ConsultationAssisted livingAdult Foster Care" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The settings facilities member choice regarding services and supports, and who provides them."	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The MCO service coordinator provides information about potential AFC homes and coordinates visits to the homes for the individual.</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▸ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>STAR+PLUS Handbook, Section 7123, Adult Foster Care - MCO Responsibilities</p> <p>▸ "The managed care organization (MCO) responsibilities include: providing information to interested applicants about potential adult foster care (AFC) homes and coordinating visits to the homes;"</p> <p>STAR+PLUS Handbook, Section 7132, Assessing Potential Adult Foster Care Homes</p> <p>▸ "The MCO or MCO-contracted AFC provider agency can arrange visits to appropriate AFC homes or, if the applicant or member is capable or has family/supports available, the applicant or member and family may make the arrangements to visit potential AFC homes. The purpose of the visits to potential AFC homes is to let the applicant or member assess the home and let the AFC home provider assess if the applicant or member will be an appropriate resident for the AFC home."</p> <p>▸ "The managed care organization (MCO) responsibilities include: •providing information to interested applicants about potential adult foster care (AFC) homes and coordinating visits to the homes;"</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR+PLUS home and community-based services are provided complies with 42 CFR §441.301(c)(4)(i)-(v) and §441.530, as applicable:</p> <ul style="list-style-type: none">CFC PASCFC HabilitationRespiteNursingPhysical TherapyOccupational TherapyCognitive Rehabilitation TherapySpeech TherapySupported EmploymentEmployment AssistanceSupport ConsultationAssisted livingAdult Foster Care" <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR+PLUS and STAR+PLUS HCBS services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">The settings facilities member choice regarding services and supports, and who provides them."
<p>In a provider-owned or controlled residential setting:</p> <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p> <p>42 CFR §441.301(c)(4)(vi)(A)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: The individual cannot be forced to leave the ALF setting, except under certain circumstances and with proper notice. The MCO, ALF provider, and individual must take specific steps before an individual's assisted living services are terminated due to failure to pay. STAR+PLUS Handbook requires specific steps to be taken before eviction and the setting must provide an eviction notice.</p> <p>TAC §553.259, Admission Policies and Procedures</p> <p>▸ (a)(2) "There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services."</p> <p>▸ (a)(3) "A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided."</p> <p>TAC §553.267(3)(X), (Y) and (Z), Rights</p> <p>▸ (3)(X) "Each resident in the assisted living facility has the right to: not be transferred or discharged unless:</p> <ul style="list-style-type: none">the transfer is for the resident's welfare, and the resident's needs cannot be met by the facility;the resident's health is improved sufficiently so that services are no longer needed;the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;the provider ceases to operate or to participate in the program that reimburses for the resident's treatment or care; orthe resident fails, after reasonable and appropriate notice, to pay for services; <p>▸ (3)(Y) "...not be transferred or discharged, except in an emergency, until the 30th day after the date the facility provides written notice to the resident, the resident's legal representative, or a member of the resident's family..."</p> <p>▸ (3)(Z) "...leave the facility temporarily or permanently, subject to contractual or financial obligations;"</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▸ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>STAR+PLUS Handbook, Section 7241, "Room and Board Requirements"</p> <p>▸ "If the member or authorized representative (AR) fails to pay the entire copayment and room and board by the facility's due date, the facility must...</p> <ul style="list-style-type: none">makes every effort to resolve the problem with the member and the facility;advises the member of the consequences that result from refusal to make the required payments to the assisted living facility (ALF), including: termination of eligibility; eviction; and being placed at the end of the interest list if the member reapplies for services in the future;" <p>▸ "All members must pay the room and board charges to be eligible for assisted living (AL). Room and board cannot be waived... The managed care organization (MCO) must notify the applicant or member of the initial amount of room and board to pay and the ongoing amount of room and board to pay."</p> <p>STAR+PLUS Handbook, Section 7246, Termination Due to Failure to Pay the Required Contribution to the Cost of Care</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</p> <ul style="list-style-type: none">The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the member, and the member has, at a minimum, the same responsibilities and protections from evictions that tenants have under the Texas Property Code."	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Policies clearly outline requirements for both parties and HHSC provides a form to document the individual's agreement with the AFC provider.</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▸ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>STAR+PLUS Handbook Section 7151, "Member and AFC Home Provider Agreement"</p> <p>▸ "The managed care organization (MCO) documents the service arrangements and the agreement of the room and board payment on Form 232Z, Individual/Member and Provider Agreement...</p> <ul style="list-style-type: none">A full description of the care needs of the member and frequency of services needed...The monthly dollar amount the member agrees to pay the AFC home provider for room and board, as documented on Form 2327....The rights and responsibilities of both the member and the AFC home provider for notifying the MCO, MCO-contracted AFC provider agency, as applicable, of problems such as illnesses, adverse medication reactions, hospitalizations, acts of violence, accidents or complaints about abuse, neglect or exploitation." <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings: The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the member, and the member has, at a minimum, the same responsibilities and protections from evictions that tenants have under the Texas Property Code."</p>

Federal Rule	Assisted Living Facilities (Residential)	Adult Foster Care (Residential)
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <p>- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(1)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</p> <ul style="list-style-type: none">Each member has privacy in their sleeping or living unit:<ul style="list-style-type: none">Units have entrance doors lockable by the member, with only appropriate staff having keys to doors;"	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</p> <ul style="list-style-type: none">Each member has privacy in their sleeping or living unit:<ul style="list-style-type: none">Units have entrance doors lockable by the member, with only appropriate staff having keys to doors;"
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping unit:</p> <p>- Individuals sharing units have a choice of roommates in that setting.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(2)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 12000, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</p> <ul style="list-style-type: none">Each member has privacy in their sleeping or living unit:<ul style="list-style-type: none">The member sharing units have a choice of roommates in that setting; and"	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</p> <ul style="list-style-type: none">Each member has privacy in their sleeping or living unit: <p>The member sharing units have a choice of roommates in that setting; and"</p>
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <p>- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(3)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Licensing rules for all ALFs require that the individual has the right to use personal possessions, including furnishings. Residents’ Bill of rights ensures all the rights granted to any person. Rule language allows personal possessions including furnishings. Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>TAC §553.267, Rights</p> <p>▶ (a)(3)(S) "Each resident in the facility has the right to: retain and use personal possessions, including clothing and furnishings, as space permits...</p> <p>▶ (a)(3)(U) "...retain and use personal property in his or her immediate living quarters"</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>STAR+PLUS Handbook, <u>Section 7223</u>, Admission to an Assisted Living Facility</p> <p>▶ Members are encouraged to bring basic furnishings for bedroom areas with them.</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</p> <ul style="list-style-type: none">Each member has privacy in their sleeping or living unit:<ul style="list-style-type: none">The member has the freedom to furnish and decorate their sleeping or living units within the lease or other agreement."	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</p> <ul style="list-style-type: none">Each member has privacy in their sleeping or living unit:<ul style="list-style-type: none">The member has the freedom to furnish and decorate their sleeping or living units within the lease or other agreement."
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p> <p>42 CFR §441.301(c)(4)(vi)(C)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Policies require that the individual has control over their schedules and activities. Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>TAC §553.267, Rights</p> <p>▶ (a)(3)(B) "Each resident in the assisted living facility has the right to: participate in activities of social, religious, or community groups unless the participation interferes with the rights of others..."</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>STAR+PLUS Handbook, <u>Section 7220</u>, Description of Services</p> <p>▶ Services include... social and recreational activities... organizing activities that require group and member-initiated activities; providing opportunities to interact with other people; providing interaction, cultural enrichment, educational or recreational activities, and other social activities on site or in the community in a planned program to meet the social needs and interests of the members..."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</p> <ul style="list-style-type: none">The member has the freedom and support to control their own schedules and activities, and has access to food at any time.	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <p>▶ "HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)."</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</p> <p>Draft handbook language:</p> <p>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</p> <p>The member has the freedom and support to control their own schedules and activities, and has access to food at any time.</p>

Federal Rule	Assisted Living Facilities (Residential)	Adult Foster Care (Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <ul style="list-style-type: none">Individuals are able to have visitors of their choosing at any time. <p>42 CFR §441.301(c)(4)(vi)(D)</p>	<p><u>NON-COMPLIANT</u></p> <p>Rationale: Rules for all ALFs specify that an individual can have visitors “at any reasonable hour.” Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>TAC §553.26Z, Rights</p> <ul style="list-style-type: none"><i>(a)(3)(J) “Each resident in the facility has the right to: unrestricted communication, including personal visitation with any person of the resident’s choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour;”</i> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <ul style="list-style-type: none"><i>“HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4).”</i> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>“The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi).”</i></p> <p>Draft handbook language:</p> <p><i>“The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <ul style="list-style-type: none"><i>The member is able to have visitors of their choosing at any time.”</i>	<p><u>NON-COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <ul style="list-style-type: none"><i>“HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4).”</i> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>“The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi).”</i></p> <p>Draft handbook language:</p> <p><i>“The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <ul style="list-style-type: none"><i>The member is able to have visitors of their choosing at any time.”</i>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <ul style="list-style-type: none">The setting is physically accessible to the individual. <p>42 CFR §441.301(c)(4)(vi)(E)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Settings must comply with Texas Accessibility Standards. Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>TAC §553.100, Facility Construction</p> <ul style="list-style-type: none"><i>(k) An assisted living facility must comply with the plan review and inspection requirements of the Texas Accessibility Standards (TAS) adopted by the Texas Department of Licensing and Regulation (TDLR) rules in Texas Administrative Code, Title 16, Chapter 68, and must provide documentation demonstrating it has registered the facility with TDLR and obtained a plan review from a Registered Accessibility Specialist, if TDLR requires the facility to be registered and reviewed.</i> <p>UMCC, Section 8.1.5.8 Cultural Competency Plan (p. 8-107)</p> <ul style="list-style-type: none"><i>“The MCO must have a comprehensive written Cultural Competency plan describing how it will ensure culturally competent services, and provide Linguistic Access and Disability related Access”</i> <p>UMCC, Definitions (p.7)</p> <ul style="list-style-type: none"><i>Disability-related Access means that facilities are readily accessible to and usable by individuals with disabilities, and that auxiliary aids and services are provided to ensure effective communication, in compliance with Title III of the Americans with Disabilities Act.</i> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <ul style="list-style-type: none"><i>“HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. §441.301(c)(4).”</i> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>“The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi).”</i></p> <p>Draft handbook language:</p> <p><i>“The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <ul style="list-style-type: none"><i>The setting is physically accessible to the member.”</i>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Policies require AFC homes to comply with applicable fire, health and safety laws. Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>UMCC, Section 8.3.1.2, HCBS STAR+PLUS Waiver Services Available to Qualified Members (p. 8-222)</p> <ul style="list-style-type: none"><i>“HCBS STAR+PLUS Waiver services must be provided in home and community based settings and comply with 42 C.F.R. §441.301(c)(4).”</i> <p>STAR+PLUS Handbook <u>Appendix XXIV</u>, Minimum Standards for STAR+PLUS AFC Home and Home Providers; Eligibility for Payment</p> <ul style="list-style-type: none"><i>“AFC home and AFC home providers must comply with all applicable fire, health, and safety laws, ordinances and regulations along with necessary fire and safety health inspections.”</i><i>“All homes in which AFC is provided must:</i><ul style="list-style-type: none"><i>have bedrooms with at least 80 square feet of floor space in a single occupancy room, and at least 60 square feet of floor space per resident in a double occupancy room. The bedrooms must: be close enough in proximity to the AFC home provider to alert the AFC home provider to nighttime needs or emergencies, or they must be equipped with a call bell or intercom;</i><i>have comfortable sleeping arrangements for residents;</i><i>provide at least one grab bar in the bathtub/shower area and a slip-proof surface in the bathtub/shower area;</i><i>provide a sketch of the home floor plan showing the dimensions and the purpose of all rooms and specifying where residents and household members will sleep. As arrangements change, an updated floor plan must be provided...</i><i>have at least one communal dining table with adequate seating for all residents</i><i>be maintained, repaired and cleaned so that the homes are not hazardous to residents</i> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>“The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi).”</i></p> <p>Draft handbook language:</p> <p><i>“The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <p><i>The setting is physically accessible to the member.”</i></p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Identify a specific and individualized assessed need. <p>42 CFR §441.301(c)(4)(vi)(F)(1)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>“The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi).”</i></p> <p>Draft handbook language:</p> <p><i>“The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Identify a specific and individualized assessed need;”</i>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>“The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi).”</i></p> <p>Draft handbook language:</p> <p><i>“The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Identify a specific and individualized assessed need;”</i>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Document the positive interventions and supports used prior to any modifications to the person-centered plan. <p>42 CFR §441.301(c)(4)(vi)(F)(2)</p>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>“The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi).”</i></p> <p>Draft handbook language:</p> <p><i>“The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Document the positive interventions and supports used prior to any modifications to the person-centered service plan;”</i>	<p><u>PARTIALLY COMPLIANT</u></p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>“The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi).”</i></p> <p>Draft handbook language:</p> <p><i>“The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i> <p><i>Document the positive interventions and supports used prior to any modifications to the person-centered service plan;”</i></p>

Federal Rule	Assisted Living Facilities (Residential)	Adult Foster Care (Residential)
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">Include assurances that interventions and supports will cause no harm to the individual. <p>42 CFR §441.301(c)(4)(vi)(F)(8)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</i></p> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Include an assurance that interventions and supports will cause no harm to the individual."</i>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Medicaid managed care contracts require MCOs to ensure their providers comply with requirements at 42 CFR §441.301(c)(4).</p> <p>Remediation: HHSC is amending the UMCC, STAR+PLUS Expansion, STAR+PLUS MRSA and MMDD contracts, to add requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR §441.301(c)(4). HHSC is also adding Section 1130, HCBS Settings, to the STAR+PLUS Handbook.</p> <p>Proposed contract language:</p> <p><i>"The MCO must ensure that a setting in which Assisted Living or Adult Foster Care is provided complies with 42 CFR §441.301(c)(4)(vi)."</i></p> <p>Draft handbook language:</p> <p><i>"The HCBS settings regulations include additional requirements for provider-owned and controlled residential settings. These requirements apply to assisted living facility and adult foster care settings:</i></p> <ul style="list-style-type: none"><i>Any modifications to these requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following criteria must be included in the plan:</i><ul style="list-style-type: none"><i>Include an assurance that interventions and supports will cause no harm to the individual."</i>
<p>Home and community-based settings do not include the following: NF, IMD, ICF/IID; hospital; or any other locations that have qualities of an institutional setting.</p> <p>42 CFR §441.301(c)(5)</p>	<p>COMPLIANT</p> <p>Rationale: Assisted living services are not provided in institutional settings.</p> <p>STAR+PLUS Handbook Section 6111, Service Introduction</p> <ul style="list-style-type: none"><i>"The service array under the STAR+PLUS Home and Community Based Services (HCBS) program is designed to offer home and community-based services as cost-effective alternatives to institutional care in Medicaid certified nursing facilities... Agencies contracted with managed care organizations (MCOs) provide services to members living in their own homes, foster homes, assisted living facilities (ALFs) and other locations where service is needed."</i> <p>STAR+PLUS Handbook Section 6112, Service Locations for STAR+PLUS HCBS Program</p> <ul style="list-style-type: none"><i>"All services through the STAR+PLUS Home and Community Based Services (HCBS) program, except minor home modifications (MHMs), can be provided to members in locations of their choice. Nursing services, therapy services, adaptive aids (including dental) and medical supplies may be provided to a STAR+PLUS HCBS program member residing in an assisted living facility (ALF) contracted to provide STAR+PLUS HCBS program services. Per Title 42 of the Code of Federal Regulations (CFR), Subpart K, Section 441.530(a)(2), the following locations are excluded from STAR+PLUS HCBS program service locations, with the exception of out-of-home respite care:</i><ul style="list-style-type: none"><i>Nursing facilities (NFs);</i><i>Psychiatric hospitals;</i><i>Intermediate care facilities for individuals with intellectual disabilities (ICF/IID);</i><i>Hospitals providing long term care; and</i><i>Locations that have the qualities of an institution."</i>	<p>COMPLIANT</p> <p>Rationale: Adult foster care services are not provided in institutional settings.</p> <p>STAR+PLUS Handbook Section 6111, Service Introduction</p> <ul style="list-style-type: none"><i>"The service array under the STAR+PLUS Home and Community Based Services (HCBS) program is designed to offer home and community-based services as cost-effective alternatives to institutional care in Medicaid certified nursing facilities... Agencies contracted with managed care organizations (MCOs) provide services to members living in their own homes, foster homes, assisted living facilities (ALFs) and other locations where service is needed."</i> <p>STAR+PLUS Handbook Section 6112, Service Locations for STAR+PLUS HCBS Program</p> <ul style="list-style-type: none"><i>"All services through the STAR+PLUS Home and Community Based Services (HCBS) program, except minor home modifications (MHMs), can be provided to members in locations of their choice. Nursing services, therapy services, adaptive aids (including dental) and medical supplies may be provided to a STAR+PLUS HCBS program member residing in an assisted living facility (ALF) contracted to provide STAR+PLUS HCBS program services. Per Title 42 of the Code of Federal Regulations (CFR), Subpart K, Section 441.530(a)(2), the following locations are excluded from STAR+PLUS HCBS program service locations, with the exception of out-of-home respite care:</i><ul style="list-style-type: none"><i>Nursing facilities (NFs);</i><i>Psychiatric hospitals;</i><i>Intermediate care facilities for individuals with intellectual disabilities (ICF/IID);</i><i>Hospitals providing long term care; and</i><i>Locations that have the qualities of an institution."</i>

Section 8. Department of Family and Protect Services Foster Care Homes

In Texas, Medicaid HCBS recipients who are minors and in state conservatorship may reside in a Department of Family and Protective Services (DFPS) foster care home. These minors may also be enrolled in the state’s CLASS, DBMD, HCS, MDCP, TxHmL or YES Waiver programs, and may receive Community First Choice services. When an individual residing in a DFPS foster care home is enrolled in a Medicaid HCBS waiver program or receiving Community First Choice services, they may receive Medicaid HCBS and Community First Choice services in the foster care home in which they live in the same manner as they would receive them in an adoptive or biological parent’s own home/family home. DFPS foster care providers are not Medicaid HCBS providers, and serve as parents to individuals under state conservatorship. DFPS foster care is care provided to children and youth in a DFPS foster family home. A DFPS foster family home must be the primary residence of the foster parent(s) and provide care for six or fewer children or youth.

Although DFPS foster care homes are not residential settings funded by a Medicaid HCBS waiver or the Medicaid state plan, HHSC has assessed policies for DFPS foster care homes to ensure there are no conflicts with requirements of the HCBS Settings Rule (as directed by CMS in June 2022 feedback on HHSC’s STP). The table below outlines rules and policies for DFPS foster care homes and notes the state’s determination regarding alignment with the corresponding HCBS settings criteria.

Policies related to DFPS foster care are located at:

- [TAC Title 26, Part 1, Chapter 749](#), Minimum Standards for Child-Placing Agencies
- [TAC Title 40, Part 19, Chapter 700, Child Protective Services](#)
- [Child Protective Services Handbook, Section 4000 Placing Children in DFPS Conservatorship](#)
- [Form K-908-254](#), Voluntary Extended Foster Care Agreement and Financial Agreement
- [Form K-908-2530](#), CPS Rights of Children and Youth in Foster Care

Demonstrating Compliance through Texas Medicaid Policies

For criteria of the HCBS Settings Rule that apply to all settings (42 CFR 441.301(c)(4)(i-v)), where DFPS foster care policies are silent or partially compliant, HHSC has outlined Medicaid policies that will address the criteria. Policies for the Medicaid HCBS waiver programs govern delivery of Medicaid HCBS in all settings, including Medicaid HCBS delivered to children and youth in foster care home settings.

Provider Outreach and Education

To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including 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 individuals not receiving Medicaid HCBS.</p> <p>42 CFR §441.301(c)(4)(i)</p>	<p>COMPLIANT</p> <p>Rationale: Rules for DFPS foster care providers require that children in care participate in childhood activities as much as possible. Rules state that, depending on age and maturity, the child has a right to seek employment, manage their own funds, and have a bank account. DFPS extended foster care is a voluntary program that allows youth turning 18 in DFPS care the opportunity to continue foster care placement and facilitate the transition to independence with DFPS supervision. Young adults in DFPS extended foster care agree that monthly benefits they receive, such as SSI or RSDI, will be used by DFPS to pay for the cost of their foster care, and any monthly benefit funds in excess of DFPS foster care costs belong to and are controlled by the young adult.</p> <p>TAC §749.1003, Living a normal life</p> <p>"(b) The following categories include the child's rights that you must adhere to:</p> <p>(3) Living a normal life, including:</p> <p>(L) Depending on the child's age and maturity, the right to seek employment, keep the child's own money, have a bank account in the child's name, and get paid for any work done for the agency or home as part of the child's service plan or vocational training, with the exception of assigned routine duties that relate to the child's living environment, such as cleaning the child's room, or other chores, or work assigned as a disciplinary measure;"</p> <p>TAC §749.2601, What is "normalcy"?</p> <p>"Normalcy is the ability of a child in care to live as normal a life as possible, including:</p> <p>(1) Engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard; and</p> <p>(2) Having normal interaction and experiences within a foster family and participating in foster family activities."</p> <p>TAC §749.2603, Are children in care required to participate in childhood activities?</p> <p>"(a) Children in care must participate in childhood activities, including unsupervised childhood activities, as much as possible.</p> <p>(b) Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions on how normalcy for the child can be achieved, and discussions, if applicable, regarding a child's refusal to participate in childhood activities. The child's service plan must specify whether there are any restrictions on the child's participation in these activities and whether the activities may extend into sleeping hours."</p> <p>Form K-908-254, Voluntary Extended Foster Care Agreement and Financial Agreement</p> <p>"Supplemental Security Income (SSI), Retirement, Survivors, and Disability Insurance (RSDI), and Other Monthly Benefits</p> <p>I agree that any monthly benefits that I receive, such as Supplemental Security Income (SSI) and Retirement, Survivors, and Disability Insurance (RSDI), will be used by the Department of Family and Protective Services (DFPS) to pay for the cost of my foster care as long as I remain in the voluntary Extended Foster Care program (or in an extended foster care placement for youth in DADS guardianship). I agree to allow the Social Security Administration or the issuing entity to name DFPS as my representative payee to receive any SSI, RSDI, or the other monthly benefits to which I am entitled. If the Social Security Administration or other entity names me as the payee, rather than naming DFPS, I agree to endorse the checks that I receive, thereby turning over my SSI, RSDI, or other monthly benefits to DFPS so that DFPS may use the money to pay for my foster care.</p> <p>If my monthly benefit exceeds the cost of my foster care, the excess money belongs to me. My caseworker and I will determine how the excess money will be reimbursed; that is, either by issuing a check to me for the difference, or holding the money in a children's income account (CIA) and drawing interest. To receive the funds, I understand that I need to contact my caseworker and that my caseworker will contact the accountant.</p> <p>If I choose not to sign this financial agreement, and I do not sign over my monthly benefits to DFPS, I acknowledge that my eligibility for foster care will end, I will no longer be eligible for the voluntary Extended Foster Care program, and I must leave the DFPS placement."</p>	<p>HHSC is revising its Medicaid program policies to ensure compliance with the HCBS Settings Rule. Medicaid recipients who are children or youth in DFPS foster care (i.e. state conservatorship) may be enrolled in one of the state's 1915(c) waiver programs. Policies for these programs will ensure settings where Medicaid HCBS are delivered to these recipients meet the requirements of the HCBS Settings Rule.</p> <p>CLASS</p> <p>The following rule will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual's person-centered service plan:</p> <p>(1) is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual:</p> <p>(A) to seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life; and</p> <p>(C) control personal resources;"</p> <p>DBMD</p> <p>The following rule will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</p> <p>(1) The setting is integrated in and support the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</p> <p>(A) seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources; and</p> <p>(D) receive services in the community."</p> <p>HCS</p> <p>The following rule will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</p> <p>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</p> <p>(A) seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources; and</p> <p>(D) receive services in the community."</p> <p>MDCP</p> <p>HHSC has amended the STAR Kids and STAR Health managed care contracts and is adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Contract language:</p> <p>"The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">• Respite• flexible family support services• Employment Assistance• Supported Employment• Adaptive Aids• Minor Home Modifications" <p>Draft handbook language:</p> <p>The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <ul style="list-style-type: none">• The setting provides opportunities for members to seek employment and work in competitive, integrated settings.• The setting provides opportunities for members to engage in community life.• The setting provides opportunities for members to control personal resources.• The setting provides opportunities for recipients to receive services in the community. " <p>TxHmL</p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>"(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(1) The setting is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual:</p> <p>(A) to seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources;</p> <p>(D) receive services in the community."</p> <p>YES Waiver</p> <p>TAC §307.9, Individual Plan of Care (IPC)</p> <p>"(b) The initial IPC must be reviewed by an LPHA at the LMHA that serves the geographic area of the participant's residence before forwarding to the department for approval. The IPC must be approved by the department before a provider can begin delivering waiver program services. To be approved, the IPC must:</p> <p>(1) promote the child's or adolescent's inclusion into the community;"</p> <p>YES Policy Manual, Section 2600, Participant Rights and Responsibilities</p> <p>"Participants in the YES Waiver have guaranteed rights and responsibilities. These rights include:</p> <ul style="list-style-type: none">• Choice of community-based services rather than institutional care.• Choice of Wraparound Provider Organization (WPO).• Choice of service providers.• Choice of CFT members and option to add members at any time.• Option to file complaints and request Fair Hearings in accordance with [POLICY 1100 Complaints and Fair Hearings]." <p>YES Provider Manual, Section 7000.3, Employment Assistance</p> <p>"Employment assistance is assistance provided to an individual as identified during the person-centered planning process to help the individual locate paid employment at or above minimum wage in an integrated employment setting in the community and meet the individual's personal and career goals."</p> <p>YES Provider Manual, Section 7000.12, Supported Employment</p> <p>"Supported employment means assistance provided, in order to sustain competitive and integrated employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed."</p> <p>YES Policy Manual, Section 7000.13: Supportive Family-Based Alternatives</p> <p>"The [supportive family-based alternative] home must be located in a typical residence in the community and provide an environment that assures community integration, health, safety and welfare of the Waiver participant."</p>

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>The setting is selected by the individual from among setting options, including non-disability specific settings, and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.</p> <p>42 CFR §441.301(c)(4)(ii)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Rules and policies require that children and youth be placed in the least restrictive settings possible. A DFPS caseworker must consult with the individual before determining a DFPS foster care placement and a pre-placement visit is required. DFPS pre-placement visits must be documented in the child’s record. Medicaid HCBS recipients in DFPS conservatorship have a choice of DFPS foster care family placement to the same extent as children and youth in DFPS foster care who are not receiving Medicaid HCBS.</p> <p>TAC §749.1251, What are the requirements for pre-placement visits for a child? "(a) A child over six months of age must visit the foster home at least once before placement. (b) There must be a meaningful interval between the pre-placement visit and the placement. This interval must be at least sufficient to allow a child and foster parents to have privacy, an opportunity to discuss and consider placement, and to have their questions, opinions, and concerns addressed. (c) You must document pre-placement visits in the child's record. (d) Pre-placement visits are not required for emergency admissions."</p> <p>TAC §749.2902, What health and safety measures are required at a foster home? "(a) Subject to the availability of a placement approved by the Department of Family and Protective Services (DFPS), a young adult may receive foster care assistance if all of the following eligibility requirements are met: (1) The young adult meets the requirements of §700.316 of this title (relating to General Eligibility Requirements for Foster Care Assistance); (2) The young adult turned 18 years of age while in the temporary or permanent managing conservatorship of DFPS; (3) The young adult signs and continues to abide by the terms of a Voluntary Extended Foster Care Agreement, including monthly caseworker visits and participation in all required extended foster care review hearings under Subchapter G of Chapter 263, Texas Family Code;"</p> <p>Child Protective Services Handbook, Section 4113.4 Consult the Child or Youth "Before any move, the caseworker must talk to the child or youth to determine his or her thoughts and recommendations about the best placement. The discussion must take place in a developmentally appropriate manner. The caseworker must ensure that the child or youth understands he or she is simply making recommendations and there is no guarantee that the caseworker can fulfill the requests. The discussion must include the following: The child's or youth's preferences for the placement, including: Desire to remain in current school. Household composition. Rural or urban setting. Number of other children in the home. Animals. Access to extracurricular activities. What the child or youth liked and disliked about previous placements, if applicable. The caseworker must also consider information gathered about the child or youth throughout the life of the case."</p> <p>Child Protective Services Handbook, Section 4114.4 Preference for the Least Restrictive Setting "The caseworker must place the child or youth in the least restrictive, most family-like setting available, consistent with the child or youth's best interest and special needs."</p> <p>Child Protective Services Handbook, Section 4118 Additional Actions for Placing Children with Intellectual or Developmental Disabilities Section 4118.1 Assessing the Need for Facility Placement "Children and youth with disabilities must be placed in the least restrictive, most family-like setting that meets their needs."</p> <p>Section 4118.2 Home and Community-Based Services (HCS) "Staff may request a Home and Community-Based Services (HCS) waiver slot for youth aging out of care or for children who reside in a general residential operation (GRO) for children with intellectual and developmental disabilities..." Before considering a pre-placement or placement in HCS, CPS staff must take the following actions:</p> <ul style="list-style-type: none">Conduct appropriate background checks.Conduct an inspection of the HCS home.Schedule a pre-placement visit. <p>Home Inspections: Before pre-placement, a regional DDS must conduct a home inspection of an HCS home being considered. The regional DDS must provide his or her findings and recommendations to the caseworker, supervisor, and program director for consideration in an email. This includes if the HCS is an option, if there are any concerns, and the HCS home's plan to rectify any concerns. The program director consults with the program administrator (PA) if there are any identified concerns. Pre-Placement Visit: Once the caseworker has selected and vetted the HCS provider, the regional DDS or caseworker must schedule a pre-placement visit for the child or youth. This pre-placement visit allows both the child or youth and the provider to become familiar with each other. Pre-placement visits generally last anywhere from one to six days."</p> <p>Texas Government Code, Sec. 531.157, COMMUNITY-BASED SERVICES. "A state agency that receives notice of a child's placement in an institution shall ensure that, on or before the third day after the date the agency is notified of the child's placement in the institution, the child is also placed on a waiting list for waiver program services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, appropriate to the child's needs."</p>	<p>HHSC is revising its Medicaid program policies to ensure compliance with the HCBS Settings Rule. Medicaid recipients who are children or youth in foster care (i.e., state conservatorship) may be enrolled in one of the state's 1915(c) waiver programs. Policies for these programs will ensure settings where Medicaid HCBS are delivered to these recipients meet the requirements of the HCBS Settings Rule.</p> <p>CLASS The following rule will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule: "(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual's person-centered service plan: (2) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a provider-owned or controlled residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for provider-owned or controlled residential settings, resources available for room and board."</p> <p>DBMD The following rule will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule: "(a) A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP. (1) The setting is integrated in and support the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to: (A) seek employment and work in a competitive integrated setting; (B) engage in community life; (C) control personal resources; and (D) receive services in the community."</p> <p>HCS The following rule will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule: (a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP. (2) The setting is selected by an individual from among setting options, including non-disability specific settings and an option for a private unit in a setting in which residential support, supervised living, or host home/companion care is provided. The setting options are identified and documented in an individual's PDP and are based on the individual's needs, preferences, and, for settings in which residential support, supervised living, or host home/companion care is provided, resources available for room and board."</p> <p>MDCP HHSC has amended the STAR Kids and STAR Health managed care contracts and is adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Proposed contract language: "The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">Respiteflexible family support servicesEmployment AssistanceSupported EmploymentAdaptive AidsMinor Home Modifications" <p>Draft handbook language: "The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities: The setting is selected by the member from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board."</p> <p>TxHmL The following rule will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule: "(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP. (2) The setting is selected by an individual from among setting options, including non-disability specific settings. The setting options are identified and documented in an individual's PDP and are based on the individual's needs and preferences."</p> <p>YES Waiver YES Waiver Policy Manual, Section 1000: YES Waiver Overview</p> <ul style="list-style-type: none">"YES participants have access to an array of services coordinated and delivered by the participant's choice of Comprehensive Waiver Provider (CWP)." <p>YES Waiver Policy Manual, Section 5000: Wraparound Provider Organization Responsibilities</p> <ul style="list-style-type: none">"Services and supports are being implemented and provided in accordance with the Wraparound Plan and continue to meet the participant's reason for referral, needs, goals, and preferences."

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p> <p>42 CFR §441.301(c)(4)(iii)</p>	<p>COMPLIANT</p> <p>Rationale: Rules require that child or youth in DFPS foster care has the right to privacy and that a DFPS foster family protects a child’s right to privacy. A child in DFPS foster care also has the right to safety and care and to file a complaint ?with the state? about a DFPS foster care provider. A child has the right to live a normal life, which includes the right to: be spoken to in the child’s own language; receive educational services; receive personal care, hygiene, and grooming supplies, and training in how to use them; comfortable and weather-appropriate clothing. A DFPS foster care provider must ensure a Medicaid recipient's rights of privacy, dignity and respect, and freedom from coercion and restraint to the same extent these rights are ensured for children and youth not receiving Medicaid HCBS.</p> <p>TAC §749.1001, How must I protect the rights of children served by my child-placing agency?</p> <p>"(a) You must protect the rights of children while they are in foster care or in adoptive placement prior to the consummation of the adoption.</p> <p>(b) You must ensure that a caregiver or an adoptive parent, prior to consummation of the adoption, does not restrict or deny a child’s rights.</p> <p>(c) You are responsible for removing a child from a situation where abuse, neglect, or exploitation exists.”</p> <p>TAC §749.1003, What rights does a child in care have?</p> <p>"(b) The following categories include the child's rights that you must adhere to:</p> <p>(1) Safety and care, including:</p> <p>(A) The right to good care and treatment that meets the child's needs in the most family-like setting possible;</p> <p>(B) The right to be free from abuse, neglect, and exploitation; and</p> <p>(C) The right to fair treatment;</p> <p>(3) Living a normal life, including:</p> <p>(A) The right to speak and be spoken to in the child's own language, including Braille if the child is blind or sign language if the child is deaf. This should also occur within a reasonable time after an emergency admission of a child, if applicable. You must make every effort to place a child with foster parent(s) who can communicate with the child. If these efforts are not successful, you must document in the preliminary service plan your plan to meet the communication needs of the child;</p> <p>(B) The right to receive educational services appropriate to the child's age and developmental level;</p> <p>(C) The right to have the child's religious needs met;</p> <p>(D) The right to participate in childhood activities, including foster family activities and activities away from the foster home and the foster parents, that are appropriate for the child's age, maturity, and developmental level;</p> <p>(E) The right to privacy, including sending and receiving unopened mail, making and receiving phone calls, keeping a personal journal, and having visitors, unless the child's best interest, appropriate professionals, or court order necessitates restrictions;</p> <p>(F) The right to personal care, hygiene, and grooming equipment and supplies and training in how to use them;</p> <p>(G) The right to have comfortable clothing, which is suitable to the child's age and size and similar to the clothing of other children in the community. Teenagers should have reasonable opportunities to select the clothing;</p> <p>(H) The right to clothing that protects the child against the weather;</p> <p>(I) The right to have personal items at the child's home and to get additional things within reasonable limits;</p> <p>(J) The right to personal space in the child's bedroom to store clothes and belongings;</p> <p>(K) The right to be informed of search policies and be free of unreasonable searches and unreasonable removal of personal items;</p> <p>(L) Depending on the child's age and maturity, the right to seek employment, keep the child's own money, have a bank account in the child's name, and get paid for any work done for the agency or home as part of the child's service plan or vocational training, with the exception of assigned routine duties that relate to the child's living environment, such as cleaning the child's room, or other chores, or work assigned as a disciplinary measure;</p> <p>(M) The right to consent in writing before taking part in any publicity or fund raising activity for the foster home or agency, including the use of the child's photograph;</p> <p>(N) The right to refuse to make public statements showing gratitude to the foster home or agency; and</p> <p>(O) The right to not be pressured to get an abortion, give up her child for adoption, or parent her child, if applicable;</p> <p>(E) The right to privacy, including sending and receiving unopened mail, making and receiving phone calls, keeping a personal journal, and having visitors, unless the child's best interest, appropriate professionals, or court order necessitates restrictions;</p> <p>(7) Complaints, including the right to make calls, reports, or complaints without interference, coercion, punishment, retaliation, or threats of punishment or retaliation. The child may make these calls, reports, or complaints anonymously. Depending upon the nature of the complaint, the child has the right to call, report, or complain to:</p> <p>(A) The DFPS Texas Abuse/Neglect Hotline at 1-800-252-5400;</p> <p>(B) The HHSC Ombudsman for Children and Youth Currently in Foster Care at 1-844-286-0769;</p> <p>(C) The DFPS Office of Consumer Affairs at 1-800-720-7777; or</p> <p>(D) Disability Rights of Texas at 1-800-252-9108.”</p> <p>TAC §749.1013, What right to privacy does a child have with respect to his contact with others?</p> <p>"(a) Except as determined by child placement management staff or the child’s parent, you may not:</p> <p>(1) Open or read the child's incoming or outgoing mail, including electronic mail, unless necessary to assist the child with reading or writing; or</p> <p>(2) Listen to or screen the child's telephone calls unless the child needs assistance with using the telephone.</p> <p>(b) You must document in the child's record:</p> <p>(1) Any reason for restrictions on the child’s mail or telephone calls that you impose; and</p> <p>(2) A listing of the mail or telephone calls that you restrict.</p> <p>(c) You must inform the child and parent about restrictions that you place on the child.</p> <p>(d) Restrictions imposed by you that continue for more than 30 days must be re-evaluated monthly by your child placement management staff, who also must:</p> <p>(1) Explain the reasons for the continued restrictions to the child; and</p> <p>(2) Document the reasons in the child's record.”</p> <p>TAC §749.1015, Under what circumstances may I conduct a search for prohibited items or items that endanger a child's safety?</p> <p>"(a) A child's possessions must be free of unreasonable searches and unreasonable removal of personal items.</p> <p>(b) You may search a child, his possessions, or his room only when you have reasonable suspicion:</p> <p>(1) Of the presence of a prohibited item or an item that endangers the child's safety;</p> <p>(2) That the child made suicidal threats or threatened to hurt himself or others; or</p> <p>(3) That the child or children was involved in theft.</p> <p>(c) Only a caregiver may conduct searches that involve the removal of clothing, other than outer clothing, such as coats, jackets, hats, gloves, shoes, or socks.</p> <p>(d) If a search of a child who is five years old or younger involves the removal of clothing (other than outer clothing), another adult must witness the search.</p> <p>(e) If a search of a child who is over the age of five involves the removal of clothing (other than outer clothing), an adult of the same gender must witness the search.</p> <p>(f) The caregiver must ensure that other children do not witness a search that involves the removal of clothing, other than outer clothing.”</p> <p>TAC §749.1021, What techniques am I prohibited from using on a child?</p> <p>"Certain techniques must not be used on a child, including:</p> <p>(1) Chemical restraints, mechanical restraints, and seclusion. For more information on emergency behavior intervention, see Subchapter L of this chapter (relating to Foster Care Services: Emergency Behavior Intervention);</p> <p>(2) Aversive conditioning, which includes, but is not limited to, any technique designed to or likely to cause a child physical pain, the application of startling stimuli, and the release of noxious stimuli or toxic sprays, mists, or substances in proximity to the child’s face;</p> <p>(3) Pressure points;</p> <p>(4) Rebirthing therapy; and</p> <p>(5) Hug and/or holding therapy.”</p> <p>TAC §749.1017, May a caregiver conduct a body cavity search of a child in care?</p> <p>"With the exception of a child's mouth, a caregiver may not conduct a body cavity search of a child in care.”</p>	<p>HHSC is revising its Medicaid program policies to ensure compliance with the HCBS Settings Rule. Medicaid recipients who are children or youth in DFPS foster care (i.e., state conservatorship) may be enrolled in one of the state’s 1915(c) waiver programs. Policies for these programs will ensure settings where Medicaid HCBS are delivered to these recipients meet the requirements of the HCBS Settings Rule.</p> <p>CLASS</p> <p>The following rule will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p>"(a) A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</p> <p>(3) The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.”</p> <p>DBMD</p> <p>The following rule will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual’s IPP.</p> <p>(3) The setting ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.”</p> <p>HCS</p> <p>The following rule will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(a) "A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual’s PDP.</p> <p>(1) The setting is integrated in and supports the individual’s access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:</p> <p>(A) seek employment and work in a competitive integrated setting;</p> <p>(B) engage in community life;</p> <p>(C) control personal resources; and</p> <p>(D) receive services in the community.”</p> <p>MDCP</p> <p>HHSC has amended the STAR Kids and STAR Health managed care contracts and is adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Contract language:</p> <p>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</p> <ul style="list-style-type: none">• Respite• flexible family support services• Employment Assistance• Supported Employment• Adaptive Aids• Minor Home Modifications” <p>Draft handbook language:</p> <p>"The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</p> <p>The setting ensures a member’s rights of privacy, dignity and respect, and freedom from coercion and restraint.”</p> <p>TxHmL</p> <p>The following rule will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>"(a) A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual's PDP.</p> <p>(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.”</p> <p>YES Waiver</p> <p>YES Waiver Policy Manual, Section 3600: Confidentiality</p> <ul style="list-style-type: none">• "Staff must consider the participant’s privacy and confidentiality rights and preferences to the greatest extent possible when determining locations for services. To accommodate service delivery in various environments such as homes, schools, homeless shelters, or street locations, the entity must have policies and procedures addressing confidentiality and safety considerations when services are provided in a community-based setting.” <p>YES Waiver Policy Manual, Section 3400: Use of Restraints and Restrictive Interventions</p> <ul style="list-style-type: none">• "Providers shall not use more force than is necessary to prevent imminent harm and shall ensure the safety, well-being, and dignity of Waiver participants who are personally restrained, including attention for personal needs. The effects of the intervention in relation to the participant’s health and welfare must always be considered.”

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p> <p>42 CFR §441.301(c)(4)(iv)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: A child or youth in DFPS foster care must be involved in foster care service planning process to the same extent as children and youth not in DFPS foster care and should provide input on development of the service plan, including the child’s participation in childhood activities. A DFPS foster care provider must optimize, but not regiment, individual initiative, autonomy, and independence in making life choices for a Medicaid HCBS recipient to the same extent as for children and youth in foster care who do not receive Medicaid HCBS.</p> <p>TAC §749.1311, Who must be involved in developing an initial service plan? "(<i>b</i>) <i>The child, if verbal and developmentally able to participate, the parents, and the foster parents must be invited to the service planning meeting and should participate and provide input into the development of the service plan, including discussions regarding the child’s participation in childhood activities.</i>"</p> <p>TAC §749.1007, What are a child’s rights regarding education? "(<i>a</i>) <i>A child must have an appropriate education through participation in an educational/vocational program in the most appropriate and least restrictive educational settings, for example: attending regular classes conducted in an accredited elementary, middle, or secondary school within the community or home schooling.</i> <i>(b) Foster parents and caregivers must, as applicable:</i> <i>(1) Attend and participate in school staffings, conferences, and education planning meetings;</i> <i>(2) Make reasonable efforts to allow the child to participate in extracurricular activities; and</i> <i>(3) Make reasonable efforts to allow the child to participate in school extracurricular activities to the extent of his interests and abilities and in accordance with his service plan.</i>"</p> <p>Child Protective Services Handbook, Section 4113.4 Consult the Child or Youth "Before any move, the caseworker must talk to the child or youth to determine his or her thoughts and recommendations about the best placement. The discussion must take place in a developmentally appropriate manner. The caseworker must ensure that the child or youth understands he or she is simply making recommendations and there is no guarantee that the caseworker can fulfill the requests. The discussion must include the following: <i>The child’s or youth’s preferences for the placement, including:</i></p> <ul style="list-style-type: none">• <i>Desire to remain in current school.</i>• <i>Household composition.</i>• <i>Rural or urban setting.</i>• <i>Number of other children in the home.</i>• <i>Animals.</i>• <i>Access to extracurricular activities.</i> <p><i>What the child or youth liked and disliked about previous placements, if applicable."</i></p>	<p>HHSC is revising its Medicaid program policies to ensure compliance with the HCBS Settings Rule. Medicaid recipients who are children or youth in DFPS foster care (i.e., state conservatorship) may be enrolled in one of the state’s 1915(c) waiver programs. Policies for these programs will ensure settings where Medicaid HCBS are delivered to these recipients meet the requirements of the HCBS Settings Rule.</p> <p>CLASS</p> <p>The following rule will be added as Texas Administrative Code (TAC) Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule:</p> <p>"(<i>a</i>) <i>A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</i> <i>(3) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact."</i></p> <p>DBMD</p> <p>The following rule will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(<i>a</i>) <i>"A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual’s strengths, preferences, and needs as documented in the individual’s IPP.</i> <i>(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact."</i></p> <p>HCS</p> <p>The following rule will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule:</p> <p>(<i>a</i>) <i>"A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual’s PDP.</i> <i>(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact."</i></p> <p>MDCP</p> <p>HHSC has amended the STAR Kids and STAR Health managed care contracts and is adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Contract language:</p> <p>"<i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable</i></p> <ul style="list-style-type: none">• <i>Respite</i>• <i>flexible family support services</i>• <i>Employment Assistance</i>• <i>Supported Employment</i>• <i>Adaptive Aids</i>• <i>Minor Home Modifications"</i> <p>Draft handbook language:</p> <p>"<i>The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</i></p> <ul style="list-style-type: none">• <i>The setting optimizes, but does not regiment, the member’s individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact."</i><p>TxHmL</p><p>The following rule will be added as TAC Title 26, Part 1, Chapter 262, Rule §262.202, Requirements for Home and Community-Based Settings.</p><p>Draft rule:</p><p>"(<i>a</i>) <i>A home and community-based setting is a setting in which an individual resides or receives TxHmL Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of the individual as documented in the individual’s PDP.</i> <i>(4) The setting optimizes, not regiments, individual initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact."</i></p><p>YES Waiver</p><p>YES Waiver Policy Manual, Section 7000.13: Supportive Family-Based Alternatives (SFBA)</p><ul style="list-style-type: none">• "<i>The support family must include at least one adult living in the home and no more than four non-related individuals may live in the home. The [SFBA] home must be located in a typical residence in the community and provide an environment that assures community integration, health, safety and welfare of the Waiver participant...Services may include:</i>• <i>age and individually appropriate guidance regarding and/or assistance with the activities of daily living and instrumental activities of daily living (ambulating, bathing, dressing, eating, getting in and out of bed, grooming, personal hygiene, money management, toileting, communicating, performing household chores, and managing medications);</i>• <i>securing and providing transportation;</i>• <i>reinforcement of counseling, therapy, and related activities;</i>• <i>assistance with medications and performance of tasks delegated by a registered nurse or physician;</i>• <i>supervision of the participant for safety and security;</i>• <i>facilitating inclusion in community activities, social interaction, use of natural supports, participation in leisure activities, and development of socially valued behaviors; or</i>• <i>assistance in accessing community and school resources."</i>

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>The setting facilitates individual choice regarding services and supports, and who provides them.</p> <p>42 CFR §441.301(c)(4)(v)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Rules require children and youth in DFPS foster care to be involved in decisions related to placement with a DFPS foster family. A child must be able to visit the DFPS foster home at least once before placement. A child must be involved in the service planning process and should provide input on development of the service plan, including the child’s participation in childhood activities. A Medicaid HCBS recipient in DFPS foster care has choice regarding services and supports, and who provides them, to the same extent as children and youth in DFPS foster care who do not receive Medicaid HCBS. Note that the related DFPS foster care policies refer to the recipient’s choices regarding DFPS foster care placement and service planning, rather than to service planning and delivery of Medicaid HCBS.</p> <p>TAC §749.1251, What are the requirements for pre-placement visits for a child? "(a) <i>A child over six months of age must visit the foster home at least once before placement.</i> (b) <i>There must be a meaningful interval between the pre-placement visit and the placement. This interval must be at least sufficient to allow a child and foster parents to have privacy, an opportunity to discuss and consider placement, and to have their questions, opinions, and concerns addressed.</i> (c) <i>You must document pre-placement visits in the child's record.</i> (d) <i>Pre-placement visits are not required for emergency admissions."</i></p> <p>TAC §749.1253, What must staff do to prepare a child for a placement? "(a) <i>The child-placement staff must discuss with the child the circumstances that make the placement necessary, as appropriate to the child's age and ability to respond orally and behaviorally to such a discussion. The discussion must take place prior to or at the time of the placement of a child.</i> (b) <i>You must document into the child's record:</i> (1) <i>That the discussion occurred; and</i> (2) <i>The child's understanding of and response to the discussions and the placement."</i></p> <p>TAC §749.1305, Who must be involved in developing an initial service plan? "(b) <i>The child, if verbal and developmentally able to participate, the parents, and the foster parents must be invited to the service planning meeting and should participate and provide input into the development of the service plan, including discussions regarding the child's participation in childhood activities."</i></p> <p>TAC §749.1321, With whom do I share the initial service plan? "(a) <i>You must give a copy or summary of the initial service plan to the:</i> (1) <i>Child, when appropriate. At a minimum, you must give a copy or summary of the plan to a child 14 years of age or older, unless there is justification for not providing the plan;</i> (2) <i>Child's parents; and</i> (3) <i>Child's caregivers.</i> (b) <i>If you provide a copy or summary of the initial service plan to a child:</i> (1) <i>The child must review the plan;</i> (2) <i>The child must sign the plan, or you must document the child's refusal to sign it; and</i> (3) <i>You must document if the child disagrees with the plan.</i> (c) <i>If you do not provide a copy or summary of the initial service plan to a child, you must document your justification for not sharing the plan in the child's record.</i> (d) <i>You must document in the child's record that you provided a copy or summary of the initial service plan to the child's parents."</i></p> <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure compliance with the HCBS Settings Rule. Medicaid recipients who are children or youth in DFPS foster care (i.e., state conservatorship) may be enrolled in one of the state’s 1915(c) waiver programs. Policies for these programs will ensure settings where Medicaid HCBS are delivered to these recipients meet the requirements of the HCBS Settings Rule.</p> <p><u>CLASS</u> The following rule will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.59, Service Settings.</p> <p>Draft rule: "(a) <i>A home and community-based setting is a setting in which an individual receives CLASS Program services or CFC services. A home and community-based setting must have all of the following qualities based on the needs of the individual as documented in the individual’s person-centered service plan:</i> (5) <i>The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports."</i></p> <p><u>DBMD</u> The following rule will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.59, Requirements for Home and Community-Based Settings.</p> <p>Draft rule: (a) <i>"A home and community-based setting is a setting in which an individual resides or receives DBMD Program services or CFC services. A home and community-based setting must have all of the following qualities based on the individual's strengths, preferences, and needs as documented in the individual's IPP.</i> (5) <i>The setting facilitates individual choice regarding services and supports, and the service providers who provide the services and supports."</i></p> <p><u>HCS</u> The following rule will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.501, Requirements for Home and Community-Based Settings.</p> <p>Draft rule: (a) <i>"A home and community-based setting is a setting in which an individual resides or receives HCS Program services or CFC services. A home and community-based setting must have all of the following qualities, based on the needs and preferences of an individual as documented in the individual's PDP.</i> (5) <i>The setting facilitates individual choice regarding services and supports and the service providers who provide the services and supports."</i></p> <p><u>MDCP</u> HHSC has amended the STAR Kids and STAR Health managed care contracts and is adding Appendix XIV, HCBS Settings, to the STAR Kids Handbook.</p> <p>Contract language: <i>The MCO must ensure that a setting in which any of the following STAR Kids [/STAR Health] and MDCP home and community-based services are provided complies with 42 CFR §441.301(c)(4)-(5) and §441.530, as applicable:</i></p> <ul style="list-style-type: none">• <i>Respite</i>• <i>flexible family support services</i>• <i>Employment Assistance</i>• <i>Supported Employment</i>• <i>Adaptive Aids</i>• <i>Minor Home Modifications"</i> <p>Draft handbook language: "<i>The HCBS settings regulations require that all settings where STAR Kids and MDCP services are delivered have certain the following qualities:</i> •<i>The settings facilities member choice regarding services and supports, and who provides them."</i></p> <p><u>YES Waiver</u> YES Waiver Policy Manual, Section 2600: Participant Rights and Responsibilities</p> <ul style="list-style-type: none">• <i>"Participants in the YES Waiver have guaranteed rights and responsibilities. These rights include:</i><ul style="list-style-type: none">▸ <i>choice of community-based services rather than institutional care;</i>▸ <i>choice of Wraparound Provider Organization (WPO);</i>▸ <i>choice of service providers;</i>▸ <i>choice of CFT members and option to add members at any time; and</i>▸ <i>option to file complaints and request Fair Hearings in accordance with [POLICY 1100 COMPLAINTS AND FAIR HEARINGS]."</i>

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>In a provider-owned or controlled residential setting:</p> <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p> <p>42 CFR §441.301(c)(4)(vi)(A)</p>	<p>COMPLIANT</p> <p>Rationale: Children and youth under 18 are not required to have a lease or residential agreement with their foster care provider. Texas DFPS remains responsible for the care and placement of young adults 18 and older in extended foster care.</p> <p>Children and young adults who reside in DFPS foster care settings and receive Medicaid HCBS have the same rights and responsibilities related to transfer and discharge from a DFPS foster care setting as children and young adults in DFPS foster care not receiving Medicaid HCBS. During transfer or discharge from a foster care setting, the DFPS caseworker must review and take into consideration the child or young adult's goals, needs, and preferences related to placement. Note that this process also applies to the young adults in DFPS extended foster care.</p> <p>Related Policies and Description of DFPS Processes: <u>DFPS Child Protective Services (CPS) Handbook Sections 4111-4113</u> and <u>DFPS 24 Hour Residential Child Care Requirements (Residential Contracts) Section 1441</u> describe the agency's processes for placement changes for minors and young adults in care (i.e. discharges from one foster care provider to another provider, or a transfer to another placement setting with the same provider).</p> <p>During a placement change, the DFPS caseworker must:</p> <ul style="list-style-type: none">review the child or young adult's current permanency goal (CPS Handbook Section 4113.1);review medical, intellectual, and physical functioning (4113);review behavior and supervision needs (4113);review educational needs, including extracurricular preferences (4113);consult the child or young adult's parents (4113.3);consult with the child or young adult for desired placement characteristics, such as location and household composition (4113.4); andconsult with the child's attorney ad litem, guardian ad litem, and court-appointed special advocate (CASA) representative (4113.5). <p>The <u>DFPS Placement Process Resource Guide</u> provides guidance for CPS case workers regarding the placement process.</p> <ul style="list-style-type: none">The Placement Process Overview: Subsequent Placements (p.7):<ul style="list-style-type: none">"Children and youth who have been removed from their homes have a high need for stability and continuity of care. To the extent possible, CPS avoids moving children or youth from one placement to another, especially when a child or youth has been in a placement for an extended period." <p>In addition, TAC Title 26, Sections <u>749.1281</u>, <u>749.1363</u>, <u>749.1367</u>, <u>749.1003(b)(5)</u>, and <u>749.1377</u>, apply to foster care home placement changes. While a child or young adult is in the conservatorship or care of the state, the state must ensure the child/young adult's needs are met with each change in placement and the state retains the responsibility to care for and place the child/young adult.</p> <ul style="list-style-type: none">TAC <u>§749.1251</u>, What are the requirements for pre-placement visits for a child?<ul style="list-style-type: none">"(a) A child over six months of age must visit the foster home at least once before placement. (b) There must be a meaningful interval between the pre-placement visit and the placement. This interval must be at least sufficient to allow a child and foster parents to have privacy, an opportunity to discuss and consider placement, and to have their questions, opinions, and concerns addressed. (c) You must document pre-placement visits in the child's record. (d) Pre-placement visits are not required for emergency admissions."TAC <u>§749.1281</u>, What are the requirements when I move a child from one foster home to another?<ul style="list-style-type: none">"(a) If the move is not an emergency, child placement management staff must: (1) Review and approve the move before you move the child to the new placement; (2) Document the review and approval in the child's record, including signature and date; and (3) Comply with the pre-placement requirements in §749.1251 of this title"TAC <u>§749.1363</u>, Who must plan a child's non-emergency discharge or transfer?<ul style="list-style-type: none">"(a) You must involve at least the following persons in planning the child's non-emergency discharge or transfer: (1) At least one of the child's current caregivers; and (2) At least one professional service provider involved in the child's service planning.(b) You must invite the following persons to participate in planning the child's non-emergency discharge or transfer, if appropriate: (1) The child; (2) The child's parent(s); and (3) Any other person pertinent to the child's care.(c) If you are unable to plan the transfer or discharge with the persons required in subsections (a) and (b) of this section, you must document in the child's record the reason why."TAC <u>§1003(b)(5)</u>, What rights does a child in care have?<ul style="list-style-type: none">"(b) The following categories include the child's rights that you must adhere to: (5) Plans for the child while in care, including: (A) The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning; and (B) The right to actively participate in the development of the child's service plan within the limits of the child's comprehension and ability to manage the information. The child has the right to a copy or summary of the plan. A child 14 years of age or older has the right to review and sign the service plan;"TAC <u>§749.1377</u>, What constitutes an emergency discharge or transfer?<ul style="list-style-type: none">"An emergency transfer or discharge occurs when:<ul style="list-style-type: none">The parent withdraws a child unexpectedly from care;There is a medical emergency requiring inpatient care;The child is absent from the home and cannot be located; orThere is an immediate danger to the child or others and you determine that you cannot serve the child." <p>When the state no longer has legal authority over the child or young adult, the child or young adult exits DFPS foster care. This includes circumstances in which: the court dismisses the state's conservatorship over the child as the child has returned to the parent; permanent managing conservatorship is granted to a relative or other adult; the child is adopted; or the young adult voluntarily exits foster care, no longer meets the federal eligibility to remain in foster care, or can legally no longer be under the state's child welfare system due to the young adult's age.</p> <p>Additional DFPS policies related to transfer/discharge processes are located in the following sections of the <u>CPS Handbook</u>:</p> <ul style="list-style-type: none">Section 4244, Planning for Discharge from Intensive Psychiatric Transition Program (IPTP) Placement;Section 4264, Discharge from Treatment Foster Family Care (TFFC);Section 10466-10472, Discharge from Supervised Independent Living (SIL) Program (for 18-21 year olds); andSection 11614, Discharge from Inpatient Psychiatric Facilities.	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p><u>CLASS</u></p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p>"(b) An individual's support family agency or continued family agency must ensure that an individual receiving SFS or CFS has a written residential agreement with the support family. (c) The residential agreement required by subsection (b) of this section must include:</p> <p>(6) a provision that:</p> <p>(A) the support family and the individual or LAR agree that the residential agreement is a "lease" under Texas Property Code Chapter 92 and that they are subject to state law governing residential tenancies, including Texas Property Code Chapters 24, 91, and 92 and Texas Rules of Civil Procedure Rule 510; and (B) to the extent allowed by law, in the event of a conflict or inconsistency between any provision of the residential agreement and any provision of state statutory law, including Texas Property Code Chapters 91 and 92, the provision in the residential agreement governs; (C) the individual or LAR is not waiving any right or remedy provided to tenants under state law and is not agreeing to any notice period that is shorter than the notice period to which tenants are entitled under state law;"</p> <p><u>DBMD</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b)" An individual's program provider must ensure that an individual receiving licensed assisted living has a written residential agreement with the program provider. (7) a provision that:</p> <p>(A) the program provider and the individual or LAR agree that the residential agreement is a "lease" under Texas Property Code Chapter 92and that they are subject to state law governing residential tenancies, including Texas Property Code Chapters 24, 91, and 92 and the Texas Rules of Civil Procedure Rule 510; and (B) to the extent allowed by law, in the event of a conflict or inconsistency between any provision of the residential agreement and any provision of state statutory law, including Texas Property Code Chapters 91 and 92, the provision in the residential agreement governs; (8) a provision that the individual or LAR is not waiving any right or remedy provided to tenants under state law and is not agreeing to any notice period that is shorter than the notice period to which tenants are entitled under state law;"</p> <p><u>HCS</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p>(b) "An individual's program provider must ensure that:</p> <p>(1) an individual living in a three-person residence or four-person residence or LAR has a written residential agreement with the program provider;"</p> <p>(c) "The residential agreement required by subsection (b) of this section must include:</p> <p>(7) a provision that:</p> <p>(A) the program provider or service provider of host home/companion care and the individual or LAR agree that the residential agreement is a "lease" under Texas Property Code Chapter 92 and that they are subject to state law governing residential tenancies, including Texas Property Code Chapters 24, 91, and 92 and Texas Rules of Civil Procedure Rule 510; and (B) to the extent allowed by law, in the event of a conflict or inconsistency between any provision of the residential agreement and any provision of state statutory law, including Texas Property Code Chapters 91 and 92, the provision in the residential agreement governs; (8) a provision that the individual or LAR is not waiving any right or remedy provided to tenants under state law and is not agreeing to any notice period that is shorter than the notice period to which tenants are entitled under state law;"</p>

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <p>- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(1)</p>	<p>SILENT</p> <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p><u>CLASS</u></p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p><i>"(k) In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <p class="list-item-l1"><i>(1) an individual has privacy in the individual's bedroom;</i></p> <p class="list-item-l1"><i>(4) a lock is installed on the individual's bedroom door at no cost to the individual and that:</i></p> <p class="list-item-l2"><i>(A) the lock is operable by the individual; and</i></p> <p class="list-item-l2"><i>(B) only the individual, a roommate of the individual, and the support family has keys to the individual's bedroom door;"</i></p> <p><u>DBMD</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living is provided:</i></p> <p class="list-item-l1"><i>(3) a lock is installed on the individual's bedroom door at no cost to the individual, and that:</i></p> <p class="list-item-l2"><i>(i) the lock is operable by the individual; and</i></p> <p class="list-item-l2"><i>(ii) only the individual, a roommate of the individual, and staff designated by the program provider have keys to the individual's bedroom door;"</i></p> <p><u>HCS</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p class="list-item-l1"><i>(1) an individual has privacy in the individual's bedroom;</i></p> <p>...</p> <p class="list-item-l1"><i>(4) a lock is installed on the individual's bedroom door at no cost to the individual and that:</i></p> <p class="list-item-l2"><i>(A) the lock is operable by the individual; and</i></p> <p class="list-item-l2"><i>(B) only the individual, a roommate of the individual, and staff designated by the program provider have keys to the individual's bedroom door;"</i></p>
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping unit:</p> <p>- Individuals sharing units have a choice of roommates in that setting.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(2)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: DFPS rules require a DFPS caseworker to discuss with a child or youth their preferences for a DFPS foster care placement, including their preference regarding the household composition and number of other children in the home. Children and youth in DFPS foster care who receive Medicaid HCBS have a choice of roommates to the same degree as children and youth in DFPS foster care not receiving Medicaid HCBS.</p> <p><u>TAC §749.1251</u>, What are the requirements for pre-placement visits for a child?</p> <p><i>"(a) A child over six months of age must visit the foster home at least once before placement.</i></p> <p><i>(b) There must be a meaningful interval between the pre-placement visit and the placement. This interval must be at least sufficient to allow a child and foster parents to have privacy, an opportunity to discuss and consider placement, and to have their questions, opinions, and concerns addressed.</i></p> <p><i>(c) You must document pre-placement visits in the child's record.</i></p> <p><i>(d) Pre-placement visits are not required for emergency admissions."</i></p> <p><u>CPS Handbook Section 4113.4</u> Consult the Child or Youth</p> <p><i>"Before any move, the caseworker must talk to the child or youth to determine his or her thoughts and recommendations about the best placement. The discussion must take place in a developmentally appropriate manner. The caseworker must ensure that the child or youth understands he or she is simply making recommendations and there is no guarantee that the caseworker can fulfill the requests. The discussion must include the following:</i></p> <ul style="list-style-type: none"><i>The child's or youth's preferences for the placement, including:</i><ul style="list-style-type: none"><i>Desire to remain in current school.</i><i>Household composition.</i><i>Rural or urban setting.</i><i>Number of other children in the home.</i><i>Animals.</i><i>Access to extracurricular activities.</i><i>What the child or youth liked and disliked about previous placements, if applicable.</i> <p><i>The caseworker must also consider information gathered about the child or youth throughout the life of the case."</i></p> <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not DFPS foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p><u>CLASS</u></p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p><u>"(k) In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</u></p> <p class="list-item-l1"><i>(1) an individual has privacy in the individual's bedroom;</i></p> <p class="list-item-l1"><i>(2) an individual has the option not to share a bedroom with a roommate;</i></p> <p class="list-item-l1"><i>(3) an individual sharing a bedroom has a choice of roommates;"</i></p> <p><u>DBMD</u></p> <p>Draft rule:</p> <p><i>(a) A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living is provided:</i></p> <p class="list-item-l1"><i>(1) an individual has privacy in the individual's bedroom;</i></p> <p class="list-item-l1"><i>(2) an individual sharing a bedroom has a choice of roommates;"</i></p> <p><u>HCS</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p><i>(a) "In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p class="list-item-l1"><i>(1) an individual has privacy in the individual's bedroom;</i></p> <p class="list-item-l1"><i>(2) an individual has the option not to share a bedroom with a roommate;</i></p> <p class="list-item-l1"><i>(3) an individual sharing a bedroom has a choice of roommates;"</i></p>

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>In a provider-owned or controlled residential setting, each individual has privacy in their sleeping or living unit:</p> <p>- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p> <p>42 CFR §441.301(c)(4)(vi)(B)(3)</p>	<p>COMPLIANT</p> <p>Rationale: DFPS rules state that a child or youth in DFPS foster care has the right to have personal items in the DFPS foster care home. A lease or residential agreement is not applicable to children and youth in DFPS foster care. Children and youth in DFPS foster care who receive Medicaid HCBS have the freedom to furnish and decorate their sleeping or living units to the same degree as children and youth in DFPS foster care not receiving Medicaid HCBS.</p> <p>TAC §749.1003, What rights does a child in care have?</p> <p>"(b) <i>The following categories include the child's rights that you must adhere to:</i></p> <p class="margin-left: 20px;">(3) <i>Living a normal life, including:</i></p> <p class="margin-left: 40px;">(I) <i>The right to have personal items at the child's home and to get additional things within reasonable limits;</i></p> <p class="margin-left: 40px;">(J) <i>The right to personal space in the child's bedroom to store clothes and belongings;</i></p> <p class="margin-left: 40px;">(K) <i>The right to be informed of search policies and be free of unreasonable searches and unreasonable removal of personal items;"</i></p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p><u>CLASS</u></p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p>"(k) <i>In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <p class="margin-left: 20px;">(1) <i>an individual has privacy in the individual's bedroom;</i></p> <p class="margin-left: 20px;">(5) <i>an individual can furnish and decorate the individual's bedroom;"</i></p> <p>"(b) <i>An individual's support family agency or continued family agency must ensure that an individual receiving SFS or CFS has a written residential agreement with the support family.</i></p> <p>(c) <i>The residential agreement required by subsection (b) of this section must include:</i></p> <p class="margin-left: 20px;">(6) <i>a provision that:</i></p> <p class="margin-left: 40px;">(G) <i>the individual may furnish and decorate the individual's bedroom;"</i></p> <p><u>DBMD</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(a) <i>A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living is provided:</i></p> <p class="margin-left: 20px;">(4) <i>an individual can furnish and decorate the individual's bedroom;"</i></p> <p><u>HCS</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p>(a) <i>"In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p class="margin-left: 20px;">(5) <i>an individual can furnish and decorate the individual's bedroom;"</i></p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p> <p>42 CFR §441.301(c)(4)(vi)(C)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: DFPS rules require a DFPS caseworker to discuss with a child or youth their preferences for a DFPS foster care placement, including their preference for extracurricular activities. DFPS rules also prohibit a foster care parent from withholding food. Youth in voluntary DFPS extended foster care agree to participate in certain regular activities, such as attending high school or an institution of higher education, or being employed, unless they have a medical condition that prevents participation in these activities. Children and youth in DFPS foster care who receive Medicaid HCBS have control over their daily activities, including access to food, to the same degree as children and youth in DFPS foster care not receiving Medicaid HCBS.</p> <p>CPS Handbook Section 4113.4 Consult the Child or Youth</p> <p>"Before any move, the caseworker must talk to the child or youth to determine his or her thoughts and recommendations about the best placement. The discussion must take place in a developmentally appropriate manner. The caseworker must ensure that the child or youth understands he or she is simply making recommendations and there is no guarantee that the caseworker can fulfill the requests. The discussion must include the following:</p> <ul style="list-style-type: none">• The child's or youth's preferences for the placement, including:<ul style="list-style-type: none">• Desire to remain in current school.• Household composition.• Rural or urban setting.• Number of other children in the home.• Animals.• Access to extracurricular activities.• What the child or youth liked and disliked about previous placements, if applicable. <p>The caseworker must also consider information gathered about the child or youth throughout the life of the case."</p> <p>TAC §749.3067, May a caregiver use food as a reward or punishment or as part of any behavior management program?</p> <p>"A caregiver may not use food that meets a child's nutritional requirements as a reward or punishment or as part of a behavior management program. Food cannot be withheld."</p> <p>Form K-908-254, Voluntary Extended Foster Care Agreement and Financial Agreement</p> <p>"I agree to do the following:</p> <ol style="list-style-type: none">1. Attend high school or a program leading to a high school diploma or General Equivalence Diploma (GED).2. Attend an institution of higher education or a postsecondary vocational or technical program. The number of hours that I am enrolled must be consistent with my transition plan, and I must attend a minimum of six hours per semester.3. Participate in a program or activity that promotes or removes barriers to employment. My participation must total a minimum of 15 hours per week and must be consistent with my transition plan.4. Be employed at least 80 hours per month. <p>Or, I</p> <ol style="list-style-type: none">5. Have a documented medical condition that prevents me from participating in the activities described in numbers 1 through 4." <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p><u>CLASS</u></p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p>"(k) <i>In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <p class="margin-left: 20px;">(6) <i>while in the residence, an individual has the freedom and support:</i></p> <p class="margin-left: 40px;">(A) <i>to control the individual's schedule and activities that are not part of the implementation plan; and</i></p> <p class="margin-left: 40px;">(B) <i>to have access to food at any time."</i></p> <p><u>DBMD</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(a) <i>A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living is provided:</i></p> <p class="margin-left: 20px;">(5) <i>while in the residence, an individual has the freedom and support:</i></p> <p class="margin-left: 40px;">(i) <i>to control the individual's schedules and activities that are not part of the IPP for licensed assisted living; and</i></p> <p class="margin-left: 40px;">(ii) <i>to have access to food at any time;"</i></p> <p><u>HCS</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings.</p> <p>Draft rule:</p> <p>(a) <i>"In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (b) of this section:</i></p> <p class="margin-left: 20px;">(6) <i>while in the residence, an individual has the freedom and support:</i></p> <p class="margin-left: 40px;">(A) <i>to control the individual's schedule and activities that are not part of the implementation plan; and</i></p> <p class="margin-left: 40px;">(B) <i>to have access to food at any time."</i></p>

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <ul style="list-style-type: none">- Individuals are able to have visitors of their choosing at any time. <p>42 CFR §441.301(c)(4)(vi)(D)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: DFPS foster care rules and policies describe a child or youth’s right to visitation with a parent, sibling, but do not specify the settings(s) in which visitation takes place, and describe the rights of children and youth in DFPS foster care to visitation with parents, siblings, other family members and friends. Children and youth in DFPS foster care who receive Medicaid HCBS are able to have visitors of their choosing in the DFPS foster care setting to the same degree as children and youth in foster care not receiving Medicaid HCBS.</p> <p>TAC §749.1009, What right does a child have regarding contact with a parent?</p> <p>"(a) <i>You must allow contact between a child and his parent whose parental rights have not been terminated according to:</i></p> <ul style="list-style-type: none"><i>(1) Your policies; and</i><i>(2) The provisions of a court order or any visitation agreement.</i> <p>(b) <i>You must document in the child's record:</i></p> <ul style="list-style-type: none"><i>(1) Any plans for contact between the child and a parent; and</i><i>(2) Any decision to limit contact with a parent.</i> <p>(c) <i>Before you can temporarily restrict ongoing contacts or communication between the child and a parent, your child placement management staff must:</i></p> <ul style="list-style-type: none"><i>(1) Explain the reasons for the restrictions to the child and the child's parent; and</i><i>(2) Document the reasons in the child's record.</i> <p>(d) <i>Restrictions imposed by you that continue more than 30 days must be re-evaluated monthly by your child placement management staff, who also must:</i></p> <ul style="list-style-type: none"><i>(1) Explain the reasons for the continued restrictions to the child and the child's parents; and</i><i>(2) Document the reasons in the child's record.</i> <p>(e) <i>If you limit communications or visits with a parent for practical reasons, such as geographical distance or expense, you must discuss the limits with the child and the child's parents. You must document the limits in the child's record."</i></p> <p>TAC §749.1011, What right does a child have regarding contact with siblings?</p> <p>"(a) <i>A child must have a reasonable opportunity for sibling visits and contacts in an effort to preserve sibling relationships.</i></p> <p>(b) <i>You must address plans for sibling visits and contacts in the child's record.</i></p> <p>(c) <i>When you restrict sibling contact, you must include justification in the child's record. Restrictions imposed by you that continue for more than 60 days must be re-evaluated every 60 days by your child placement management staff, who also must:</i></p> <ul style="list-style-type: none"><i>(1) Explain the reasons for the continued restrictions to the child; and</i><i>(2) Document the reasons in the child's record.</i> <p>(d) <i>If barriers to visits exist, such as unavoidable geographic distance and expense issues, the agency must make provisions for sibling contact through letters, telephone calls, or some other means."</i></p> <p>TAC §749.1013, What right to privacy does a child have with respect to his contact with others?</p> <p>"(a) <i>Except as determined by child placement management staff or the child's parent, you may not:</i></p> <ul style="list-style-type: none"><i>(1) Open or read the child's incoming or outgoing mail, including electronic mail, unless necessary to assist the child with reading or writing; or</i><i>(2) Listen to or screen the child's telephone calls unless the child needs assistance with using the telephone.</i> <p>(b) <i>You must document in the child's record:</i></p> <ul style="list-style-type: none"><i>(1) Any reason for restrictions on the child's mail or telephone calls that you impose; and</i><i>(2) A listing of the mail or telephone calls that you restrict.</i> <p>(c) <i>You must inform the child and parent about restrictions that you place on the child.</i></p> <p>(d) <i>Restrictions imposed by you that continue for more than 30 days must be re-evaluated monthly by your child placement management staff, who also must:</i></p> <ul style="list-style-type: none"><i>(1) Explain the reasons for the continued restrictions to the child; and</i><i>(2) Document the reasons in the child's record."</i><p>CPS Handbook, Section 4114.2 Separating Siblings</p><p><i>"Under federal law, DFPS must make reasonable efforts to place siblings together unless DFPS documents that doing so is contrary to the safety or well-being of one of the siblings.</i></p><p><i>If siblings are not placed together, DFPS must provide for frequent visitation or other ongoing interaction between the siblings unless it would be contrary to the safety or well-being of one of them."</i></p><p>CPS Handbook, Section 4114.6 Substitute Caregiver’s Circumstances</p><p><i>"When making a placement decision, the caseworker must consider the substitute caregiver’s willingness and ability to do the following:</i></p><p><i>Support the child or youth’s connections, including visitation with siblings, parents, friends, and other family members."</i></p><p>Provider Outreach and Education</p><p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p>CLASS</p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p>"(k) <i>In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <ul style="list-style-type: none"><i>(7) an individual may have visitors of the individual's choosing at any time;"</i><p>DBMD</p><p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p><p>Draft rule:</p><p>(a) <i>A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living is provided:</i></p><ul style="list-style-type: none"><i>(6) an individual may have visitors of the individual's choosing at any time;"</i><p>HCS</p><p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 565.5, Rights of Individuals.</p><p>Draft rule:</p><p>(b) <i>"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:</i></p><ul style="list-style-type: none"><i>(9) receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals;"</i>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <ul style="list-style-type: none">- The setting is physically accessible to the individual. <p>42 CFR §441.301(c)(4)(vi)(E)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: DFPS rules require that a DFPS foster home is safe, kept clean and in good repair, and that exits are not blocked.</p> <p>TAC §749.3041, What are the requirements for a foster home's physical environment?</p> <p><i>"The foster home must ensure that:</i></p> <ul style="list-style-type: none"><i>(1) The home is safe for children, kept clean, and in good repair;</i><i>(2) Equipment and furniture are safe for children, kept clean, and in good repair;</i><i>(3) Exits in living areas are not blocked by furniture;</i><i>(4) The outdoor areas are safe for children, kept clean, and in good repair;</i><i>(5) Outdoor areas are well drained;</i><i>(6) Windows and doors used for ventilation are screened;</i><i>(7) Flammable or poisonous substances are stored out of the reach of children unless caregivers have evaluated a child as capable and likely to use such items responsibly; and</i><i>(8) The home is free of rodents and insects."</i><p>Provider Outreach and Education</p><p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p>CLASS</p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rule:</p> <p>"(k) <i>In each residence in which a support family agency provides SFS or a continued family agency provides CFS, the support family agency or the continued family agency must ensure that, except as provided in subsection (l) of this section:</i></p> <ul style="list-style-type: none"><i>(7) the residence is physically accessible to the individual."</i><p>DBMD</p><p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p><p>Draft rule:</p><p>(a) <i>A program provider must ensure that, except as provided in subsection (b) of this section, in a residence in which licensed assisted living is provided:</i></p><ul style="list-style-type: none"><i>(7) the residence is physically accessible to the individual."</i><p>HCS</p><p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 565.23, Residential Requirements.</p><p>Draft rule:</p><p>(a) <i>"This applies to all three-person and four-person residences and host home/companion care settings unless otherwise specified.</i></p><p>(b) <i>A program provider must ensure:</i></p><ul style="list-style-type: none"><i>(18) the interior and exterior of the home:</i><i>(A) is free of accumulation of waste and trash;</i><i>(B) is accessible and free of hazards to an individual; and</i><i>(C) does not compromise the health or safety of an individual."</i>

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D) is supported by a specific assessed need and justified in the person-centered service plan.</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Identify a specific and individualized assessed need. <p>42 CFR §441.301(c)(4)(vi)(F)(1)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Rules require the service planning process to include identification of any new needs and strategies to meet these needs.</p> <p>TAC §749.1003, What rights does a child in care have?</p> <p>"(b) <i>The following categories include the child's rights that you must adhere to:</i></p> <p class="list-item-l1">(5) <i>Plans for the child while in care, including:</i></p> <p class="list-item-l2">(A) <i>The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning; and</i></p> <p class="list-item-l2">(B) <i>The right to actively participate in the development of the child's service plan within the limits of the child's comprehension and ability to manage the information. The child has the right to a copy or summary of the plan. A child 14 years of age or older has the right to review and sign the service plan;"</i></p> <p>TAC §749.1335, How do I review and update a service plan?</p> <p>"To review and update a service plan, you must:</p> <p class="list-item-l1">(1) <i>Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports and medical interventions;</i></p> <p class="list-item-l1">(2) <i>Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees and caregivers;</i></p> <p class="list-item-l1">(3) <i>Document any achieved or changed objectives;</i></p> <p class="list-item-l1">(4) <i>If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement;</i></p> <p class="list-item-l1">(5) <i>Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable;</i></p> <p class="list-item-l1">(6) <i>Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</i></p> <p class="list-item-l1">(7) <i>Update the estimated length-of-stay and discharge plans, if changed;</i></p> <p class="list-item-l1">(8) <i>Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:</i></p> <p class="list-item-l2">(A) <i>The frequency, patterns, and effectiveness of types of emergency behavior interventions;</i></p> <p class="list-item-l2">(B) <i>Strategies to reduce the need for emergency behavior interventions overall; and</i></p> <p class="list-item-l2">(C) <i>Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable;</i></p> <p class="list-item-l1">(9) <i>Document in the child's record the review and update of the plan;</i></p> <p class="list-item-l1">(10) <i>Document the names of the persons participating in the review and update."</i></p> <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p>CLASS</p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p>"(l) <i>If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p class="list-item-l1">(1) <i>notify the case manager of the needed modification; and</i></p> <p class="list-item-l1">(2) <i>provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p>(m) <i>A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following:</i></p> <p class="list-item-l1">(1) <i>a description of the specific and individualized assessed need that justifies the modification;"</i></p> <p>DBMD</p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b) <i>If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</i></p> <p class="list-item-l1">(1) <i>revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</i></p> <p class="list-item-l1">(2) <i>document on the individual's IPP:</i></p> <p class="list-item-l2">(A) <i>a description of the specific and individualized assessed need that justifies the modification;"</i></p> <p>HCS</p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) <i>"A service coordinator must:</i></p> <p class="list-item-l1">(21) <i>if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</i></p> <p class="list-item-l2">(A) <i>a description of the specific and individualized assessed need that justifies the modification;"</i></p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Document the positive interventions and supports used prior to any modifications to the person-centered plan. <p>42 CFR §441.301(c)(4)(vi)(F)(2)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Rules require evaluation of the child's progress and documentation of any achieved or changed objectives.</p> <p>TAC §749.1003, What rights does a child in care have?</p> <p>"(b) <i>The following categories include the child's rights that you must adhere to:</i></p> <p class="list-item-l1">(5) <i>Plans for the child while in care, including:</i></p> <p class="list-item-l2">(A) <i>The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning; and</i></p> <p class="list-item-l2">(B) <i>The right to actively participate in the development of the child's service plan within the limits of the child's comprehension and ability to manage the information. The child has the right to a copy or summary of the plan. A child 14 years of age or older has the right to review and sign the service plan;"</i></p> <p>TAC §749.1335, How do I review and update a service plan?</p> <p>"To review and update a service plan, you must:</p> <p class="list-item-l1">(1) <i>Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports and medical interventions;</i></p> <p class="list-item-l1">(2) <i>Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees and caregivers;</i></p> <p class="list-item-l1">(3) <i>Document any achieved or changed objectives;</i></p> <p class="list-item-l1">(4) <i>If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement;</i></p> <p class="list-item-l1">(5) <i>Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable;</i></p> <p class="list-item-l1">(6) <i>Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</i></p> <p class="list-item-l1">(7) <i>Update the estimated length-of-stay and discharge plans, if changed;</i></p> <p class="list-item-l1">(8) <i>Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:</i></p> <p class="list-item-l2">(A) <i>The frequency, patterns, and effectiveness of types of emergency behavior interventions;</i></p> <p class="list-item-l2">(B) <i>Strategies to reduce the need for emergency behavior interventions overall; and</i></p> <p class="list-item-l2">(C) <i>Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable;</i></p> <p class="list-item-l1">(9) <i>Document in the child's record the review and update of the plan;</i></p> <p class="list-item-l1">(10) <i>Document the names of the persons participating in the review and update."</i></p> <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. 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In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p>CLASS</p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p>"(l) <i>If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p class="list-item-l1">(1) <i>notify the case manager of the needed modification; and</i></p> <p class="list-item-l1">(2) <i>provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p>(m) <i>A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following:</i></p> <p class="list-item-l1">(2) <i>a description of any positive interventions and supports that have been tried but did not work;"</i></p> <p>DBMD</p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b) <i>If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</i></p> <p class="list-item-l1">(1) <i>revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</i></p> <p class="list-item-l1">(2) <i>document on the individual's IPP:</i></p> <p class="list-item-l2">(B) <i>a description of any positive interventions and supports that have been tried but did not work;"</i></p> <p>HCS</p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) <i>"A service coordinator must:</i></p> <p class="list-item-l1">(21) <i>if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</i></p> <p class="list-item-l2">(B) <i>a description of the positive interventions and supports that were tried but did not work;"</i></p>

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Document less intrusive methods of meeting the need that have been tried but did not work. <p>42 CFR §441.301(c)(4)(vi)(F)(3)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Rules require evaluation of the effectiveness of strategies and techniques used.</p> <p>TAC §749.1335, How do I review and update a service plan? "To review and update a service plan, you must: (1) Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports and medical interventions; (2) Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees and caregivers; (3) Document any achieved or changed objectives; (4) If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement; (5) Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable; (6) Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family; (7) Update the estimated length-of-stay and discharge plans, if changed; (8) Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on: (A) The frequency, patterns, and effectiveness of types of emergency behavior interventions; (B) Strategies to reduce the need for emergency behavior interventions overall; and (C) Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable; (9) Document in the child's record the review and update of the plan; (10) Document the names of the persons participating in the review and update."</p> <p>TAC §700.1311, What special considerations apply when selecting a placement other than a relative or other person with whom the child has a long-standing and significant relationship? (a) If a child cannot be placed with a relative or other person with whom the child has a long-standing and significant relationship, DFPS will seek to place the child in a foster or adoptive home that can meet the child's needs. If DFPS is unable to locate a foster or adoptive home that can provide safe and appropriate care to the child, DFPS may place the child in any of the settings described in §700.1307 of this title (relating to In what kinds of settings may a child in DFPS conservatorship be placed?), when: (1) the child needs treatment services or additional programmatic services, other than child care services, that are not available or cannot be provided to the child in a foster home; (2) the child is placed with a sibling or parent who needs the services described in paragraph (1) of this subsection, and placement of the child with the sibling or parent in a general residential operation is deemed to be in the child's best interest; (3) the child is placed temporarily in a general residential operation because of the proximity of the placement to the child's home or school of origin, and such placement is deemed to be in the child's best interest; (4) there is no foster home immediately available for the child to be placed; or (5) the placement is ordered by a court of competent jurisdiction. (b) A child receiving emergency care services from a general residential operation may not remain in such operation beyond the maximum lengths of stay set forth in the following chart unless the child's caseworker obtains supervisory approval to extend the placement and documents the reasons for extending the placement in the child's case record: (c) Notwithstanding any other provision in this section, unless ordered by a court to do so, DFPS does not place a child in: (1) a general residential operation that the Child Care Licensing Department of the Texas Health and Human Services Commission has placed on probation unless the placement is approved by the Associate Commissioner or Deputy Associate Commissioner for Child Protective Services, the Deputy Commissioner for DFPS, or the Commissioner for DFPS; or (2) a foster home whose verification has been placed on inactive status by the child-placing agency that verifies the home."</p> <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p><u>CLASS</u></p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules: "(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must: (1) notify the case manager of the needed modification; and (2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager. (m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following: (3) a description of any less intrusive methods of meeting the need that have been tried but did not work;"</p> <p><u>DBMD</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule: (b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must: (1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and (2) document on the individual's IPP: (C) a description of any less intrusive methods of meeting the need that have been tried but did not work;"</p> <p><u>HCS</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule: (e) "A service coordinator must: (21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following: (C) a description of the less intrusive methods of meeting the need that were tried but did not work;"</p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Include a clear description of the condition that is directly proportionate to the specific assessed need. <p>42 CFR §441.301(c)(4)(vi)(F)(4)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Rules require that the service plan review process include identifying any new needs and strategies to meet these needs.</p> <p>TAC §749.1135, What are the additional admission assessment requirements when I admit a child for treatment services? Attached Graphic</p> <p>TAC §749.1335, How do I review and update a service plan? "To review and update a service plan, you must: (1) Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports and medical interventions; (2) Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees and caregivers; (3) Document any achieved or changed objectives; (4) If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement; (5) Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable; (6) Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family; (7) Update the estimated length-of-stay and discharge plans, if changed; (8) Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on: (A) The frequency, patterns, and effectiveness of types of emergency behavior interventions; (B) Strategies to reduce the need for emergency behavior interventions overall; and (C) Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable; (9) Document in the child's record the review and update of the plan;" (10) Document the names of the persons participating in the review and update."</p> <p>CPS Handbook, Section 4117 Specific Placement Considerations for Children or Youth Who Have Primary Medical Needs</p> <p>"In addition to the factors detailed in 4114 Required Factors to Consider When Evaluating a Possible Placement and its sub-items, the caseworker must consider the following factors when choosing a placement for a child or youth with primary medical needs (PMN):</p> <ul style="list-style-type: none">• Whether the home is contracted and verified to provide PMN services.• The individual capabilities of the foster family that meet the specific needs of the child or youth.• The number of children or youths in the home and how many of them are also receiving PMN services.• Whether the caregiver treats the child or youth like a patient or a family member and includes him or her in daily activities and family activities (for example, daily meals, family outings, and recreational activities).• Whether the foster parent will be the caretaker of the child or youth during day time hours and night time hours.• Whether the foster parent acts as the caretaker for the other children or youths currently placed in the foster home.• For the definition of primary medical needs, see the Placement Process Resource Guide PDF Document – Specific Placement Considerations for Children Who Have Primary Medical Needs." <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p><u>CLASS</u></p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules: "(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must: (1) notify the case manager of the needed modification; and (2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager. (m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following: (4) a description of the condition that is directly proportionate to the specific assessed need;"</p> <p><u>DBMD</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule: (b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must: (1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and (2) document on the individual's IPP: (D) a description of the condition that is directly proportionate to the specific assessed need;"</p> <p><u>HCS</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule: (e) "A service coordinator must: (21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following: (D) a description of the condition that is directly proportionate to the specific assessed need;"</p>

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<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Include regular collection and review of data to measure the ongoing effectiveness of the modification. <p>42 CFR N/A441.301(c)(4)(vi)(F)(5)</p>	<p>COMPLIANT</p> <p>Rationale: Rules specify timeframes in which the service plan must be reviewed and updated. The review process includes considering the effectiveness of strategies and techniques used toward meeting identified needs.</p> <p>TAC §749.1331, How often must I review and update a service plan?</p> <p>Attached Graphic</p> <p>TAC §749.1335, How do I review and update a service plan?</p> <p>"To review and update a service plan, you must:</p> <ul style="list-style-type: none">(1) Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports and medical interventions;(2) Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees and caregivers;(3) Document any achieved or changed objectives;(4) If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement;(5) Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable;(6) Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;(7) Update the estimated length-of-stay and discharge plans, if changed;(8) Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:<ul style="list-style-type: none">(A) The frequency, patterns, and effectiveness of types of emergency behavior interventions;(B) Strategies to reduce the need for emergency behavior interventions overall; and(C) Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable;(9) Document in the child's record the review and update of the plan;(10) Document the names of the persons participating in the review and update."	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p>CLASS</p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p>"(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</p> <ul style="list-style-type: none">(1) notify the case manager of the needed modification; and(2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager. <p>(m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following:</p> <ul style="list-style-type: none">(5) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;" <p>DBMD</p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</p> <ul style="list-style-type: none">(1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and(2) document on the individual's IPP:<ul style="list-style-type: none">(E) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;" <p>HCS</p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must:</p> <ul style="list-style-type: none">(21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:<ul style="list-style-type: none">(E) a description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;"
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none">- Establish time limits for periodic reviews to determine if the modification is still necessary or can be terminated. <p>42 CFR §441.301(c)(4)(vi)(F)(6)</p>	<p>COMPLIANT</p> <p>Rationale: Rules specify timeframes in which the service plan must be reviewed and updated. Review of the service plan is required for child-care services at least 180 days from the child's last service plan review; for treatment services for emotional disorder, autism spectrum disorder, or primary medical needs, at least 90 days from the date of the child's last service plan review; and for treatment services for intellectual disabilities, in the first year of care the plan must be reviewed at least every 180 days from the date of the child's last service plan review and at least annually thereafter. The review process includes considering the effectiveness of strategies and techniques used toward meeting identified needs.</p> <p>TAC §749.1331, How often must I review and update a service plan?</p> <p>Attached Graphic</p> <p>TAC §749.1335, How do I review and update a service plan?</p> <p>"To review and update a service plan, you must:</p> <ul style="list-style-type: none">(1) Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports and medical interventions;(2) Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees and caregivers;(3) Document any achieved or changed objectives;(4) If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement;(5) Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable;(6) Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;(7) Update the estimated length-of-stay and discharge plans, if changed;(8) Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:<ul style="list-style-type: none">(A) The frequency, patterns, and effectiveness of types of emergency behavior interventions;(B) Strategies to reduce the need for emergency behavior interventions overall; and(C) Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable;(9) Document in the child's record the review and update of the plan; and(10) Document the names of the persons participating in the review and update."	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p>CLASS</p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p>"(l) If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</p> <ul style="list-style-type: none">(1) notify the case manager of the needed modification; and(2) provide the case manager with the information described in subsection (m) of this section as requested by the case manager. <p>(m) A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following:</p> <ul style="list-style-type: none">(6) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;" <p>DBMD</p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b) If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</p> <ul style="list-style-type: none">(1) revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and(2) document on the individual's IPP:<ul style="list-style-type: none">(F) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;" <p>HCS</p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) "A service coordinator must:</p> <ul style="list-style-type: none">(21) if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:<ul style="list-style-type: none">(F) the established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;"

Federal Rule	Related DFPS Foster Care Policies	Related Texas Medicaid Policies
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>- Include informed consent of the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(7)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Rules require documentation of the names of persons participating in review and update of a service plan, but do not explicitly require informed consent of the child or youth, or their parent/legal guardian.</p> <p>TAC §749.2902, What health and safety measures are required at a foster home?</p> <p>"(a) <i>Subject to the availability of a placement approved by the Department of Family and Protective Services (DFPS), a young adult may receive foster care assistance if all of the following eligibility requirements are met:</i></p> <p>(1) <i>The young adult meets the requirements of §700.316 of this title (relating to General Eligibility Requirements for Foster Care Assistance);</i></p> <p>(2) <i>The young adult turned 18 years of age while in the temporary or permanent managing conservatorship of DFPS;</i></p> <p>(3) <i>The young adult signs and continues to abide by the terms of a Voluntary Extended Foster Care Agreement, including monthly caseworker visits and participation in all required extended foster care review hearings under Subchapter G of Chapter 263, Texas Family Code;"</i></p> <p>TAC §749.1335, How do I review and update a service plan?</p> <p>"To review and update a service plan, you must:</p> <p>(1) <i>Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports and medical interventions;</i></p> <p>(2) <i>Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees and caregivers;</i></p> <p>(3) <i>Document any achieved or changed objectives;</i></p> <p>(4) <i>If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement;</i></p> <p>(5) <i>Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable;</i></p> <p>(6) <i>Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</i></p> <p>(7) <i>Update the estimated length-of-stay and discharge plans, if changed;</i></p> <p>(8) <i>Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:</i></p> <p>(A) <i>The frequency, patterns, and effectiveness of types of emergency behavior interventions;</i></p> <p>(B) <i>Strategies to reduce the need for emergency behavior interventions overall; and</i></p> <p>(C) <i>Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable;</i></p> <p>(9) <i>Document in the child's record the review and update of the plan; and</i></p> <p>(10) <i>Document the names of the persons participating in the review and update."</i></p> <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p><u>CLASS</u></p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p>"(l) <i>If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p>(1) <i>notify the case manager of the needed modification; and</i></p> <p>(2) <i>provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p>(m) <i>A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following:</i></p> <p>(7) <i>the individual's or LAR's signature on the IPP evidencing informed consent to the modification;"</i></p> <p><u>DBMD</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b) <i>If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</i></p> <p>(1) <i>revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</i></p> <p>(2) <i>document on the individual's IPP:</i></p> <p>(G) <i>the individual's or LAR's signature on the IPP evidencing informed consent to the modification;"</i></p> <p><u>HCS</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) <i>"A service coordinator must:</i></p> <p>(21) <i>if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</i></p> <p>(G) <i>the individual's or LAR's signature evidencing informed consent to the modification;"</i></p>
<p>In a provider-owned or controlled residential setting, the following conditions must be met:</p> <p>The following requirements must be documented in the person-centered service plan:</p> <p>- Include assurances that interventions and supports will cause no harm to the individual.</p> <p>42 CFR §441.301(c)(4)(vi)(F)(8)</p>	<p>PARTIALLY COMPLIANT</p> <p>Rationale: Rules prohibit the use of certain techniques that may cause harm to the child or youth, but do not explicitly cover all aspects of the HCBS Settings Rule requirement.</p> <p>TAC §749.1003, What rights does a child in care have?</p> <p>"(4) <i>Discipline, including:</i></p> <p>(A) <i>The right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating treatment or punishment."</i></p> <p>TAC §749.1021, What techniques am I prohibited from using on a child?</p> <p>"Certain techniques must not be used on a child, including:</p> <p>(1) <i>Chemical restraints, mechanical restraints, and seclusion. For more information on emergency behavior intervention, see Subchapter L of this chapter (relating to Foster Care Services: Emergency Behavior Intervention);</i></p> <p>(2) <i>Aversive conditioning, which includes, but is not limited to, any technique designed to or likely to cause a child physical pain, the application of startling stimuli, and the release of noxious stimuli or toxic sprays, mists, or substances in proximity to the child's face;</i></p> <p>(3) <i>Pressure points;</i></p> <p>(4) <i>Rebirthing therapy; and</i></p> <p>(5) <i>Hug and/or holding therapy."</i></p> <p>TAC §749.1335, How do I review and update a service plan?</p> <p>"To review and update a service plan, you must:</p> <p>(1) <i>Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports and medical interventions;</i></p> <p>(2) <i>Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees and caregivers;</i></p> <p>(3) <i>Document any achieved or changed objectives;</i></p> <p>(4) <i>If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement;</i></p> <p>(5) <i>Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable;</i></p> <p>(6) <i>Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</i></p> <p>(7) <i>Update the estimated length-of-stay and discharge plans, if changed;</i></p> <p>(8) <i>Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:</i></p> <p>(A) <i>The frequency, patterns, and effectiveness of types of emergency behavior interventions;</i></p> <p>(B) <i>Strategies to reduce the need for emergency behavior interventions overall; and</i></p> <p>(C) <i>Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable;</i></p> <p>(9) <i>Document in the child's record the review and update of the plan; and</i></p> <p>(10) <i>Document the names of the persons participating in the review and update."</i></p> <p>Provider Outreach and Education</p> <p>To address HCBS Settings Rule requirements for provider-owned and controlled settings (42 CFR 441.301(c)(4)(vi)), HHSC will notify and provide education to DFPS foster care providers, with an emphasis on criteria where DFPS foster care policies are silent or partially compliant. HHSC will provide written guidance for DFPS staff and foster care providers, and will provide technical assistance to DFPS as needed. Guidance materials will cover all criteria of the HCBS Settings Rule. HHSC will also provide guidance to Medicaid MCOs and Medicaid HCBS providers regarding delivery of Medicaid HCBS to recipients in foster care homes through written guidance and regularly scheduled MCO and stakeholder meetings.</p>	<p>HHSC is revising its Medicaid program policies to ensure Medicaid HCBS provider-owned and controlled residential settings comply with the HCBS Settings Rule criteria at 42 CFR 441.301(c)(4)(vi). These policies will apply specifically to Medicaid HCBS-funded residential settings, which are not foster care settings. In rare circumstances, a child or youth in DFPS conservatorship may reside in a Medicaid HCBS waiver residential setting.</p> <p><u>CLASS</u></p> <p>These new rules will be added as TAC Title 26, Part 1, Chapter 259, Rule §259.205, Residential Agreements, Requirements for Provider-Controlled Residential Settings, and Support Family Agency and Continued Family Agency Functions.</p> <p>Draft rules:</p> <p>"(l) <i>If a support family agency or continued family agency becomes aware that a modification to a requirement described in subsection (k)(1)-(6) of this section is needed based on a specific assessed need of an individual, the support family agency or continued family agency must:</i></p> <p>(1) <i>notify the case manager of the needed modification; and</i></p> <p>(2) <i>provide the case manager with the information described in subsection (m) of this section as requested by the case manager.</i></p> <p>(m) <i>A case manager must, if notified in accordance with subsection (l)(1) of this section, convene a service planning team meeting to update the individual's IPP to include the following:</i></p> <p>(8) <i>the support family agency or continued family agency's assurance that the modification will cause the individual no harm."</i></p> <p><u>DBMD</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 260, Rule §260.403, Requirements for Program Provider-Owned Residential Settings.</p> <p>Draft rule:</p> <p>(b) <i>If an individual's service planning team determines that any of the requirements in subsection (a)(1) - (6) of this section must be modified, the service planning team must:</i></p> <p>(1) <i>revise the individual's IPP in accordance with §260.77 of this chapter (relating to Renewal and Revision of an IPP and IPC); and</i></p> <p>(2) <i>document on the individual's IPP:</i></p> <p>(H) <i>the program provider's assurance that the modification will cause the individual no harm."</i></p> <p><u>HCS</u></p> <p>The new rule to address this requirement will be added as TAC Title 26, Part 1, Chapter 263, Rule §263.901, LIDDA Requirements for Providing Service Coordination in the HCS Program.</p> <p>Draft rule:</p> <p>(e) <i>"A service coordinator must:</i></p> <p>(21) <i>if notified by the program provider that a requirement described in §263.503(c)(16) of this chapter (relating to Residential Agreements) or §263.502(a)(1)-(6) of this chapter (relating to Requirements for Program Provider Owned or Controlled Residential Settings) needs to be modified, update the individual's PDP to include the following:</i></p> <p>(H) <i>the program provider's assurance that the modification will cause no harm to the individual;"</i></p>

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<p>Home and community-based settings do not include the following: NF, IMD, ICF/IID; hospital; or any other locations that have qualities of an institutional setting.</p> <p>42 CFR §441.301(c)(5)</p>	<p>COMPLIANT</p> <p>Rationale: DFPS foster care is care provided to children and youth in a DFPS foster family home. A DFPS foster family home must be the primary residence of the foster parent(s) and provides care for six or fewer children or youth.</p> <p>Section 4118.1 Assessing the Need for Facility Placement "Children and youth with disabilities must be placed in the least restrictive, most family-like setting that meets their needs."</p> <p>TAC §749.43, What do certain words and terms mean in this chapter? "(28) Foster care--Care that is provided to a foster child by a foster family home. (29) Foster family home--A home that is the primary residence of the foster parent(s) and provides care for six or fewer children or young adults, under the regulation of a child-placing agency. Also referred to as a "foster home" in this chapter."</p>	<p>Texas Medicaid HCBS settings do not include NF, IMD, ICF/IID, hospital, or any other settings with qualities of an institutional setting.</p> <p><u>CLASS</u> TAC 45.504, Suspension of CLASS Program Services or CFC Services</p> <p>▸ "(a) [HHSC] suspends an individual's CLASS Program services or CFC services if the individual:</p> <p><i>(1) is under a temporary admission to one of the following facilities:</i> <i>(A) an ICF/IID, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter (relating to Respite);</i> <i>(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter;</i> <i>(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;</i> <i>(D) a residential child-care operation licensed or subject to being licensed by DFPS, unless it is a foster family home or a foster group home;</i> <i>(E) a facility licensed or subject to being licensed by the Department of State Health Services;</i> <i>(F) a facility operated by the Department of Assistive and Rehabilitative Services; or</i> <i>(G) a residential facility operated by the Texas Youth Commission, a jail, or prison;"</i></p> <p><u>DBMD</u> TAC §42.104, Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC (a) "The Deaf Blind with Multiple Disabilities (DBMD) Program is a Medicaid waiver program. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program."</p> <p><u>HCS</u> The setting resembles a typical residence within the community where services are provided.</p> <p>TAC §9.155(a)(5) related to (related to the Eligibility Criteria)</p> <p>▸ "...not reside in an ICF/IID, a nursing facility...assisted living facility licensed...a setting in which two or more dwellings...create a residential area distinguishable from other areas..."</p> <p>TAC §9.174(a)(23) related to Certification Principles: Service Delivery</p> <p>▸ "...individual lives in a home...typical residence within the community..."</p> <p><u>MDCP</u> STAR Kids Managed Care Contract, Section 8.1.36, Covered Community-Based Services (p. 8-188)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 C.F.R. § 441.301(c)(4)." <p>STAR Health Managed Care Contract, Section 8.1.39, Covered Community-Based Services (p. 8-189)</p> <ul style="list-style-type: none">"MDCP services must be provided in home and community based settings and comply with 42 CFR §441.301(c)(4)." <p><u>TxHmL</u> TAC §9.554(a) related to Description of TxHmL Program</p> <p>"It provides community-based services and supports to...individuals who live in their own homes or...family homes."</p> <p><u>YES Waiver</u> YES Waiver Policy Manual, Section 1000 Youth Empowerment Services Waiver Overview</p> <p>"The YES Waiver provides short-term, comprehensive home and community-based mental health services to children and youth at risk of institutionalization or out-of-home placement due to their SED."</p>

Assumptions

- HHSC assumes that a service provided in an institution, if available to anyone in the community, follows the HCBS setting regulations. For example, physical therapy provided at a nursing facility in the STAR+PLUS HCBS program.
- CMS confirmed that if provisions exist in an approved waiver application for use of respite out of the home, use of ICF, NF, or large ALF for respite is permissible under the HCBS Settings Rule.