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Home and Community- Based Settings Rule: Implementation in Texas

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February 11, 2023

What is the HCBS Settings Rule?

- The HCBS Settings Rule is a group of federal regulations issued by the Centers for Medicare and Medicaid Services (CMS).
 - These regulations tell HHSC where Medicaid home and community-based services can be provided.
- CMS has given states until March 17, 2023, to ensure all Medicaid HCBS providers comply with the HCBS Settings Rule.

[42 Code of Federal Regulations \(CFR\) 441.301](#)



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Impacted Programs

- Home and Community-based Services (HCS)
- Texas Home Living (TxHmL)
- Deaf Blind with Multiple Disabilities (DBMD)
- Community Living Assistance and Support Services (CLASS)
- Medically Dependent Children Program (MDCP)
- STAR+PLUS Home and Community-Based Services (HCBS)



What is the Goal of the HCBS Settings Rule?

- The HCBS Settings Rule requires that a Medicaid HCBS setting support a person's full access to the community.
- This includes opportunities to:
 - Engage in community life
 - Work in competitive integrated settings
 - Control personal resources



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Individuals Must Have Choice

- A home and community-based setting must:
 - Optimize individual autonomy and independence in making life choices
 - Facilitate individual choice regarding services and supports, and who provides them
 - Be selected by the individual from setting options
 - Ensure an individual's rights to privacy, dignity, and respect, and freedom from coercion and restraint



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HCBS Settings Must Be Community-based

- Settings must be integrated in and support the individual's access to the greater community
- HCBS cannot be provided in a setting that CMS assumes is similar to an institution.
- HHSC can request CMS review certain settings in a process called heightened scrutiny.
- After this review, CMS determines if the setting meets the standard for a HCBS setting.



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Individuals Must Have Freedom

- The individual has freedom and support to control their own schedules and activities and has access to food at any time.
- The individual can have visitors at any time.
- The setting is physically accessible.



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Individuals Must Have Privacy and Choice

- In each residence that provides a waiver residential service, the program provider must ensure that an individual:
 - has privacy in the individual's bedroom
 - has the option not to share a bedroom with a roommate
 - sharing a bedroom has a choice of roommates
 - has a lock installed on the individual's bedroom door at no cost to the individual



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Individuals Must Have Autonomy

- In each residence that provides residential support, supervised living, or host home/companion care, the program provider must ensure that an individual:
 - has control of the individual's schedule and activities that are not part of the implementation plan
 - has access to food at any time.
 - can furnish and decorate the individual's bedroom



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When Changes Are Required

- If a program provider becomes aware that a modification, the program provider must:
 - notify the service coordinator or case manager of the needed modification; and
 - provide the service coordinator or case manager this information as requested by the service coordinator or case manager.



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Residential Agreements

- During a service planning team meeting, a service coordinator must inform an individual or legally authorized representative (LAR) of the following:
 - The residential setting options available in the program in which the individual is enrolling
 - The individual or LAR will be responsible for paying room and board
 - The individual's program provider or service provider may evict the individual for non-payment of room and board



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Residential Agreements, cont.

- The program provider must have a residential agreement in place with an individual living in an HCS 3- or 4-person home or a DBMD assisted living setting.
- In an HCS host home/companion care (HH/CC) setting, if the individual does not own the residence or lease the residence from another person, the residential agreement is between the individual and the service provider of HH/CC.





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Individualized Skills and Socialization

Individualized Skills & Socialization

- Only available in HCS, TxHmL, and DBMD
- Provides person-centered activities
- Supports the pursuit and achievement of employment
- Provides personal assistance for an individual who cannot manage personal care needs
- Provides assistance with medications and the performance of tasks delegated by a Registered Nurse (RN)



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On-site Individualized Skills & Socialization

- Promotes an individual's development of skills and behavior that support independence and personal choice
- Provided in a building or a portion of a building owned or leased by an Individualized Skills and Socialization provider
- Includes transportation from one on-site location to another on-site location



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On-site Prohibited Settings in HCS and TxHmL

- Residence of an individual or another person
- Prohibited residential settings set forth in the rules:
 - ICF/IID
 - Nursing Facilities
 - Assisted living facilities (ALFs)
 - Residential child-care facility operation licensed by DFPS unless it is an agency foster home
 - Facility licensed or subject to being license by DSHS
 - Residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison



On-site Prohibited Settings in DBMD

- Residence of an individual or another person
- Prohibited residential settings set forth in the rules:
 - ICF/IID
 - Nursing Facilities
 - ALFs, unless providing licensed assisted living in the DBME program
 - Residential child-care facility operation licensed by DFPS unless it is an agency foster home
 - Hospital
 - Residential facility operated by the Texas Workforce Commission
 - A mental health or inpatient chemical dependency treatment facility.



Off-site Individualized Skills & Socialization

- Integrates an individual into the community
- Promotes the development of skills and behaviors that support independence and personal choice
- Provided in a community setting chosen by the individual
- Includes transportation between an on-site location and an off-site location and between off-site locations



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Off-site Prohibited Settings

- Building in which on-site Individualized Skills and Socialization is provided
- Residence of an individual or another person unless the off-site individualized skills and socialization activity is a volunteer activity performed by an individual in the residence
- Prohibited residential settings set forth in the rules, unless:
 - the off-site individualized skills and socialization activity is a volunteer activity; or
 - off-site individualized skills and socialization is provided in an event open to the public



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How On-site and Off-site ISS May Be Provided

- On-site and off-site must be provided by a licensed Individualized Skills and Socialization provider who is the program provider or a contractor of the program provider
- Provide on-site and off-site in accordance with an individual's person directed plan (PDP), individual plan of care (IPC), and implementation plan
- If an individual or their LAR opposes participating in a scheduled activity, the provider must document the decision not to participate in the individual's record



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In-home Individualized Skills & Socialization

- Assists with gaining and keeping self-help, social and adaptive skills
- Provides age-appropriate activities that enhance self-esteem and function level
- Reinforces skills and lessons taught
- Provides help for an individual who cannot manage personal care needs
- Offers assistance with medication and tasks delegated by a registered nurse



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In-home Individualized Skills & Socialization

- ISS program providers must ensure that in-home is provided at your home (or the home of the individual)
- For in-home ISS, you don't need a licensed ISS provider



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Staffing Ratios: DBMD

On-site	1:3
Off-site	1:2



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Staffing Ratios: HCS & TxHmL Off-site Only

Level of Need (LON)	LON 1 or 5 No enhancement	LON 1 or 5 Level 1 enhancement	LON 8 or 6	LON 1, 5, 8 or 6 Level 2 enhancement	LON 9
HCS	1:8	1:2	1:2	1:6	1:1
TxHmL	1:8	1:2	1:2	1:1	1:1



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Provider Licensing

- Providers will need a Day Activity Health Services (DAHS) – Individualized Skills and Socialization service category license
- The licensing process has been open since January 9th.



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Community Engagement Plan

- To get a license, providers must have a Community Engagement Plan that includes:
 - How the organization will make off-site ISS available to individuals.
 - How the organization will work with contracted program providers to ensure on-site and off-site activities align with the individual's PDP
 - How staff will respond to an emergency or unexpected event during an on-site or off-site activity



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Statewide Transition Plan & Program Rules

- Statewide Transition Plan (STP)
 - Received initial approval on Dec 21, 2022
 - Final STP posted for public comment through Feb 13
- Rules (revised to comply with HCBS Settings Rule)
 - CLASS: 01/30/23
 - DBMD: 02/26/23
 - HCS: 03/03/23 (expected)
 - TxHmL: 03/03/23 (expected)



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Site Assessments

- Site Assessments
 - HHSC is conducting site assessments of provider-owned and controlled settings, which are:
 - STAR+PLUS HCBS: Assisted living facility (ALF) and adult foster care
 - HCS: 3-person residences, 4-person residences, and host home/companion care
 - DBMD: ALF and licensed home health assisted living



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Heightened Scrutiny

- Heightened Scrutiny: HHSC is submitting the following settings to CMS for review:
 - STAR+PLUS HCBS: All ALFs
 - HCS: Intentional communities
 - HCS, TxHmL and DBMD: Certain prospective individualized skills and socialization settings
- CMS is conducting in-person visits of selected ALFs, one intentional community, and one prospective individualized skills and socialization setting February 13-16, 2023.



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Resources

- [HCS Rules](#)
- [TxHmL Rules](#)
- [DBMD Rules](#)
- [Long-term Care Regulatory \(LTCR\) Rules](#)



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Thank you!

Send questions to:

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TxHmLPolicy@hhs.texas.gov

DBMDPolicy@hhs.texas.gov

LTCRPolicy@hhs.texas.gov