



HHSC Corrective Action Plan Request for HCBS Settings Rule

Executive Summary

The federal Home and Community-Based Services (HCBS) Settings Rule requires Medicaid HCBS settings to be integrated in and support full access for individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive and 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. The Centers for Medicare and Medicaid Services (CMS) has given states until March 17, 2023, to comply with the HCBS Settings Rule.

In May 2022, CMS introduced a corrective action plan (CAP) process for states to request additional time beyond March 17, 2023, to achieve full compliance with the federal HCBS Settings Rule.

The CAP process is available to authorize additional time to comply with HCBS settings criteria directly impacted by PHE disruptions. These criteria are:

- Access to the broader community;
- Opportunities for employment;
- Choice of non-disability specific settings; and
- In residential settings, the option for a private unit and/or choice of a roommate.

The Texas Health and Human Services Commission (HHSC) requests a CAP for additional time to meet the HCBS settings requirement for access to the community for individualized skills and socialization, a new service that replaces day habilitation services in the state's Home and Community-based Services (HCS), Texas Home Living (TxHmL), and Deaf Blind with Multiple Disabilities (DBMD) 1915(c) waiver programs for people with intellectual and developmental disabilities

(IDD). Individualized skills and socialization will include an on-site component and an off-site component. The off-site component will be delivered to individuals in the broader community. Specifically, HHSC requests to delay implementing the off-site component of individualized skills and socialization to March 17, 2024.

The requested CAP to delay implementing the off-site component of individualized skills and socialization would allow individualized skills and socialization providers additional time to address staffing shortages and develop more robust plans for non-disability specific community activities.

Federal Guidance

In an all-state call on May 26, 2022, CMS introduced a recalibrated strategy to align the focus of federal support and state compliance activities with the realities of the direct-service workforce crisis exacerbated by the COVID-19 PHE. The recalibrated strategy contains the following components:

- States must receive final Statewide Transition Plan approval.
- States and providers must be in compliance with all settings criteria **not** directly impacted by PHE disruptions, including PHE-related workforce challenges.
- Time-limited CAPs are available to states to authorize additional time to achieve full compliance with settings criteria that are directly impacted by PHE disruptions, when states document the efforts to meet these requirements to the fullest extent possible, and are in compliance with all other settings criteria.

HCBS Settings Criteria Not Eligible for a CAP

All states must be fully compliant by March 2023 with the following HCBS settings criteria that are not impacted by the COVID-19 PHE (that apply to both non-residential and residential settings):

- Privacy, dignity, respect, and freedom from coercion and restraint;
- Control of personal resources

All states must be fully compliant by March 2023 with the following residential settings criteria:

- A lease or other legally enforceable agreement providing similar protections

- Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit
- Access to food at any time
- Access to visitors at any time
- Physical accessibility
- Person-centered service plan documentation of modifications to relevant regulatory criteria

CMS will not accept a CAP request for these HCBS settings criteria.

HCBS Settings Criteria Eligible for a CAP

CMS will accept CAP requests for the following HCBS criteria that have been impacted by the PHE, including PHE-related workforce shortages:

- Access to the broader community
- Opportunities for employment
- Option for a private unit and/or choice of a roommate
- Choice of non-disability specific settings

In addition, a state requesting a CAP must be able to show that their policies and procedures reflect the HCBS settings criteria and that the state has made efforts to implement the criteria to the fullest extent possible and work with CMS on a concrete, time-limited plan to come into full compliance with remaining criteria.

CAP Request Process

To request a CAP, a state must submit the following information to CMS by December 1, 2022:

- Information on the HCBS settings criteria for which the state will need extra time to ensure full compliance;
- The state's efforts to bring providers into compliance with those criteria, and the PHE-related impacts that created barriers to compliance; and
- The state's plan to overcome encountered barriers, and the time needed to do so.

A state must have final STP approval for the state's CAP request to be approved. HHSC has not yet received final approval of its STP. However, CMS has provided guidance that a state without final STP approval may submit its CAP request by

December 1, 2022, and CMS will review and approve the CAP request after granting the state final STP approval.

Request to Delay Off-Site Individualized Skills and Socialization

HHSC requests a CAP for additional time to bring its new service, individualized skills and socialization, into compliance with the HCBS settings requirement for access to the broader community. Specifically, HHSC requests to delay implementation of the off-site component of individualized skills and socialization to March 17, 2024.

The extended transition time will allow additional time to address direct service workforce shortages and build community partnerships, which will be utilized to develop off-site activities for individuals in the community.

Overview of Individualized Skills and Socialization

Individualized skills and socialization is a new service replacing day habilitation in the state's HCS, TxHmL, and DBMD waiver programs. Individualized skills and socialization will allow individuals greater access to and integration in the community. The new service is also intended to ensure individuals have access to more personalized habilitative activities and to optimize an individual's initiative, autonomy and independence in making life choices.

Individualized skills and socialization will include an on-site component that is facility based and off-site component that is community based. Individualized skills and socialization will include staff-to-individual ratio requirements to allow staff to provide more individualized attention to individuals.

To comply with community access and integration requirements in 42 CFR §441.301(c)(4)(i), individualized skills and socialization includes an off-site component. Off-site individualized skills and socialization will be delivered in non-disability specific settings in the broader community. Off-site individualized skills and socialization may include activities such as visiting public community spaces like parks and libraries, participating in activities at local recreational centers, or volunteering in the community.

An individualized skills and socialization provider must be either a TxHmL or HCS program provider, a DBMD program provider, or a subcontractor of a TxHmL, HCS

or DBMD provider. An individualized skills and socialization provider must also be licensed by HHSC.

Summary of Compliance Efforts

To implement individualized skills and socialization, HHSC has developed new policies to authorize and guide implementation of the service. Policy development has included amending the HCS, TxHmL and DBMD 1915(c) waiver applications; promulgating new Texas Administrative Code (TAC) rules for provider licensure and Medicaid program requirements; and revising program handbooks and billing guidelines. New policies require individualized skills and socialization providers to meet all applicable requirements of the HCBS Settings Rule.¹ HHSC has also developed new rates for individualized skills and socialization, and has made updates to billing and claims systems.

HHSC worked with external stakeholders, in particular the Intellectual and Developmental Disability System Redesign Advisory Committee (IDD SRAC), early in the transition period to conceptualize the new service. In December 2020, HHSC submitted the [Transition of Day Habilitation Services](#) plan to the Texas Legislature, which described HHSC's plan to replace day habilitation with individualized skills and socialization.² HHSC submitted an exceptional item request to the Texas Legislature for the state fiscal year (SFY) 2022-23 biennium to fund individualized skills and socialization. The Texas Legislature granted HHSC transfer authority to fund the new service from the agency's existing budget and appropriated funds for staffing needs related to the individualized skills and socialization provider licensure system.³ HHSC continues to meet regularly with stakeholders, including an IDD coordination workgroup, to provide updates and seek input on implementation of individualized skills and socialization.

HHSC has provided education and guidance to providers through live webinars in July and August 2022, and through written guidance including provider letters and

¹ Individualized skills and socialization is a non-residential service, so is not required to meet all residential criteria of the HCBS Settings Rule.

² The Transition of Day Habilitation was submitted as required by the 2020-21 General Appropriations Act, House Bill 1, 86th Legislature, Regular Session, 2019 (Article II, Health and Human Services Commission, Rider 21)

³ 2022-23 General Appropriations Act, House Bill 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23)

a frequently asked questions (FAQ) document.⁴ HHSC has created an [individualized skills and socialization webpage](#) where policy guidance and resources are available. HHSC has also published a computer-based training for providers regarding the licensure application process and how to prepare for an on-site inspection.

Barriers to Achieving Full Compliance

Direct Service Workforce Crisis

Providers have expressed concerns regarding implementation of off-site individualized skills and socialization due to PHE-related staffing shortages. Off-site services will require more staff than on-site services in order to provide transportation and provide individualized attention to individuals in community settings as they develop skills needed to achieve greater independence and exercise personal choice. Delivery of off-site individualized skills and socialization will also require staff training on transporting and supporting individuals in community settings.

Individual Preferences for Social Distancing

Providers have expressed concerns about the ability to control and maintain environmental safety for settings outside the on-site individualized skills and socialization setting. Individuals may feel hesitant to go into new and unfamiliar community settings in light of public health concerns.

Limited Community Engagement Opportunities during PHE

Community engagement opportunities and activities have been limited during the PHE. Many non-disability-specific community settings have closed, or have changed or reduced their hours and activity offerings. In addition, many activities have shifted from in-person to virtual and may remain virtual going forward or only allow a limited number of participants as a PHE-related precaution. Community settings may also have changed their activity offerings as a result of the PHE, meaning that individuals are no longer able to engage in activities they participated in before the PHE.

⁴ Provider education and guidance materials are posted at:
<https://www.hhs.texas.gov/providers/long-term-care-providers/individualized-skills-socialization>

Supply Chain Delays

HHSC anticipates supply chain shortages and delays will continue to impact providers who need to purchase equipment and supplies to support implementation of off-site individualized skills and socialization. For instance, many providers will need to purchase new physically accessible vehicle(s) to transport individuals into the community.

PHE Impacts to Service Implementation

The PHE caused initial delays to implementation of individualized skills and socialization, as state staff bandwidth for implementation activities was reduced in 2020 and early 2021 due to urgent PHE-related responsibilities. The delay in overall implementation of individualized skills and socialization has reduced the amount of transition time from day habilitation to individualized skills and socialization for providers.

Plan to Overcome Barriers and Timeline

Extending the deadline by which providers must implement off-site individualized skills and socialization to March 17, 2024, will afford HHSC and providers more time to overcome external barriers to service implementation. The delay will provide necessary time for providers to develop strategies and community relationships for off-site activities in the community, efforts that were impeded initially by the PHE. This will allow a gradual ramp up of community integration activities to help ensure that by March 17, 2024, providers have a robust offering of non-disability specific activities for individuals to participate in through off-site individualized skills and socialization..

The delay will afford providers time to identify specific staffing needs for off-site service delivery. As providers work to develop community partnerships and plan off-site individualized skills and socialization activities, they will be better able to confirm the number of direct care staff needed to facilitate specific activities, and to hire and train those staff. It will also allow more time to confirm the equipment and supplies needed to support delivery of off-site services, as well as allowing additional time that may be needed to acquire necessary equipment if there are supply chain delays.

During the extended transition period for off-site individualized skills and socialization services, on-site services will be delivered. This will give providers the opportunity to discuss with individuals in greater detail their preferences for off-site

activities, including identifying concerns and preferences related to social distancing or other PHE-related precautions.

HHSC will use this extended ramp-up time for off-site individualized skills and socialization to provide ongoing guidance and technical assistance to providers, and to solicit feedback from providers and other stakeholders to address any implementation challenges as they arise.

Timeline	
December 1, 2022	<ul style="list-style-type: none"> Prospective individualized skills and socialization providers begin applying for provider license.
January 2023	<ul style="list-style-type: none"> Providers begin delivering and billing for individualized skills and socialization.
March 1, 2023	<ul style="list-style-type: none"> Day habilitation is no longer an available waiver service.
January 2023 – September 2023	<ul style="list-style-type: none"> Providers develop strategies and establish community partnerships for delivery of off-site individualized skills and socialization. Providers begin delivering and billing for off-site individualized skills and socialization.
March 17, 2024	<ul style="list-style-type: none"> Individualized skills and socialization providers must be delivering off-site services.
Ongoing	<ul style="list-style-type: none"> HHSC conducts ongoing provider education and direction through written guidance. HHSC provides technical assistance to providers on an individual basis, as needed.

Resources

- [Tuesday, May 24, 2022 CMS COVID-19 Medicaid & CHIP COVID-19 All-State Call](#)
- [Texas Statewide Transition Plan](#)
- [Individualized skills and socialization](#)