TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 262 TEXAS HOME LIVING (TxHmL) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER J INDIVIDUALIZED SKILLS AND SOCIALIZATION

§262.901. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) Abuse--

(A) physical abuse;

(B) sexual abuse; or

(C) verbal or emotional abuse.

(2) Applicant--A Texas resident seeking services in the Texas Home Living Program (TxHmL).

(3) Calendar day--Any day, including weekends and holidays.

(4) CFC--Community First Choice.

(5) CFC PAS/HAB--CFC personal assistance services/habilitation.

(6) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(7) Day habilitation--A TxHmL Program service that provides assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual.

(8) DFPS--The Department of Family and Protective Services.

(9) Emergency response plan--A written plan that describes the actions that will be taken to protect individuals, including evacuation or sheltering-in-place, in the event of an emergency such as a fire or other man-made or natural disaster.

(10) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(11) HHSC--The Texas Health and Human Services Commission.

(12) ICAP--Inventory for Client and Agency Planning.

(13) ID/RC Assessment--A form used by HHSC for level of care determination and level of need assignment.

(14) Implementation plan--A written document developed by a program provider for an individual that, for each TxHmL Program service and CFC service on the individual's individual plan of care (IPC) to be provided by the program provider except for community support and CFC support management, includes:

(A) a list of outcomes identified in the person-directed plan that will be addressed using TxHmL Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of TxHmL Program services and CFC services needed to complete each objective;

(E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, legally authorized representative, and the program provider.

(15) Individual--A person enrolled in the TxHmL Program.

(16) Individualized skills and socialization provider--A legal entity licensed in accordance with Texas Human Resources Code Chapter 103.

(17) Initial IPC--The first IPC for an individual developed before the individual's enrollment into the TxHmL Program.

(18) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(19) IPC year--The effective period of an initial IPC and renewal IPC as described in this paragraph.

(A) Except as provided in subparagraph (B) of this paragraph, the IPC year for an initial and renewal IPC is a 365-calendar day period starting on the begin date of the initial or renewal IPC.

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February 28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.

(C) A revised IPC does not change the begin or end date of an IPC year.

(20) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(21) LOC--Level of care. A determination given to an applicant or individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(22) LON--Level of need. An assignment given by HHSC to an applicant or individual that is derived from the ICAP service level score and from selected items on the ID/RC Assessment.

(23) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(24) PDP--Person-directed plan. A plan developed using an HHSC form that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety.

(25) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(26) Program provider--A person, as defined in 40 TAC §49.102 (relating to Definitions), that has a contract with HHSC to provide TxHmL Program services, excluding a financial management services agency.

(27) Renewal IPC--An IPC required to be developed for an individual at least 30 but not more than 90 calendar days before the expiration of the individual’s IPC in accordance with rules governing the TxHmL Program.

(28) Revised IPC-–An initial IPC or renewal IPC that is revised during the IPC year in accordance with rules governing the TxHmL Program to add a new TxHmL Program service or CFC service or change the amount of an existing service.

(29) Service coordinator--An employee of a local intellectual and developmental disability authority who provides service coordination to an individual.

(30) Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(31) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(32) TxHmL Program--The Texas Home Living Program.

§262.903. Description of Individualized Skills and Socialization.

(a) Individualized skills and socialization is a TxHmL Program service described in this section and in Appendix C of the TxHmL Program waiver application approved by CMS.

(b) Individualized skills and socialization:

(1) provides person-centered activities related to skill development and gaining independence, socialization, community participation, or future volunteer or employment goals consistent with achieving the outcomes identified in an individual's PDP; and

(2) supports the individual’s pursuit and achievement of employment through school, vocational rehabilitation, the TxHmL Program service of employment assistance, or the TxHmL Program service of supported employment.

(c) Individualized skills and socialization must be provided by an individualized skills and socialization provider. An individualized skills and socialization provider must be the program provider or a contractor of the program provider.

(d) The two types of individualized skills and socialization are on-site individualized skills and socialization and off-site individualized skills and socialization.

(e) 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; and

(2) is not provided in:

(A) a prohibited residential setting for an individual, as set forth in the rules governing the TxHmL Program, unless provided in an event open to the public; or

(B) the residence of an individual or another person.

(f) Off-site individualized skills and socialization:

(1) provides activities that:

(A) integrate an individual into the community; and

(B) promote the individual’s development of skills and behavior that support independence and personal choice;

(2) is provided in a community setting chosen by the individual from among available community setting options;

(3) includes transportation necessary for the individual’s participation in off-site individualized skills and socialization; and

(4) is not provided in:

(A) a building in which on-site individualized skills and socialization is provided;

(B) a prohibited residential setting for an individual, as set forth in the rules governing the TxHmL Program, unless provided in an event open to the public; or

(C) the residence of the individual or the residence of another person.

§262.905. Provision of Individualized Skills and Socialization.

(a) An individualized skills and socialization provider must make both on-site individualized skills and socialization and off-site individualized skills and socialization available to an individual.

(b) An individualized skills and socialization provider must provide on-site individualized skills and socialization and off-site individualized skills and socialization in accordance with an individual’s PDP, IPC, and implementation plan.

(c) An individualized skills and socialization provider must allow an individual to receive off-site individualized skills and socialization without requiring the individual to take a skills test or meet other requirements.

(d) If an individual does not want to participate in an on-site individualized skills and socialization or off-site individualized skills and socialization activity that the individual had scheduled, or the LAR does not want the individual to participate in such activity, the individualized skills and socialization provider must document the decision not to participate in the individual’s record.

§262.907. Service Limit for Individualized Skills and Socialization.

The service limit for the combined total of on-site individualized skills and socialization and off-site individualized skills and socialization is 30 hours during a calendar week and 1560 hours during an IPC year.

§262.909. Staffing Ratios.

(a) The ratio of service providers of individualized skills and socialization to persons receiving services:

(1) on-site must be no higher than one service provider of individualized skills and socialization to five individuals and other persons receiving individualized skills and socialization or a similar service (1:5); and

(2) off-site must be:

(A) no higher than one service provider of individualized skills and socialization to four individuals without an add-on rate and other persons receiving individualized skills and socialization or a similar service (1:4); and

(B) no higher than one service provider of individualized skills and socialization to two individuals with the add-on rate and other persons receiving individualized skills and socialization or a similar service (1:2).

(b) A service provider of individualized skills and socialization assigned to the individuals represented in a ratio in subsection (a) of this section must provide services only to the individuals and other persons represented in the ratio.

§262.911. Discontinuation of Day Habilitation.

Notwithstanding other rules governing the TxHmL Program, effective March 1, 2023, day habilitation is not a service in the TxHmL Program.

§262.913. Including Individualized Skills and Socialization on an IPC.

(a) If an applicant wants to receive individualized skills and socialization:

(1) a service coordinator must include the type of individualized skills and socialization on the applicant’s PDP and the type and amount of individualized skills and socialization on the initial IPC in accordance with the rules governing the TxHmL Program; and

(2) a program provider must develop an implementation plan for on-site individualized skills and socialization and for off-site individualized skills and socialization.

(b) To renew or revise an IPC to include individualized skills and socialization, a service coordinator and program provider must comply with rules governing the TxHmL Program, which include developing an implementation plan for on-site individualized skills and socialization and an implementation plan for off-site individualized skills and socialization.

(c) If an individual or the individual’s LAR wants the individual to receive on-site or off-site individualized skills and socialization, but not both, the service coordinator must document the decision in the individual’s PDP.

(d) A service coordinator must ensure that an initial IPC that is effective on or after March 1, 2023 does not include day habilitation.

(e) A service coordinator must ensure that a renewal IPC that is effective on or after March 1, 2023 does not include day habilitation.

(f) A program provider or service coordinator must ensure that a revised IPC with an effective date that is between March 1, 2023 and February 29, 2024 includes only the amount of day habilitation that the program provider provided to the individual before March 1, 2023.

§262.915. Service Provider Qualifications.

(a) A service provider of individualized skills and socialization must be at least 18 years of age and:

(1) have a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) have documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served.

(b) A service provider of individualized skills and socialization who provides transportation must:

(1) have a valid driver's license; and

(2) transport individuals in a vehicle insured in accordance with state law.

(c) A service provider of individualized skills and socialization must complete training as required by the rules governing the TxHmL Program.

§262.917. Fire Drills, Notices About Reporting an Allegation of Abuse, Neglect, or Exploitation, and an Emergency Response Plan in On-site Individualized Skills and Socialization Buildings.

In a building in which on-site individualized skills and socialization is provided, the individualized skills and socialization provider must:

(1) at least once every 90 calendar days, conduct a fire drill during which individuals evacuate the building;

(2) prominently post, in an area of the building that is readily accessible to individuals, employees, contractors, volunteers, and visitors, a notice of the requirement to report an allegation of abuse, neglect, or exploitation of an individual and how to report such an allegation to the DFPS abuse hotline toll free telephone number at 1-800-647-7418 or through the DFPS abuse hotline website; and

(3) have an emergency response plan for individuals while receiving on-site individualized skills and socialization in the building.

§262.919. Program Provider Reimbursement for Individualized Skills and Socialization.

(a) Except as provided in subsection (b) of this section, HHSC pays for on-site individualized skills and socialization and off-site individualized skills and socialization provided to an individual at the reimbursement rate for individualized skills and socialization regardless of the individual’s LON.

(b) If approved in accordance with §262.921 of this subchapter (relating to Add-on Rate) HHSC pays an add-on rate for off-site individualized skills and socialization for an individual in accordance with 1 TAC §355.723 (relating to Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs).

(c) If an individual's TxHmL Program services and CFC services are suspended or terminated, a program provider must not submit a claim for on-site individualized skills and socialization or off-site individualized skills and socialization provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination.

(d) HHSC does not pay a program provider for on-site individualized skills and socialization or off-site individualized skills and socialization, or recoups any payments made to the program provider for on-site individualized skills and socialization or off-site individualized skills and socialization, if:

(1) the individual receiving individualized skills and socialization is, at the time individualized skills and socialization was provided, ineligible for the TxHmL Program;

(2) individualized skills and socialization is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

(3) individualized skills and socialization is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

(4) individualized skills and socialization is provided during a period of time for which the individual did not have an LOC determination;

(5) individualized skills and socialization is not provided in accordance with a signed, dated, and authorized IPC that includes on-site individualized skills and socialization or off-site individualized skills and socialization;

(6) individualized skills and socialization is not provided in accordance with the individual's PDP or implementation plan;

(7) individualized skills and socialization is provided before the individual's enrollment date into the TxHmL Program;

(8) individualized skills and socialization is not provided in accordance with this subchapter;

(9) individualized skills and socialization is not provided in accordance with the TxHmL Program Billing Requirements;

(10) individualized skills and socialization is not documented in accordance with the TxHmL Program Billing Requirements;

(11) the program provider does not comply with 40 TAC §49.305 (relating to Records);

(12) the claim for individualized skills and socialization does not meet the requirements in 40 TAC §49.311 (relating to Claims Payment) or the TxHmL Program Billing Requirements;

(13) HHSC determines that individualized skills and socialization would have been paid for by a source other than the TxHmL Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for individualized skills and socialization;

(14) individualized skills and socialization is provided by a service provider who does not meet the qualifications to provide individualized skills and socialization as described in the TxHmL Program Billing Requirements;

(15) individualized skills and socialization was paid at an incorrect LON because the information entered in the HHSC data system from a completed ID/RC Assessment is not identical to the information on the completed ID/RC Assessment; or

(16) individualized skills and socialization was not provided.

(e) HHSC does not pay a program provider for day habilitation, or recoups any payments made to the program provider for day habilitation, if day habilitation is provided after March 1, 2023, even if an individual’s IPC includes day habilitation after March 1, 2023.

(f) HHSC conducts provider fiscal compliance reviews, also known as billing and payment reviews, in accordance with rules governing the TxHmL Program and the TxHmL Program Billing Requirements to determine whether a program provider is in compliance with this subchapter.

§262.921. Add-on Rate.

(a) A program provider may request the add-on rate for off-site individualized skills and socialization described in §262.919(b) of this subchapter (relating to Program Provider Reimbursement for Individualized Skills and Socialization) for an individual by submitting the following documentation to HHSC:

(1) a completed HHSC Add-on Rate Request Form;

(2) the most recent ICAP scoring booklet;

(3) the most recent ID/RC Assessment;

(4) the most recent PDP;

(5) the most recent implementation plan for individualized skills and socialization; and

(6) other documentation that supports the individual’s request for an add-on rate, which may include:

(A) the behavior support plan;

(B) a physician’s order;

(C) an assessment completed by a service provider of a professional therapy;

(D) the nursing assessment; and

(E) the CFC PAS/HAB assessment.

(b) HHSC approves a request made in accordance with subsection (a) of this section if the documentation submitted to HHSC demonstrates that to participate in off-site individualized skills and socialization, the individual requires more service provider support than the individual typically receives. The requirement for additional support may be because of the individual’s mobility, medical, or behavioral needs.

(c) HHSC may review an approved add-on rate at any time to determine if it is appropriate. If HHSC reviews an add-on rate, a program provider must submit documentation supporting the add-on rate to HHSC in accordance with HHSC's request.

(d) HHSC notifies a program provider that an add-on rate is approved or denied through the HHSC data system.

(e) A program provider may request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing) if HHSC:

(1) denies a request made in accordance with subsection (a) of this section; or

(2) denies an add-on rate based on a review described in subsection (c) of this section.