

Audit Report

# Oversight of the HHSC Home and Community-Based Services (HCS) Program

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HHS Regulatory Services Division

and

HHS Contract Administration and Provider  
Monitoring



**Inspector  
General**

Texas Health  
and Human Services

November 22, 2022

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HHS Regulatory Services Division  
and HHS Contract Administration and Provider Monitoring

## Results in Brief

### Why OIG Conducted This Audit

The Texas Health and Human Services (HHS) Office of Inspector General Audit and Inspections Division (OIG Audit) conducted an audit of the Texas Health and Human Services Commission (HHSC) Home and Community-Based Services (HCS) program oversight by the HHS Regulatory Services Division and HHS Medicaid and CHIP Services (MCS) Contract Administration and Provider Monitoring (CAPM).

During state fiscal year 2021, OIG Audit conducted audits of three HCS providers. Through unannounced site visits to 25 three- and four- person residential homes, these audits identified inconsistent compliance with HHSC's health and safety requirements, which indicated risks to Medicaid beneficiaries. OIG Audit conducted this audit of the oversight of HCS program providers to assess whether the residential review process effectively (a) identified and communicated conditions and needs for correction and (b) followed up with providers to ensure corrections were made.

During the period from September 1, 2019, through December 31, 2021, the HCS program contracted with 663 providers, served an average of 8,603 Medicaid beneficiaries in three- and four-person homes, and reimbursed \$2.6 billion in claims.

### Overall Conclusion

Texas Health and Human Services (HHS) Long Term Care Regulation (LTCR), part of the HHS Regulatory Services Division, (a) accurately recorded the certification and review status of three- and four-person residential homes (homes) and (b) initiated a pilot program within its quality assurance review process to improve the quality and consistency of residential reviews. However, LTCR did not consistently (a) conduct residential reviews timely, (b) calculate residential review scores correctly, (c) communicate results to Home and Community-Based Services (HCS) program providers, (d) document follow-up, or (e) ensure corrective action was taken to resolve identified issues.

In addition, HHS Medicaid and CHIP Services (MCS) Contract Administration and Provider Monitoring (CAPM) should continue to use the revised template for new providers and update all existing HCS program provider contracts using the revised contract template for community-based services.

### Key Results

LTCR did not ensure that all homes received an on-site review at least once every 12 months as required by Texas Human Resources Code. When LTCR performed subsequent residential reviews of homes, it did not use previous residential review results to validate whether failed checklist requirements, which did not require evidence of correction at the time, were corrected. LTCR also did not always correctly classify or designate some checklist requirements.

Additionally, LTCR's residential review scores did not always match (a) residential review scores in the residential review database, (b) the residential review scores communicated to HCS program providers, or (c) the Texas HHS Office of Inspector General (OIG) Audit and Inspection Division's (OIG Audit's) recalculated residential review scores. LTCR also misclassified or did not evaluate some Texas Health and Human Services (HHSC) Waiver Survey and Certification Residential Checklist (HHSC Residential Checklist) requirements and did not inform HCS program providers of residential review results as required.

Further, LTCR did not always (a) provide evidence that it followed up when HCS program providers did not submit evidence of correction, (b) document all evidence of correction submission dates, reviews, and approvals, (c) submit photographs to document failed checklist requirements when required, and (d) ensure HCS program providers corrected previously failed checklist requirements that required evidence of correction.

## Summary of Review

The objective of the audit was to determine whether the HCS program's (a) residential reviews aligned with certification requirements and enforcement remedies, (b) residential reviewers used the HHSC Waiver Survey and Certification Residential Checklist correctly and consistently, and (c) residential review results were maintained and analyzed.

The audit scope covered three- and four-person residential homes for the period from September 1, 2019, through December 31, 2021.

## Background

The HCS program enables Medicaid beneficiaries with intellectual and developmental disabilities to live in community-based settings and avoid institutionalization in intermediate care facilities. These community-based settings include homes managed by private HCS program providers. HHSC contracts with private HCS program providers to coordinate and monitor the delivery of individualized services and supports to Medicaid beneficiaries. The HCS program is available to Texans of any age not living in an institutional setting who meet HHSC's eligibility criteria.

## Management Response

The HHS Regulatory Services Division and CAPM agreed with the audit recommendations and indicated corrective actions have been completed or would be implemented by December 2024.

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Also, LTCR did not always efficiently refer cases to HHS Regulatory Enforcement (Regulatory Enforcement), part of the HHS Regulatory Services Division, to timely apply enforcement remedies. Finally, HCS program providers who contracted with HHSC prior to November 2020 have outdated contracts.

## Recommendations

OIG Audit offered recommendations to LTCR, Regulatory Enforcement, and CAPM, which, if implemented will help ensure the health and safety of Medicaid beneficiaries and compliance with requirements. The recommendations include:

- LTCR should review all homes within required time frames.
- LTCR should:
  - (a) Update the Residential Reviewer Manual to be consistent with the HHSC Residential Checklist available to HCS program providers and the public and (b) update the HHSC Residential Checklist to clearly distinguish which classifications are permitted for checklist requirements.
  - Ensure (a) all elements of the HHSC Residential Checklist are fully and correctly completed, (b) residential review scores are correctly reflected in the residential review database, and (c) residential review reports accurately reflect residential review scores. LTCR should also consistently communicate residential review results to HCS program providers in writing.
- LTCR should ensure the Residential Reviewer Manual (a) provides reviewers sufficient and clear guidance for when to photograph evidence to support a failed significant risk checklist requirement and (b) requires that residential reviewers access the previous review to ensure any previously identified failed checklist requirements were resolved as the residential review is performed. LTCR should also periodically monitor residential review results for failed checklist requirements occurring across multiple residential reviews.
- LTCR, Regulatory Enforcement, and CAPM should identify opportunities to streamline the enforcement and referral process. This may include (a) clarifying roles and responsibilities between contract-based enforcement actions and regulatory enforcement actions to define each division's authority and responsibility related to HCS program oversight and (b) identifying other opportunities to efficiently address issues with HCS program provider compliance.
- CAPM should:
  - Continue to use the revised contract template for new contracts.
  - Update all existing HCS program provider contracts using the revised contract template for community-based services. At a minimum, these updates should incorporate or reference currently available enforcement actions.

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# Audit Overview

## Overall Conclusion

Texas Health and Human Services (HHS) Long Term Care Regulation (LTCR), part of the HHS Regulatory Services Division, (a) accurately recorded the certification and review status of three- and four-person residential homes (homes) and (b) initiated a pilot program within its quality assurance review process to improve the quality and consistency of residential reviews. However, LTCR did not consistently:

- Conduct residential reviews timely.
- Calculate residential review scores correctly.
- Communicate results to Home and Community-Based Services (HCS) program providers.
- Document follow-up.
- Ensure corrective action was taken to resolve identified issues.

In addition, LTCR, Regulatory Enforcement, and HHS Medicaid and CHIP Services (MCS) Contract Administration and Provider Monitoring (CAPM) should identify opportunities to streamline the enforcement and referral process. Also, CAPM should continue to use the revised contract template for new contracts and

### Objective

To determine whether the Texas Health and Human Services Commission (HHSC) HCS program's (a) residential reviews aligned with certification requirements and enforcement remedies, (b) residential reviewers used the HHSC Waiver Survey and Certification Residential Checklist (HHSC Residential Checklist) correctly and consistently, and (c) residential review results were maintained and analyzed.

### Scope

The audit scope covered three- and four-person residential homes (homes) for the period from September 1, 2019, through December 31, 2021.<sup>1</sup>

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<sup>1</sup> The audit scope spanned a 28-month period that included (a) state fiscal years 2020 and 2021 and (b) part of state fiscal year 2022.

update all existing HCS program provider contracts using the revised contract template for community-based services.

## Key Audit Results

LTCR did not ensure that all homes received an on-site review at least once every 12 months<sup>2</sup> as required by Texas Human Resources Code. When LTCR performed subsequent residential reviews<sup>3</sup> of homes, it did not use previous residential review results to validate whether failed checklist requirements<sup>4</sup> were corrected. LTCR also did not always correctly classify or designate some checklist requirements.

Additionally, LTCR's residential review scores did not always match (a) residential review scores in the residential review database, (b) the residential review scores communicated to HCS program providers, or (c) the Texas HHS Office of Inspector General (OIG) Audit and Inspection Division's (OIG Audit's) recalculated residential review scores.<sup>5</sup> LTCR also misclassified or did not evaluate some Texas Health and Human Services (HHSC) Waiver Survey and Certification Residential Checklist (HHSC Residential Checklist) requirements and did not inform HCS program providers of residential review results as required.

### What Prompted This Audit

During state fiscal year 2021, OIG Audit conducted audits of three HCS providers. Through unannounced site visits to 25 homes, these audits identified inconsistent compliance with HHSC's health and safety requirements, which indicated risks to Medicaid beneficiaries. OIG Audit conducted this audit of the oversight of HCS program providers to assess whether the residential review process effectively (a) identified and communicated conditions and needs for correction and (b) followed up with providers to ensure corrections were made.

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<sup>2</sup> The Texas Human Resources Code states the review period in months. OIG Audit analyzed data using days; therefore, for this report, time is only expressed in months when citing to the relevant criteria.

<sup>3</sup> Subsequent residential reviews are reviews that occur after the initial residential review.

<sup>4</sup> LTCR residential reviewers designate a residential review checklist requirement as "fail" when it does not meet the stated requirements or supplemental guidance provided to residential reviewers.

<sup>5</sup> OIG Audit applied the results in the source documentation completed by residential reviewers to the Home and Community-based Services Handbook formula for calculating residential review scores. OIG Audit used these recalculated residential review scores to validate the accuracy of records and communications to HCS program providers.



Further, LTCR did not always:

- Provide evidence that it followed up when HCS program providers did not submit evidence of correction.
- Document all evidence of correction submission dates, reviews, and approvals.
- Submit photographs to document failed checklist requirements when required.
- Ensure HCS program providers corrected previously failed checklist requirements.

Also, LTCR did not always efficiently refer cases to HHS Regulatory Enforcement (Regulatory Enforcement), part of the HHS Regulatory Services Division, to timely apply enforcement remedies. Finally, HCS program providers who contracted with HHSC prior to 2020 have outdated contracts. A revised contract template for community-based services was put into use in November 2020.

OIG Audit offered recommendations to LTCR, Regulatory Enforcement, and CAPM, which, if implemented, will help ensure the health and safety of Medicaid beneficiaries and compliance with applicable requirements.

OIG Audit presented preliminary audit results, issues, and recommendations to the HHS Regulatory Services Division and CAPM in a draft report dated October 20, 2022. The HHS Regulatory Services Division and CAPM agreed with the audit recommendations and indicated corrective actions have been completed or would be implemented by December 2024. Management responses from the HHS Regulatory Services Division are included in the report following each recommendation, and the management response from CAPM follows recommendation 4b.

OIG Audit recognizes the unique challenges LTCR faced as a result of the COVID-19 public health emergency, which occurred during the audit scope period and impacted monitoring and operations. OIG Audit thanks management and staff at LTCR, Regulatory Enforcement, and CAPM for their cooperation and assistance during this audit. Although LTCR and CAPM were formally engaged for this audit, Regulatory Enforcement was identified as having a role in enforcement remedies for HCS program oversight and was specifically included for that purpose.

The “Detailed Audit Results” section of this report presents additional information about the audit results.

OIG Audit communicated other, less significant issues to LTCR in a separate written communication.

## Key Program Data

Three HHS units—LTCR, Regulatory Enforcement, and CAPM—oversee the processes for (a) detecting HCS program provider health and safety violations and (b) enforcing remedies for HCS program provider violations. Specifically:

- LTCR is located within the HHS Regulatory Services Division and (a) provides regulatory certification for and oversight of HCS program providers, (b) conducts announced initial certification and recertification surveys, (c) conducts unannounced intermittent surveys,<sup>9</sup> and (d) conducts unannounced residential reviews of each HCS program provider home, which are within the scope of this audit.

### HCS Program Coverage in Texas for the period from September 1, 2019, through December 31, 2021.

- Contracted providers: 663
- Counties: 209
- Average Medicaid beneficiaries reported: 8,603<sup>6,7</sup>
- Homes reviewed: 4,238
- Reimbursed claims: \$2.6 billion<sup>8</sup>

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<sup>6</sup> The average reported is based on the number of Medicaid beneficiaries in three- and four-person homes as reported in HHSC’s *Annual Report Regarding Long-term Care Regulation* for state fiscal years 2020 and 2021.

<sup>7</sup> Texas HHSC, *Texas Health and Human Services Commission Annual Report Regarding Long-term Care Regulation: Fiscal Year 2020* (Mar. 1, 2021) and *Texas Health and Human Services Commission Annual Report Regarding Long-Term Care Regulation: March 2022* (Mar. 1, 2022).

<sup>8</sup> Reimbursed claims to HCS program providers are inclusive of all HCS program services, including those associated with two-person homes. It does not include other community-based programs that may also be served by these program providers.

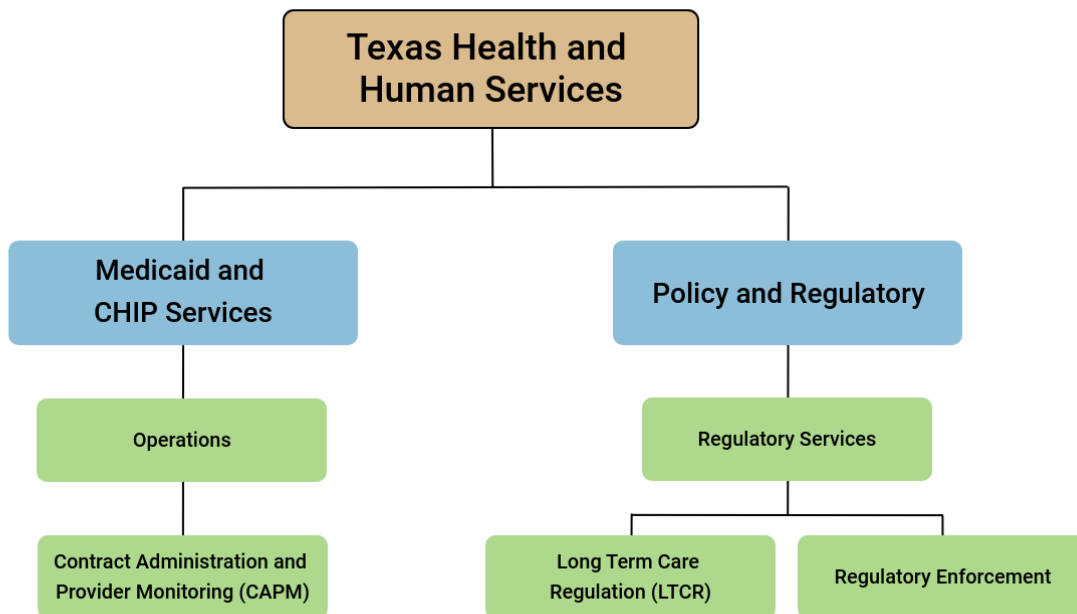
<sup>9</sup> Intermittent surveys are unannounced and conducted at the discretion of LTCR. These surveys are based on, among other factors, complaints; follow-up to residential reviews; abuse, neglect, or exploitation allegations; or deaths.

- Regulatory Enforcement, also located within the HHS Regulatory Services Division, determines and administers appropriate enforcement remedies based on referrals from LTCR.
- CAPM, located within the HHS Medicaid and CHIP Services Division, (a) establishes contracts with program providers and (b) provides contract oversight and administration.

LTCR, Regulatory Enforcement, and CAPM can each impose certain enforcement actions independently but coordinate for some enforcement actions.

Figure 1 shows the organization structure within HHS for LTCR, Regulatory Enforcement, and CAPM.

**Figure 1: LTCR, Regulatory Enforcement, and CAPM Within HHS Organization**



Source: OIG Audit

### Residential Review Process

Using the HHSC Residential Checklist, LTCR conducts annual, unannounced residential reviews of each home managed by an HCS program provider to determine if the home provides a healthy, safe, and comfortable environment that complies with HCS certification principles.

To prepare for each residential review, the assigned residential reviewer makes any necessary travel arrangements; prints the home's site profile, which includes general information about the home such as location and home type; confirms that the home is still open; and prepares introduction and authorization documents.

Upon arrival to the home under review, the residential reviewer presents introduction and authorization documents to the home's staff and explains the review process. The residential reviewer then conducts the residential review using a printed, paper-based version of the HHSC Residential Checklist. Before leaving the home, the residential reviewer (a) communicates to the home's staff any noncompliant conditions associated with significant risk checklist requirements and the timeline for the HCS program provider to correct them and (b) obtains a signature on the HHSC Residential Checklist from the home's staff.

Within one week of conducting the residential review, the residential reviewer enters the results for each checklist requirement into the residential review database, which calculates and records the residential review score. At this time, the residential reviewer also uploads any photographic evidence or other documentation obtained to support the residential review results.

Within 21 days of conducting the residential review, the residential reviewer prepares and mails the residential review report, which includes the residential review score and details any failed checklist requirements, to the HCS program provider. If evidence of correction is required, the timeline for correction is communicated to the HCS program provider through the residential review report. LTCR reviews and approves any evidence of correction upon receipt from an HCS program provider.

### **LTCR Plans and Programs**

HCS program providers are not licensed but must be in continuous compliance with HCS certification principles in order to provide services to Medicaid beneficiaries. Since LTCR does not have licensure authority to enforce HCS program requirements with program providers, LTCR must rely on coordination with both (a) Regulatory Enforcement and (b) CAPM, which is responsible for initiating and managing contracts with HCS program providers. At the time of this report, LTCR is in the process of implementing the HCS Certification Principle

Rule Rewrite Project Plan. This plan was limited to, among other goals, (a) selected HCS certification principles<sup>10</sup> pertaining to health and safety issues within LTCR's jurisdiction and (b) incorporation of the HHSC Residential Checklist into the corresponding rules. The plan will incorporate the HHSC Residential Checklist into LTCR's regulatory chapter and improve communication and independent enforcement of requirements with HCS program providers. The plan has three phases, and LTCR anticipates the last phase will be completed by May 31, 2023.

Starting in 2021, LTCR expanded its quality assurance review process to include HCS residential reviews and initiated a pilot program intended to promote consistent use of the HHSC Residential Checklist during residential reviews conducted statewide. LTCR initiated this pilot program in LTCR Region 6 before expanding to all regions. The pilot program for LTCR Region 6 began on November 1, 2021, and was still operating as of the end of audit fieldwork in July 2022. The purpose of the process established through the pilot program is to ensure (a) the HHSC Residential Checklist contains accurate and consistent information before being presented to the HCS program provider and (b) residential reviews demonstrate:

- Consistency
- Quality
- Efficiency
- Accountability

## **Auditing Standards**

### **Generally Accepted Government Auditing Standards**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>10</sup> The selected HCS certification principles are located in 40 Tex. Admin. Code §§ 9.172 through 9.180.

# Detailed Audit Results

OIG Audit analyzed (a) a population of 4,238 residential reviews and (b) failed significant risk and non-significant risk checklist requirements identified in those residential reviews. OIG Audit also reviewed and analyzed three unique samples of 30 residential reviews each against various requirements. LTCR performed these residential reviews during the period from September 1, 2019, through December 31, 2021.

The following sections of this report provide additional detail about the findings of noncompliance identified by OIG Audit.

Unless otherwise described, any year referenced is the state fiscal year, which covers the period from September 1 through August 31.

# Residential Review Time Frames

## Chapter 1: LTCR Did Not Consistently Review Homes Timely

LTCR accurately recorded dates (a) when residential reviews were conducted, (b) for scheduling timely follow-up and subsequent residential reviews, and (c) when homes opened. However, LTCR did not consistently conduct unannounced on-site reviews of homes managed by HCS program providers timely. Specifically, LTCR (a) did not ensure that all homes received a residential review within 365 days of the previous review as required. Texas Human Resources Code requires LTCR to conduct unannounced on-site reviews at least every 12 months for each home that receives services from HCS program providers.<sup>11,12</sup>

### Timely Residential Reviews of Homes

Of the 4,238 unannounced on-site residential reviews LTCR conducted between September 1, 2019, and December 31, 2021, LTCR did not perform 2,267 (53.5 percent) of these reviews within 365 days of the previous review as required.<sup>13</sup> Specifically, of these 2,267 residential reviews due during the audit scope:

- 833 were performed more than a year from the previous residential review—ranging between 366 days and 833 days and averaging 483 days after the previous review.
- 1,434 were not performed or recorded in the residential review database for up to 849 days following the previous residential review.<sup>14</sup>

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<sup>11</sup> Tex. Hum. Res. Code § 161.076 (June 11, 2009).

<sup>12</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 1 (May 5, 2014).

<sup>13</sup> OIG Audit used a standard of 365 days to determine if LTCR performed residential reviews every 12 months or annually.

<sup>14</sup> LTCR may have completed residential reviews for some of these 1,434 homes but not yet entered the residential reviews into its residential review database. OIG Audit was only able to evaluate reviews entered into LTCR's residential review database.

Additionally, OIG Audit identified 168 homes that were open for at least 365 days during the audit scope, but as of the end of the audit scope on December 31, 2021, had not had a residential review performed and recorded during the scope of the audit. These 168 homes were due for at least one residential review during the audit scope.

LTCR may be unable to reasonably ensure the health and safety of Medicaid beneficiaries without timely observations of Medicaid beneficiaries and their living conditions.

### Impact of the COVID-19 Public Health Emergency

LTCR completed an average of (a) 11.4 residential reviews per individual residential reviewer during the 28 weeks prior to the COVID-19 public health emergency, which covered the period from September 1, 2019, through March 14, 2020, and (b) 10.0 residential reviews per individual residential reviewer per week during the last 78-week period of the audit scope, which covered the period from July 5, 2020, through December 31, 2021. OIG Audit recognizes this decline was in response to the COVID-19 public health emergency and increased LTCR’s review backlog.

Table 1 illustrates the average the number of residential reviews performed by residential reviewers on a weekly basis before and during the COVID-19 public health emergency.

**Table 1: Average Number of Residential Reviews Performed Weekly by Residential Reviewers**

Time Frame	Average Weekly Residential Reviews Per Residential Reviewer
Prior to the COVID-19 public health emergency (January 1, 2019, through March 14, 2020)	11.4
During the early stages of the COVID-19 public health emergency (March 15, 2020, through July 4, 2020)	1.9
July 5, 2020, through December 31, 2021	10.0

Source: OIG Audit

In addition to the time spent on-site conducting the residential reviews, the review process includes (a) transcribing review results into the residential review database, (b) uploading supporting documents, (c) preparing correspondence to communicate review results, (d) traveling to homes, which may be a significant



distance apart, and (e) managing travel requirements. These tasks may impact residential reviewers' availability to conduct and enter residential review results into the residential review database timely.

When LTCR does not review homes within required time frames, a backlog of unreviewed homes is created or increased, which may impact the health and safety of Medicaid beneficiaries.

## **Recommendation 1a**

LTCR should review all homes within required time frames.

### **Management Response from the HHS Regulatory Services Division**

HHSC agrees with this recommendation and describes its efforts to address this important issue in detail below. The COVID-19 pandemic hindered LTCR's ability to complete HCS home reviews within required timeframes. From March to August 2020, HHSC halted all routine survey activities—anything other than investigations of abuse and neglect and high priority concerns—to support HCS program providers in implementing COVID-19 infection control measures. While critical to protecting the health and safety of individuals in the program, this pause prevented LTCR from completing reviews of residences within required timeframes and resulted in a backlog of required visits.

To ensure timely reviews, develop efficiencies, and strengthen health and safety protections overall, LTCR is revamping its HCS survey process, with a target completion date of fall 2023. Currently, LTCR has two teams of HCS surveyors:

- Waiver contract surveyors, who can write violations against a provider if they identify deficiencies and require providers to come into compliance with HCS certification principles; and
- Residential surveyors, who also go onsite but only to "score" a provider using the 3609 residential survey checklist. If they identify a high-risk concern, residential surveyors can and do refer the issue to a waiver surveyor to cite a violation and require a provider to come into compliance.

This reform effort will eliminate this cumbersome, dual survey process, with all HCS surveyors cross-trained to be waiver surveyors who can cite a provider for violations of their Medicaid contract. This will increase the number of qualified staff who can conduct full regulatory visits—not just residential reviews—from 33 to 58, which should allow for review of homes within required timeframes. It also will allow surveyors to do an on-site visit for *all* group homes under an HCS contract, not just a sample of these homes.

LTCR policy staff are developing rules that must be in effect before these survey process reforms can be implemented. With these new rules, all HCS surveyors will be able to confirm compliance with the residential requirements and issue citations for violations of noncompliance. Regulatory Enforcement staff also can impose administrative penalties if warranted, as outlined in 40 TAC § 9.181.

These rules also will make all HCS certification surveys unannounced, which would allow for residential visits for three- and four-person group homes to comply with state statute. They include new requirements for program providers to increase their oversight of residences, such as complying with several elements on the 3609 residential survey checklist that are not currently in rule.

Finally, this rule project also will revise the HCS certification principles, codify the residential survey checklist in the Texas Administrative Code, and require program providers to more closely oversee HCS host home program providers, which contract with HHSC. HCS providers also will need to ensure the satisfactory condition of the residence in addition to the health and safety of the individual.

### Action Plan

- LTCR will continue its work on these rules until they take effect August 31, 2023, after which its new HCS survey process will be fully implemented.
- HHSC will communicate with providers via a provider letter and offer trainings to providers and survey staff on the new rules and survey process.

- LTCR will use its established, centralized scheduling process, which takes into account risk assessments while also addressing review backlogs.

### **Responsible Manager**

Deputy Associate Commissioner for Survey and Compliance

### **Target Implementation Date**

August 31, 2023

## **Recommendation 1b**

Consistent with its plan to address the backlog of residential reviews, LTCR should consider methods to increase residential reviewer availability to perform residential review functions by (a) streamlining tasks in the residential review process or (b) making other changes. LTCR should consider working with its highest performing residential reviewers to identify efficient residential review processes.

### **Management Response from the HHS Regulatory Services Division**

HHSC agrees with this recommendation and has completed projects to improve processes for residential surveyors over the past year and a half:

- LTCR's Policy and Rules unit developed and distributed a new HCS handbook to staff on August 26, 2022.
- LTCR updated the residential reviewer checklist and improved guidance with clear interpretations for rating checklist items. These improvements provide accurate and efficient completion of the checklist while improving communication of significant risks within the HCS survey area in the HCS handbook published on August 26 and in Internal Memorandum (IM) 22-23, Residential Visit Documentation Guidance; distributed to staff on November 2.

### **Action Plan**

- LTCR will continue developing training on the new checklist and will present it to HCS survey staff in December 2022.

- LTCR will host communication sessions with HCS Program Managers to review and discuss IM 22-23 to improve their support of residential surveyors. LTCR also will conduct training for staff virtually via Microsoft Teams; it will cover annual visits and the items on the updated checklist (form 3609).

### **Responsible Managers**

Director of Policy and Rules (Residential Visit Documentation Guidance release)

Deputy Associate Commissioner for Licensing and Policy Operations (Training for IM 22-23 and Cross-Training of HCS Survey Staff)

### **Target Implementation Date**

August 31, 2023

## Residential Review Results

LTCR performs residential reviews using a paper-based, printed version of the HHSC Residential Checklist, which outlines 50 requirements. Of these 50 checklist requirements, 14 are designated as significant risks to the Medicaid beneficiaries residing in the home under review.<sup>15</sup> There is only one HHSC Residential Checklist that is expected to be used for all residential reviews, but some of the checklist requirements differ based on the number of Medicaid beneficiaries in the home. For example, some HCS checklist requirements are only applicable to four-person homes.

LTCR's performance of residential reviews, including the individual checklist requirement designations, is largely guided by the Residential Reviewer Manual. This manual covers all phases of the residential review process, including prereview, on-site tasks, data entry, and communication of results. The Residential Reviewer Manual is intended to complement the guidance provided publicly through the Home and Community-based Services Handbook, which outlines the rules by which employees and contracted providers are held accountable when providing services, including the performance of residential reviews.

During a residential review, LTCR residential reviewers designate each requirement on the HHSC Residential Checklist as "pass," "fail," or "n/a" (not applicable). Significant risk checklist requirements require HCS program providers to take either prompt action<sup>16</sup> or immediate action<sup>17</sup> to address failed checklist requirements. The Residential Reviewer Manual provides guidance on how to complete HHSC Residential Checklist requirements, but LTCR also gives latitude for each residential reviewer to use judgment. For example, residential reviewers

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<sup>15</sup> A significant risk is an act or failure to act that has the potential to cause (a) a major adverse effect on the health, safety, or welfare of one or more individuals, (b) emotional or physical harm, or (c) death.

<sup>16</sup> "Prompt action" is an intervention or correction that must be taken by the HCS program provider within 48 hours of the review.

<sup>17</sup> "Immediate action" is an intervention or correction that must be taken by the HCS program provider while the reviewer is on-site.

can determine that a non-significant risk checklist requirement marked "Fail" may result in a reclassification as a significant risk to the health, safety, or welfare of one or more Medicaid beneficiaries residing in the home, requiring prompt or immediate action.

After each residential review, residential reviewers transcribe the results into the residential review database. Figure 2 provides a snapshot of the HHSC Residential Checklist, and Appendix C details the complete HHSC Residential Checklist. While Figure 2 includes an example of how checklist requirements are designated as significant risk, either "SR-IA" for conditions requiring immediate action or "SR-PA" for conditions requiring prompt action, the checklist boxes do not otherwise distinguish significant risk requirements from non-significant requirements.

**Figure 2: Snapshot from the HHSC Residential Checklist**

Four-Person Homes		Pass	Fail	N/A
<b>Strength*</b>				
<input type="checkbox"/>	13. Has the fire alarm system been checked annually and does it appear to be in working order? <b>SR-PA</b> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	14. If the home has sprinklers, have they been checked annually and are they unobstructed? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	15. Does the 4-person home have a current fire marshal inspection using NFPA 101 Life Safety Code or International Fire Code? <b>SR-IA</b> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*Check this column to indicate an area of strength.

Source: OIG Audit, obtained from Texas Health and Human Services, Form 3609: Waiver Survey and Certification Residential Checklist, HHS, <https://www.hhs.texas.gov/regulations/forms/3000-3999/form-3609-waiver-survey-certification-residential-checklist> (accessed June 28, 2022)

## Chapter 2.1: LTCR Misclassified or Incorrectly Designated Some Residential Review Results

### Significant Risk Checklist Requirements

LTCR misclassified 68 of 2,977 (2.3 percent) significant risk checklist requirements appearing on 62 separate residential reviews as failed non-significant risks when the requirements should have been classified as failed significant risks. Of these 68 misclassified significant risk checklist requirements, 19 (27.9 percent) were associated with whether HCS program beneficiaries' adaptive equipment, such as shower chairs and lifts, was in good repair.

Classifications for two checklist requirements differed between (a) the HHSC Residential Checklist available to providers and the public<sup>18</sup> and (b) the guidance provided to residential reviewers in the Residential Reviewer Manual.<sup>19,20</sup> For purposes of this report, OIG Audit used the more recent, publicly available version of the checklist.

The residential review database does not have automated controls that prevent LTCR personnel from entering unpermitted classifications for checklist requirements defined by the Residential Reviewer Manual as being significant risks that, if failed, would require either immediate or prompt action and evidence of correction. As a result, when HHSC Residential Checklist requirements are incorrectly classified as non-significant risks in the residential review database, the associated conditions that should require immediate or prompt action may not be addressed timely. This may compromise the health and safety of Medicaid beneficiaries.

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<sup>18</sup> Texas Health and Human Services Commission, Form 3609: Waiver Survey and Certification Residential Checklist (Nov. 2015).

<sup>19</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 8(G) (May 5, 2014).

<sup>20</sup> One of these two checklist requirements was classified as significant risk in one source and non-significant risk in the other source. The other checklist requirement was classified in both sources as significant risk but was designated as significant risk requiring "prompt action" in one source and "immediate action" in the other source.

Appendix B includes a full list of HHSC Residential Checklist requirements classified as significant risks that require either immediate or prompt action as well as those requirements that can be designated as either significant or non-significant risks.

### **Checklist Requirements Designated as Not Applicable**

LTCR designated 367 HHSC Residential Checklist requirements as not applicable when that designation was not permitted.<sup>21</sup> This impacted 224 of the 4,238 (5.3 percent) residential reviews conducted.

The HHSC Residential Checklist and the residential review database do not specify or prevent checklist requirements from being designated as not applicable. Additionally, when HHSC Residential Checklist requirements are not assessed and are incorrectly designated as not applicable on the checklist and in the residential review database, concerns regarding Medicaid beneficiaries' health and safety may not be properly identified and remedied in a timely manner.

### **Recommendation 2.1a**

LTCR should update the HHSC Residential Checklist to clearly distinguish which checklist requirements (a) can only be classified as significant risk and (b) do not permit a designation of not applicable.

#### **Management Response from the HHS Regulatory Services Division**

HHSC agrees with this recommendation. IM 22-23 includes an improved checklist and additional clarification on items identified as a significant risk. It also eliminates the "not applicable" checklist category for high-risk items.

During OIG's audit period, HCS staff also received 10 trainings or re-trainings on the HCS residential survey process and on identifying an immediate threat. These trainings were in response to issues identified by LTCR's Quality Assurance (QA) Unit after preliminary discussions with OIG.

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<sup>21</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 8(A) (May 5, 2014).



## Action Plan

- LTCR will host communications sessions with HCS program managers on IM 22-23 to ensure direct supervisors of surveyors can provide support and clarification to their staff.
- LTCR will finalize training on the new checklist and guidance.

## Responsible Managers

Director of Policy and Rules (Release and communication to Survey Operations)

Deputy Associate Commissioner for Licensing and Policy Operations (Training for IM 22-23 of HCS Survey staff)

## Target Implementation Date

August 31, 2023

## Recommendation 2.1b

LTCR should update the Residential Reviewer Manual to be consistent with the HHSC Residential Checklist available to HCS program providers and the public.

## Management Response from the HHS Regulatory Services Division

LTCR agrees with this recommendation. HHSC provides the public with information about residential visits in the HCS/TxHmL Survey Process Handbook Section 14400, located on the HHSC webpage. The HCS/TxHmL Survey Process Handbook was issued on August 26, 2022, to be consistent with the current residential review checklist and process. To further improve consistency in surveyor application of the handbook and checklist, LTCR developed IM 22-23 to provide guidance to survey staff on how to document collected evidence and complete the checklist.

## Action Plan

- LTCR will codify the improved residential checklist in the Texas Administrative Code so a survey team can survey for provider compliance with the checklist during annual certification and recertification surveys.
- Placing the residential checklist in rule also will influence recommendations 3.1a, 3.2, and 3.3a.

## Responsible Manager

Director of Policy and Rules

## Target Implementation Date

August 31, 2023

## Recommendation 2.1c

LTCR should periodically review the residential review database for misclassified checklist requirements until the database's functionality aligns with Residential Reviewer Manual requirements, including checklist requirements that (a) must be designated as significant risk when failed or (b) cannot be designated as not applicable.

## Management Response from the HHS Regulatory Services Division

HHSC agrees with this recommendation, and in response, LTCR plans to place elements from the residential checklist into rule. With these rules in place, a recertification survey will allow for identification of checklist violations and citations, including for an Immediate Threat, as well as review by LTCR QA and Regulatory Enforcement. Like citations in other LTCR programs, they will be assigned scope and severity and written in accordance with the principles of documentation, which would mitigate the misclassification of regulatory requirements.

LTCR's QA unit also has implemented a pilot in Region 6 to review all HCS residential surveys, and it will be expanded to improve the quality and performance of residential surveys statewide. QA also will add evaluation of the

significant risk questions to its standard audit and check to ensure none are designated as “not applicable.” Finally, QA will conduct an audit for misclassified items and participate in workgroups regarding residential reviewer training and guidance to ensure field processes are aligned.

### **Action Plan**

- LTCR will codify the residential checklist in the Texas Administrative Code so survey teams can survey for provider compliance with the checklist during annual certification and recertification surveys.
- QA will perform reviews of all HCS Residential Surveys statewide and the other activities described in this section.

### **Responsible Managers**

Deputy Associate Commissioner for Survey and Compliance

Deputy Associate Commissioner for Program Operations

### **Target Implementation Date**

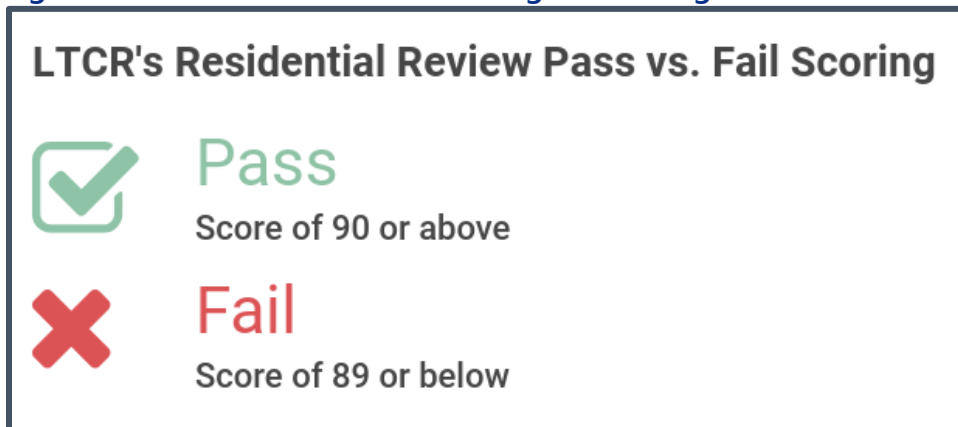
August 31, 2023

## Chapter 2.2: LTCR Did Not Always Accurately Document or Consistently Communicate Residential Review Results

LTCR’s calculated score for each residential review did not always match (a) the residential review score in the residential review database, (b) the residential review score communicated to the applicable HCS program provider, and (c) OIG Audit’s recalculated residential review score. Additionally, LTCR misclassified or did not evaluate some HHSC Residential Checklist requirements and did not inform HCS program providers of residential review results through the required method.

Figure 3 outlines the definitions that LTCR uses to differentiate passing and failing residential review scores assessed for homes during residential reviews.

**Figure 3: LTCR Definitions of Passing and Failing Residential Review Scores**



Source: OIG Audit, based on Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 6(C) (May 5, 2014)

### Residential Review Score Calculation

Each residential review results in a residential review score for the HCS program provider home under review. LTCR calculates each residential review score by deducting, from 100 points,<sup>22</sup> (a) ten points for each failed significant risk

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<sup>22</sup> The highest possible residential review score is 100.

checklist requirement and (b) the total point value for all other failed checklist requirements.<sup>23,24</sup>

OIG Audit tested a nonstatistical sample of 30 residential reviews to determine whether review scores were correctly (a) calculated and (b) communicated to the applicable HCS program providers. For 21 of 30 (70.0 percent) residential reviews tested, the HHSC Residential Checklist did not contain a review score for comparison. Additionally, the HHSC Residential Checklist was missing for two residential reviews tested. As a result, OIG Audit's recalculated residential review scores on those 30 residential reviews<sup>25</sup> tested were only compared to the residential review database and residential review reports sent to HCS program providers. Specifically:

- For 28 of 30 (93.3 percent) residential reviews tested, the residential review score recorded in the residential review database did not match the score recalculated by OIG Audit. For a representative example, on one residential review, the residential review database indicated a passing score of 90, but OIG Audit's recalculated score was 88, which is a failing score that requires evidence of correction. Design flaws in the residential review database resulted in residential review score miscalculations.<sup>26</sup> LTCR was aware of these flaws; however, as of the date of this report, LTCR did not have an estimate for when the database will be updated to repair this problem.
- For 21 of 27 (77.8 percent) residential reviews tested,<sup>27</sup> the residential review score LTCR communicated to the HCS program provider on the

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<sup>23</sup> LTCR calculates the value of each non-significant risk checklist requirement by dividing 100 points by the number of requirements on the HHSC Residential Checklist that were applicable to the residential review.

<sup>24</sup> Home and Community-based Services Handbook, § 14411, v. 17-1 (Oct. 16, 2017).

<sup>25</sup> For the two residential reviews without a documented HHSC Residential Checklist, OIG Audit used the residential review scores in the residential review database to recalculate the residential review scores.

<sup>26</sup> HHSC Long-Term Care Regulation Internal Memorandum #IM 21-51, *Temporary Residential Survey Process in Salesforce*, v. 2 (Dec. 23, 2021).

<sup>27</sup> For 3 of the 30 residential reviews in the sample, LTCR could not provide evidence that it communicated the results to the applicable HCS program provider; therefore, OIG Audit only tested 27 residential reviews to determine whether the residential review score LTCR communicated to the HCS program provider on the residential review report matched the residential review score in the residential review database.

residential review report did not match the residential review score in the residential review database.

LTCR also misclassified or did not evaluate some checklist requirements. Specifically:

- On 8 of 30 (26.7 percent) residential reviews tested, LTCR misclassified failed checklist requirements as significant risk for checklist requirements classified in the Residential Reviewer Manual as non-significant risk without documented justification.<sup>28</sup>
- On 4 of 30 (13.3 percent) residential reviews tested, LTCR did not address all 50 checklist requirements.
- On 1 of 30 (3.3 percent) residential reviews tested, LTCR classified checklist requirements as “not applicable” where not permitted.

When some residential review scores are inaccurately calculated, recorded, or reported, LTCR cannot reliably compare residential reviews across HCS program providers and areas.

### **Notification of Residential Review Results**

LTCR did not always inform HCS program providers of residential review results with a physically mailed letter as required;<sup>29</sup> instead, LTCR provided some residential review results by email or phone. While email accomplishes the primary intent of documenting LTCR’s communication of residential review results to HCS program providers, LTCR residential reviewers did not use a standardized form for each results email sent; therefore, some results emails did not include all necessary elements. Phone calls do not establish a record of the specific content communicated and cannot be verified as existent or accurate.

In some instances, LTCR could not provide documentation that it communicated residential review results. Specifically, of 60 residential reviews tested, LTCR did not provide evidence to demonstrate it communicated the results of

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<sup>28</sup> Since 2017, LTCR has directed residential reviewers to identify non-significant risk checklist requirements that they perceive to rise to the level of significant risk and support the determination.

<sup>29</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 4(D) (May 5, 2014).

10 (16.7 percent) residential reviews to the applicable HCS program providers. Of the 50 remaining residential reviews, LTCR communicated:

- 27 results using a standard template by mail
- 16 results not using a standard template by email
- 7 results by phone

Additionally, LTCR did not always consistently communicate information in residential review results to HCS program providers. Specifically, instead of a specific score, some residential review results included a score range or no score. Further, some residential review results did not specifically communicate the failed checklist requirements. While either email or mail could be an appropriate means of formally communicating and documenting residential review results to an HCS program provider, LTCR does not have a consistent communication process.

## **Recommendation 2.2a**

LTCR should develop controls to ensure (a) all elements of the HHSC Residential Checklist are fully and correctly completed, (b) residential review scores are correctly reflected in the residential review database, and (c) residential review reports accurately reflect residential review scores.

### **Management Response from the HHS Regulatory Services Division**

HHSC agrees with this recommendation and notes that to ensure staff can complete residential reviews, LTCR has implemented a workaround in response to ongoing defects with the Salesforce database. While HHSC IT continues to try to address these Salesforce defects, this interim process requires Program Managers to manually review survey reports to verify them for accuracy and then requires an additional review from QA staff.

However, as part of HCS survey process reform, LTCR plans to discontinue use of Salesforce altogether and instead use the federal database known as the Automated Survey Process Environment, or ASPEN. "Scoring" of surveys will no longer be a practice, as HCS surveyors will be able to issue citations against

program providers for any noncompliance. LTCR QA and Regulatory Enforcement also will review all surveys with findings.

#### Action Plan

- LTCR will continue to communicate with HHSC IT regarding Salesforce fixes until they have been completed, or until the transition to ASPEN occurs by the target date of August 31, 2023.

#### Responsible Manager

Deputy Associate Commissioner for Survey and Compliance

#### Target Implementation Date

August 31, 2023

### Recommendation 2.2b

LTCR should ensure that it (a) communicates residential review results to HCS program providers in a written form with consistent information and (b) retains evidence of this communication.

#### Management Response from the HHS Regulatory Services Division

HHSC agrees with this recommendation and acknowledges that technical problems with Salesforce have resulted in inaccurate results. Residential program managers and administrative assistants do provide written results to HCS program providers following each residential visit. LTCR implemented a process for accurate scoring and documentation with retention of evidence which improves the accuracy of the results and is consistently shared with program providers. This process is contained within the HCS Handbook released August 26, 2022. This process will only be needed until survey reform and the transition to ASPEN occurs.

#### Action Plan

- LTCR Survey Operations will establish, clarify, and reinforce expectations for residential Program Managers regarding consistent written



communication with HCS providers and will reinforce its records retention policy with HCS survey staff.

- LTCR Survey Operations staff will document these expectations in the HCS handbook and notify HCS staff of handbook updates by email.
- LTCR Survey Operations staff will train Residential Program Managers and administrative assistants on expectations and create process maps for reference. These initiatives will be discussed at monthly Program Manager meetings.

**Responsible Manager**

Director of Survey Operations

**Target Implementation Date**

March 1, 2023

## Residential Review Documentation and Evidence of Correction

When a residential review (a) receives an overall failing score of 89 or below or (b) has one or more failed significant risk checklist requirements, LTCR requires the affected HCS program provider to submit evidence of correction.<sup>30</sup> Evidence of correction can include documentation, receipts, photographs, or other support that demonstrates the HCS program provider corrected the failed checklist requirements. When LTCR receives evidence of correction from an HCS program provider, LTCR program managers are responsible for reviewing that evidence to determine whether it sufficiently addresses the noncompliant conditions. In some situations, LTCR program managers may compare photographic evidence submitted by the HCS program providers to photographs taken during the residential review. This comparison allows LTCR program managers to more efficiently assess whether (a) the HCS program provider resolved the cited conditions or (b) LTCR should take further action to enforce HCS program provider compliance.

### **Chapter 3.1: LTCR Did Not Consistently Document the Review and Approval of Evidence of Corrections and Performance of Follow-up**

LTCR did not (a) document follow-up when HCS program providers did not submit evidence of correction or (b) document all evidence of correction submission dates, reviews, and approvals.

#### **Follow-up and Evidence of Correction Submission**

LTCR did not consistently document follow-up when HCS program providers did not submit evidence of correction to LTCR as required.

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<sup>30</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 3(l) (May 5, 2014).

LTCR is required to communicate with and issue written notification to any HCS program provider that does not submit required evidence of correction following an unannounced residential review. Contact is required (a) after 48 hours following completion of the residential review when involving significant risk checklist requirements<sup>31</sup> or (b) within 30 days when involving non-significant risk checklist requirements that resulted in a home receiving a residential review score of 89 or below. LTCR may conduct an intermittent survey of the HCS program provider if it does not receive evidence of correction within a specified amount of time after it has followed up with the HCS program provider.

Table 2 summarizes LTCR’s time frames for (a) HCS program providers to submit evidence of correction and (b) LTCR’s follow-up with HCS program providers that do not submit required evidence of correction.

**Table 2: Summary of LTCR’s Time Frame Milestones for Evidence of Correction Submission and Follow-Up**

Evidence of Correction Milestones	Significant Risk <sup>32</sup> Checklist Requirements Identified	Non-Significant Risk Checklist Requirements Identified
Time frame for HCS program providers to submit evidence of correction	48 hours after completion of review	14 days after receipt of the residential review report
Time frame for LTCR to follow up with HCS program providers if evidence of correction is not submitted	Once time frame to submit has passed	30 days after completion of the residential review
Additional time frame for the HCS program providers to provide evidence of correction after LTCR’s follow-up	24 hours	7 days

Source: OIG Audit, based on Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 5 (May 5, 2014)

<sup>31</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 5(C) (May 5, 2014).

<sup>32</sup> In this context, “significant risk” refers to checklist requirements that require HCS program providers take prompt action within 48 hours of the residential review. Some significant risks require that HCS program providers take immediate action while the residential reviewer is on-site. In those instances, evidence of correction would have been documented with the failed checklist requirement. The Residential Reviewer Manual does not define when LTCR will perform follow-up once the 48-hour deadline passes.

Of 30 tested residential reviews that required evidence of correction, HCS program providers did not submit evidence of correction to LTCR for 4 (13.3 percent) residential reviews, which were all related to non-significant risk checklist requirements. Further, for two of these four residential reviews, LTCR did not have documented support to demonstrate that it notified the applicable HCS program providers of the missing evidence of correction.<sup>33</sup> When HCS program providers do not submit required evidence of correction for failed checklist requirements, LTCR cannot ensure HCS program providers are correcting health and safety issues identified in residential reviews.

### **Documentation of Evidence of Correction Submission Dates, Reviews, and Approvals**

To ensure that actions taken by HCS program providers sufficiently address failed checklist requirements, LTCR must review and approve all evidence of correction.<sup>34</sup>

LTCR uses its residential review database to track the date it receives evidence of correction from an HCS program provider; however, LTCR did not document the date when it received evidence of correction for 5 of 26 (19.2 percent) tested residential reviews that had evidence of correction submissions.

In addition, for 19 of the 26 (73.1 percent) residential reviews for which HCS program providers submitted evidence of correction, LTCR did not provide OIG Audit with support to demonstrate that it reviewed and approved the evidence of correction to ensure the evidence demonstrated full resolution of the noncompliant conditions identified in the residential review. For example, one home had direct care staff who were unable to demonstrate an understanding of the medications administered to the Medicaid beneficiaries residing in the home. In this instance, evidence of correction was required because this checklist requirement was classified as a significant risk and the home also received a failing residential review score; however, LTCR could not provide documented

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<sup>33</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 5(F) (May 5, 2014).

<sup>34</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 5(E) (May 5, 2014).

evidence that the program manager reviewed and approved the evidence of correction submitted by the affected HCS program provider.

While LTCR requires review and approval of evidence of correction for failed residential review checklist requirements and uses the residential review database to track when the overall residential review was reviewed and closed out, the Residential Reviewer Manual does not provide clear guidance on how LTCR program managers should document their review and approval of evidence of corrections. Without a defined and consistent process to demonstrate review and approval of an HCS program provider's evidence of correction, noncompliant conditions may remain uncorrected, which may impact the health and safety of Medicaid beneficiaries.

### **Recommendation 3.1a**

LTCR should update the Residential Reviewer Manual to specify how LTCR staff document residential review elements, including when evidence of corrections are due, when follow-up should be conducted, and when evidence of corrections are received.

#### **Management Response from the HHS Regulatory Services Division**

HHSC agrees with this recommendation, and LTCR has developed a checklist for survey staff to assist with residential visit documentation. It includes guidance regarding evidence collection and how to evaluate a significant risk versus a non-significant risk. Within the HCS handbook released August 26, 2022, are clear instructions and processes for addressing significant risks with providers, evidence of correction, Program Manager approvals of safety plans, and the intra-agency referral process.

#### **Action Plan**

- IM 22-23 Residential Visit Documentation Guidance took effect November 2, 2022.
- LTCR's Policy and Rules unit developed and distributed a new HCS handbook to staff on August 26.

### Responsible Manager

Director of Policy and Rules

### Target Implementation Date

Completed November 2, 2022

## Recommendation 3.1b

LTCR should have policies and procedures that define how LTCR program managers demonstrate review and approval of evidence of corrections.

### Management Response from the HHS Regulatory Services Division

HHSC agrees with this recommendation and notes that the HCS handbook says Program Managers must approve a safety plan to address any significant risk identified on the checklist before a reviewer can leave an HCS residence. The reviewer also must send the provider an email summarizing the discussion, as well as the elements a provider must include in the evidence of correction (EOC).

### Action Plan

- LTCR will establish written expectations on how HCS Program Managers review and approve evidence and safety plans. HHSC will establish additional expectations for ensuring consistency across residential teams.
- HCS survey process reform also will strengthen compliance with this expectation, as waiver contract surveys include the use of Plans of Correction and Plans of Removal for each violation or Immediate Threat.

### Responsible Manager

Director of Survey Operations

### Target Implementation Date

August 31, 2023

## Chapter 3.2: LTCR Residential Reviewers Could Better Support Failed Checklist Requirements with Photographic Evidence

LTCR residential reviewers are required to take photographs to document and support all failed significant risk checklist requirements. Residential reviewers should document in detail and photograph all issues that support the judgmental reclassification of a non-significant risk checklist requirement to significant risk. While residential reviewers are not required to take photographs to support failed non-significant risk checklist requirements, they are permitted to take photographs when the reviewer determines it is beneficial and appropriate.<sup>35</sup>

Any photographs taken during a residential review must be submitted with the residential review report.<sup>36,37</sup> For 14 of 18 (77.8 percent) failed significant risk checklist requirements, the residential reviewer did not submit photographs to document failed checklist requirements, including 11 significant risk checklist requirements that could be reasonably supported by photographs.

Photographic evidence may provide (a) HCS program providers with more detailed information to determine how to correct noncompliant conditions, (b) LTCR program managers with a way to more effectively determine whether failed checklist requirements were addressed, and (c) LTCR or Regulatory Enforcement with more evidence to determine appropriate enforcement remedies for failed checklist requirements that remain uncorrected.

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<sup>35</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, §§ 3(J) and 5(C) (May 5, 2014).

<sup>36</sup> Residential review reports are mailed to HCS program providers and detail specific results from residential reviews, including the checklist requirements that require correction and the time frame for making those corrections.

<sup>37</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 3(J) (May 5, 2014).

## **Recommendation 3.2**

LTCR should ensure the Residential Reviewer Manual provides sufficient and clear guidance related to when photographs should be taken to support a residential review with failed significant risk checklist requirements identified.

### **Management Response from the HHS Regulatory Services Division**

HHSC agrees with this recommendation, and LTCR has developed a checklist for survey staff to assist with residential visit documentation, including guidance on evidence collection and expectations for when a checklist item is a significant risk versus a non-significant risk.

LTCR's photography policy, which is incorporated into the current HCS Handbook, provides guidance on when and how to take photographs.

#### **Action Plan**

IM 22-23 Residential Visit Documentation Guidance took effect November 2, 2022. Photography guidance was issued on August 26, 2022.

#### **Responsible Manager**

Director of Policy and Rules

#### **Target Implementation Date**

Completed November 4, 2022



## Chapter 3.3: LTCR Did Not Ensure Previously Failed Checklist Requirements Were Corrected

When conducting reviews of homes it had previously reviewed, LTCR did not use previous residential review results to validate whether failed checklist requirements were corrected. OIG Audit analyzed 2,977 failed checklist requirements and identified 77 (2.6 percent) instances of failed checklist requirements, appearing on 69 unique residential reviews, that residential reviewers identified as noncompliant during two or more consecutive residential reviews.

For example, in one home, two failed checklist requirements remained uncorrected over three consecutive residential reviews spanning 714 days. These two failed checklist requirements involved the availability and accurate completion of medication administration records and staff training for those administering medications. In order to help ensure Medicaid beneficiaries (a) receive the intended benefits of prescribed medications and (b) are protected from potentially dangerous medication errors, it is important that HCS program providers address issues related to administering medications and documenting when medications are dispensed.

### Significant Risk Checklist Requirements

A significant risk is an act or failure to act that has the potential to cause (a) a major adverse effect on the health, safety, or welfare of one or more individuals, (b) emotional or physical harm, or (c) death. Significant risk checklist requirements necessitate that HCS program providers take either prompt action or immediate action to address failed checklist requirements. Appendix B includes a full list of HHSC Residential Checklist requirements designated as significant risks.

LTCR requires HCS program providers to submit evidence of correction when (a) a home receives a failing review score of 89 or below or (b) a residential reviewer identifies one or more failed significant risk checklist requirements. Otherwise, when a home receives a passing review score between 90 and 99 with no significant risk checklist requirements failed, LTCR notifies the HCS program provider that correction and compliance will be assessed during subsequent residential reviews. For most homes, this assessment is conducted during the home's next annual review. During the subsequent annual review, LTCR requires evidence of correction for any of the checklist requirements that were not

corrected;<sup>38</sup> however, there is no evidence that LTCR required evidence of correction for the 77 failed checklist requirements that remained uncorrected.

From the population of 4,238 reviews that LTCR conducted during the audit scope, OIG Audit generated a nonstatistical sample of 30 residential reviews, covering 30 unique homes, that (a) contained one or more failed non-significant risk checklist requirements and (b) received a passing residential review score of 90 or above. Of the 30 unique homes included in the sample, 14 (46.7 percent) homes received a subsequent residential review.

Before each residential review, residential reviewers print and review a site profile, which includes general information about the home;<sup>39</sup> however, the site profile lacks detail on previous residential review results and failed checklist requirements. Further, there is not a specific requirement for residential reviewers to seek the previous review details. For all 14 homes that received a subsequent residential review, LTCR could not provide documentation demonstrating that previous review results or previously failed checklist requirements were reviewed prior to the subsequent review. If residential reviewers are not aware of previously failed checklist requirements during subsequent reviews, (a) the noncompliant conditions may be prolonged and (b) Medicaid beneficiaries' long-term health and safety may be compromised.

Additionally, in one of the 30 (3.3 percent) residential reviews included as part of the sample testing, reviewers failed the same checklist requirement on two consecutive residential reviews.<sup>40</sup> Specifically, the applicable HCS program provider's legal posting was not present and visible within the home.

If failed checklist requirements remain uncorrected during a subsequent residential review, the condition could persist over multiple years, increasing the health and safety risk to Medicaid beneficiaries.

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<sup>38</sup> Home and Community-based Services Handbook, § 14411, v. 17-1 (Oct. 16, 2017).

<sup>39</sup> Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 2(A)(iii) (May 5, 2014).

<sup>40</sup> This residential review was included in OIG Audit's analysis that identified 69 unique residential reviews with 77 instances of failed checklist requirements that residential reviewers identified as noncompliant during two or more consecutive residential reviews.

### **Recommendation 3.3a**

LTCR should update the Residential Reviewer Manual to require that, before each subsequent residential review, the assigned residential reviewer access the results of the previous review to ensure any identified failed checklist requirements were resolved.

#### **Management Response from the HHS Regulatory Services Division**

HHSC agrees with this recommendation, and LTCR developed a checklist for survey staff to assist with residential visit documentation. See our response to recommendation 3.3b for details on accessing results of previous reviews.

#### **Action Plan**

IM 22-23 Residential Visit Documentation Guidance was published November 2, 2022.

#### **Responsible Manager**

Director of Policy and Rules

#### **Target Implementation Date**

Completed November 4, 2022

### **Recommendation 3.3b**

LTCR should (a) update the site profile for each home to highlight previously failed checklist requirements and (b) require the site profile be present with the residential reviewer while conducting an on-site residential review.

#### **Management Response from the HHS Regulatory Services Division**

HHSC agrees with this recommendation but notes this would require HHSC's Salesforce vendor to enhance the system to add the site profile. Given ongoing Salesforce defects, it is unclear if this would be feasible. Surveyors can add information into the comments section of the survey or upload a document to the location. In lieu of a system change, a requirement that surveyors review

previous residential survey results in NeuDocs or Salesforce can be added to the HCS handbook.

#### Action Plan

- LTCR will establish expectations regarding review of prior residential survey results within the NeuDocs or Salesforce databases and document this in the HCS handbook.
- Survey Operations will ensure staff receives training on these new expectations. *Note:* Implementation of survey process reform will also affect these expectations, as review of an HCS provider's prior violations is already part of the waiver survey process and Regulatory Enforcement review. Repeat patterns of provider noncompliance are subjected to a higher range for administrative penalties, and Enforcement incorporates this factor as part of its penalty assessment.

#### Responsible Manager

Director of Survey Operations

#### Target Implementation Date

March 1, 2023

### Recommendation 3.3c

LTCR should periodically monitor residential review results for failed checklist requirements occurring across multiple residential reviews.

#### Management Response from the HHS Regulatory Services Division

HHSC agrees with this recommendation, and LTCR logistics will generate reports for tracking and monitoring. As noted, QA has implemented its Region 6 pilot to review HCS residential surveys, and it will be expanded statewide. QA also will be auditing multiple HCS residential reviews to identify any trends with failed checklist items.

### **Action Plan**

- In addition to these audits, QA will provide monthly and annual trend reports starting in fiscal year 2023 and follow up with LTCR HCS staff as needed.

### **Responsible Managers**

Director of Survey Operations

Deputy Associate Commissioner for Program Operations

### **Target Implementation Date**

March 1, 2023

## Enforcement Processes and Remedies

HCS program providers are regulated through contracts with HHSC and underlying HCS certification principles. Oversight of these providers involves a coordinated effort between the (a) HHS Regulatory Services Division's LTCR and Regulatory Enforcement teams and (b) HHS Medicaid and CHIP Services (MCS) Contract Administration and Provider Monitoring (CAPM).

When HCS program providers are noncompliant with contract requirements, HCS certification principles, or both, LTCR and CAPM can each take certain enforcement actions to encourage provider compliance.<sup>41</sup> LTCR is responsible for ensuring (a) the health and safety of Medicaid beneficiaries who receive waiver services from HCS program providers and (b) HCS program providers' compliance with HCS certification principles. Regulatory Enforcement is responsible for determining and administering appropriate enforcement action based on referrals from LTCR. CAPM is responsible for (a) contract development, execution, and administration and (b) contract and fiscal compliance monitoring.

To ensure HCS program providers are providing Medicaid beneficiaries with healthy, comfortable, and safe living environments as required by HCS certification principles, LTCR performs residential reviews using the HHSC Residential Checklist as one component of its oversight responsibilities.

Certain enforcement actions require coordination among LTCR, Regulatory Enforcement, and CAPM. For example, LTCR, Regulatory Enforcement, and CAPM must coordinate for decertification, which occurs when an HCS program provider fails to maintain certification as a qualified HCS program provider and results in contract termination.

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<sup>41</sup> While this report refers to these actions collectively as "enforcement actions," LTCR and Regulatory Enforcement use the term "enforcement remedies" and CAPM uses the term "contract sanctions."

Regulatory Enforcement is responsible for enforcement decisions based on facts gathered by LTCR. Specifically, Regulatory Enforcement can:

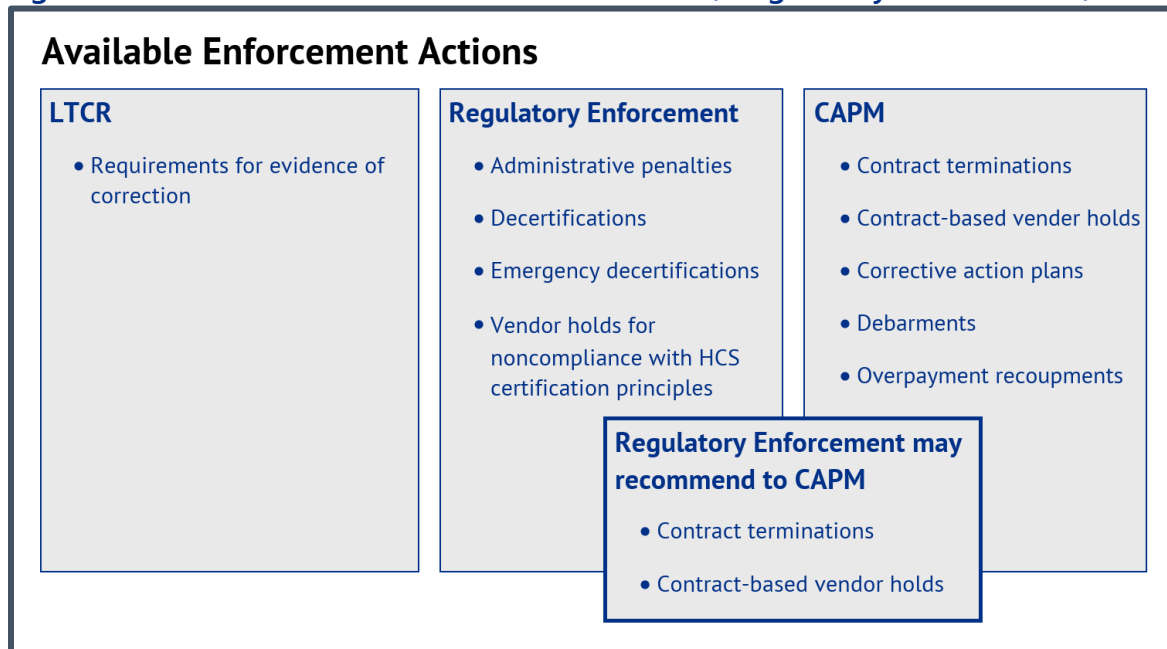
- Decertify HCS program providers.
- Issue vendor holds to delay or withhold payments to HCS program providers based on noncompliance with HCS certification principles.
- Apply administrative penalties.

Separately, CAPM can:

- Impose contract-based vendor holds to delay or withhold HCS program provider payment based on contract noncompliance.
- Recoup overpayments.
- Initiate debarments.
- Terminate HCS program provider contracts for noncompliance.

Figure 4 identifies enforcement actions that each oversight area can impose independently and enforcement actions that Regulatory Enforcement may recommend to CAPM.

**Figure 4: Enforcement Actions Available to LTCR, Regulatory Enforcement, and CAPM**



Source: OIG Audit

## **Chapter 4: LTCR and CAPM Should Identify Opportunities to Streamline Enforcement Processes and Incorporate Available Enforcement Actions into Contract Renewals**

During the period from September 1, 2019, through December 31, 2021, LTCR did not make any referrals to Regulatory Enforcement that originated specifically from a residential review, including for instances of failed checklist requirements identified as noncompliant during two or more consecutive residential reviews. However, LTCR referred 14 cases covering 83 individual violations<sup>42</sup> to Regulatory Enforcement during this period. Regulatory Enforcement addressed the 14 referred cases with:

- 7 administrative penalties
- 5 contract terminations
- 2 decertifications

Regulatory Enforcement documented each of the 14 cases with a supporting home survey.<sup>43</sup> Of the 83 individual violations identified in these surveys, 69 (83.1 percent) violations were directly associated with the health and safety of Medicaid beneficiaries, and the remaining 14 violations were administrative in nature. The resulting enforcement remedies impacted 11 of 663 (1.7 percent) HCS program providers that operated 739 homes.<sup>44</sup>

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<sup>42</sup> A case may consist of multiple individual violations.

<sup>43</sup> Generally, “home surveys” refers to various milestone reviews LTCR performs, including initial certification or recertification of an HCS program provider and intermittent surveys.

<sup>44</sup> The 739 homes included 484 two-person homes, 77 three-person homes, and 178 four-person homes.



## Enforcement Remedy Process Milestones

The five distinct milestones in LTCR’s process for detecting and addressing health and safety violations through initial certification, recertification, intermittent surveys, and referral to Regulatory Enforcement are:

- LTCR home survey entrance date
- LTCR home survey completion date
- LTCR plan of correction<sup>45</sup> deadline for HCS program providers
- Date LTCR refers a case to Regulatory Enforcement
- Date a case is assigned to a Regulatory Enforcement specialist

As detailed in Table 3, OIG Audit calculated, for the 14 cases LTCR referred to Regulatory Enforcement, the average number of days from commencement to completion for each of the five milestones.

**Table 3: Average Number of Days to Completion for Each Milestone**

Milestone Process Step	Average Number of Days for Milestone Completion
LTCR home survey entrance date to completion date	5.4 days
LTCR home survey completion date to provider plan of correction deadline	47.8 days
Provider plan of correction deadline to LTCR referral to Regulatory Enforcement	180.4 days <sup>46</sup>
LTCR referral to Regulatory Enforcement date to assignment of Regulatory Enforcement specialist	1.6 days

Source: OIG Audit

<sup>45</sup> A plan of correction is required if HHSC determines from a survey that an HCS program provider is noncompliant with one or more HCS certification principles.

<sup>46</sup> The period between the provider plan of correction deadline and LTCR referral to Regulatory Enforcement may include opportunities for the HCS program provider to revise the plan of correction and a follow-up survey to verify that the HCS program provider’s plan of correction has been completed.

As detailed in Table 4, OIG Audit also calculated, for the 14 cases LTCR referred to Regulatory Enforcement, the percentage of violations referred by the number of days between LTCR’s plan of correction deadline for HCS program providers and LTCR’s referral to Regulatory Enforcement.

**Table 4: Number of Days Distributed Between LTCR’s Plan of Correction Deadline for HCS Program Providers and LTCR’s Referral to Regulatory Enforcement**

Milestone Process Step	0–30 Days	31–60 Days	61–90 Days	91–120 Days	121–150 Days	151–180 Days	181 Days or More
Provider plan of correction deadline to LTCR referral to Regulatory Enforcement	—	7.5%	3.0%	1.5%	32.5%	—	55.2%

Source: OIG Audit

### HCS Program Provider Contracts

Five contracts reviewed as part of this audit were initiated between 2003 and 2012. These five contracts were with three HCS program providers and ranged in age from 10 to 19 years. In 2020, HHSC revised the contract template for community-based services.<sup>47</sup> CAPM has used the revised template in new contracts executed after November 2020 but, as of the date of this report, it has not used this template to renew existing contracts.

Because the five HCS program provider contracts reviewed apply to multiple community-based programs in addition to the HCS program, they do not include all enforcement actions currently available to LTCR and CAPM. For example, these five contracts did not include administrative penalties adopted to the Texas Administrative Code in 2020.<sup>48</sup> While enforcement actions available need not be specifically stated in the contracts in order to apply, including such details more fully and transparently communicates what actions LTCR, Regulatory Enforcement, and CAPM may take when HCS program providers are noncompliant with contract requirements and HCS certification principles.

<sup>47</sup> Texas Health and Human Services, Form 3254: Community Services Contract - Provider Agreement (Nov. 2020).

<sup>48</sup> 40 Tex. Admin. Code § 9.181 (April 28, 2020).

## **Recommendation 4a**

LTCR, Regulatory Enforcement, and CAPM should identify opportunities to streamline the enforcement and referral process. This may include (a) clarifying roles and responsibilities between contract-based enforcement actions and regulatory enforcement actions to define each division's authority and responsibility related to HCS program oversight and (b) identifying other opportunities to efficiently address issues with HCS program provider compliance.

### **Management Response from the HHS Regulatory Services Division**

HHSC agrees with this recommendation, and LTCR and Regulatory Enforcement have recognized the need to improve communication and coordination with CAPM on HCS residential review processes and provider performance.

In response, CAPM, LTCR, and Regulatory Enforcement have used a Cross Unit Coordination Process to issue policy documents that clearly delineate roles and responsibilities.

In addition, LTCR's IM 22-23 Residential Visit Documentation Guidance will increase accurate scoring, efficient processing, and communication among LTCR, Enforcement, and CAPM. LTCR and Enforcement also are coordinating with CAPM when contract-level issues arise with HCS providers.

#### **Action Plan**

- Regulatory Enforcement will continue coordinating with CAPM and LTCR to clarify roles and responsibilities, identify opportunities to streamline the enforcement process, and discuss next steps.

#### **Responsible Manager**

Associate Commissioner for Enforcement

#### **Target Implementation Date**

March 1, 2023

## Recommendation 4b

CAPM should:

- Continue to use the revised contract template for new contracts.
- Update all existing HCS program provider contracts using the revised contract template for community-based services. At a minimum, these updates should incorporate or reference currently available enforcement actions.

### Management Response from the HHS Regulatory Services Division

Updating the Medicaid contract with enforcement remedies would take those remedies out of the realm of regulatory rules and laws and puts them squarely into the realm of contracting.

It is not appropriate for CAPM to be handling LTCR and enforcement matters that concern health and safety via a contract when the regulatory rules clearly allow for imposing penalties, decertifying, and issuing vendor holds on program providers.

It should be noted that any update to the Medicaid contract to include regulatory enforcement penalties and remedies should be clearly identified as reference only and not subject to contract actions or remedies.

#### Action Plan

- Regulatory Enforcement will initiate a meeting with CAPM and LTCR to discuss suggestions and concerns regarding incorporating regulatory enforcement remedies into the Medicaid contract.

#### Responsible Manager

Associate Commissioner for Enforcement

#### Target Implementation Date

November 30, 2022

## Management Response from CAPM

### Action Plan

Effective 2019, CAPM implemented a process to ensure all HCS contracts are set up on a four- or five-year renewal process. CAPM worked with PCS to develop a process to reevaluate the contracts' terms, conditions, and applicability at the renewal period, and a mechanism for prioritizing contract renewals based on risk.

CAPM will continue to use the most up-to-date contract template for community-based services for newly enrolled contracts and renewals. The current contract template specifies the provider is required to adhere to HCS policies and rules which includes enforcement actions. In addition, the current template lists contract actions and sanctions that may be imposed by HHSC.

### Responsible Manager

Deputy Associate Commissioner for Contract Administration and Provider Monitoring

### Target Implementation Date

December 31, 2024

## Auditor Comment

OIG Audit recognizes that the contract may not be revised as recommended and appreciates that LTCR is willing to initiate conversations with CAPM to determine a resolution.

Although CAPM is using the revised contract for new providers, active steps should be taken to ensure the most up-to-date contract template is used for all provider contract renewals by the December 31, 2024, implementation date.

## Appendix A: Objective, Scope, and Criteria

### Objective and Scope

The audit objective was to determine whether the HHSC HCS program's (a) residential reviews aligned with certification requirements and enforcement remedies, (b) residential reviewers used the HHSC Residential Checklist correctly and consistently, and (c) residential review results were maintained and analyzed.

The audit scope covered three- and four-person residential homes (homes) for the period from September 1, 2019, through December 31, 2021.<sup>49</sup>

### Criteria

OIG Audit used the following criteria to evaluate the information provided:

- 40 Tex. Admin. Code § 9.171 (2016 through 2020)
- 40 Tex. Admin. Code § 9.181 (2020)
- Tex. Hum. Res. Code § 161.076 (2009)
- Home and Community-based Services Handbook, §§ 14200–14210 and 14410–14411, v. 17-1 (2017)
- Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual (2014)
- Application for a §1915(c) Home and Community-Based Services Waiver, TX.0110.R07.05 (2020)

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<sup>49</sup> The audit scope spanned a 28-month period that included (a) state fiscal years 2020 and 2021 and (b) part of state fiscal year 2022.

## Appendix B: Significant Risk Checklist Requirements

The HHSC Residential Checklist includes (a) six requirements classified as significant risks necessitating immediate attention, (b) eight requirements classified as significant risks requiring prompt action within 48 hours, and (c) four requirements classified as possible significant risks requiring prompt action within 48 hours, depending upon assessment by the residential reviewer. Tables B.1, B.2, and B.3 outline these significant risk checklist requirements.

**Table B.1: HHSC Residential Checklist Requirements Classified as Significant Risks Necessitating Immediate Action**

Checklist No.	Requirement
15	Does the four-person home have a current fire marshal inspection using NFPA 101 Life Safety Code or International Fire Code?
32	Does the home have enough food for the individual(s)?
35	Is the storage of chemicals and other toxins safe for the individuals who live in the home?
38	Is the water temperature 120 degrees or lower?
41	Are the medications secured as needed to safeguard the individuals?
44	If staff are administering medications, have they been trained by a nurse?

Source: Texas Health and Human Services, Form 3609: Waiver Survey and Certification Residential Checklist, HHS, <https://www.hhs.texas.gov/regulations/forms/3000-3999/form-3609-waiver-survey-certification-residential-checklist> (accessed June 28, 2022)

**Table B.2: HHSC Residential Checklist Requirements Classified as Significant Risks Necessitating Prompt Action Within 48 Hours**

Checklist No.	Requirement
1	Are exit doors unobstructed and accessible to all individuals?
2	Do the individuals' bedrooms have two means of egress? <sup>50</sup>
10	Are there adequate working smoke detectors installed?
13	Has the fire alarm system been checked annually, and does it appear to be in working order?
23	Is the home modified to meet the needs of the individuals (e.g.: ramps, widened doors, grab bars)?
24	Is all adaptive equipment in good repair (e.g.: shower chairs, lifts)?
28	Is the home free of bugs and other infestations?
30	Is the temperature of the home comfortable for the individual(s)?

Source: Texas Health and Human Services, Form 3609: Waiver Survey and Certification Residential Checklist, HHS, <https://www.hhs.texas.gov/regulations/forms/3000-3999/form-3609-waiver-survey-certification-residential-checklist> (accessed June 28, 2022)

**Table B.3: HHSC Residential Checklist Requirements Classified as Possible Significant Risks Necessitating Prompt Action Within 48 Hours**

Checklist No.	Requirement
7	Can the staff explain the emergency plans for the residence (fire and other emergencies)?
36	Is the home free of safety hazards?
43	Are staff knowledgeable about the medications received by the individuals?
49	Have staff received the training necessary to deliver services as required by the needs and characteristics of the individuals living in the home?

Source: Texas Department of Aging and Disability Services (DADS) (now part of HHSC) Regulatory Services, *Waiver Survey and Certification Manual*, Vol. III-Residential Reviewer Manual, § 8(G) (May 5, 2014)

<sup>50</sup> "Egress" refers to an exit point, such as a window or door. This requirement only applies to four-person homes that are not equipped with a fire sprinkler system.



## Appendix C: HHSC Residential Checklist

Table C.1 lists the 50 health and safety requirements included on the HHSC Residential Checklist. Requirements classified by HHSC as significant risks necessitating immediate attention or significant risks necessitating prompt attention within 48 hours are notated as applicable.

**Table C.1: HHSC Residential Checklist Requirements and Instances of Noncompliance Identified During Site Visits**

No.	Requirements
<b>Emergency Evacuations Plans</b>	
1	Are exit doors unobstructed and accessible to all individuals? (Significant risk that must be addressed within 48 hours)
2	Do the individuals' bedrooms have two means of egress as applicable? (Significant risk that must be addressed within 48 hours)
3	Are there two means of egress from the home?
4	Is an emergency plan available and appropriate to the location of the home?
5	Do emergency plans reflect the special needs of the individual(s) who live here?
6	Have the staff members participated in a fire drill?
7	Can the staff explain the emergency plans for the residence (fire and other emergencies)?
8	Do the staff know what assistance to provide the individual(s) in this home to respond to an emergency?
9	Have fire drills been conducted as required during the past year?
10	Are there adequate working smoke detectors installed? (Significant risk that must be addressed within 48 hours)
11	Are there adequate, fully charged fire extinguishers accessible to the kitchen, utility room, and garage?
12	Are emergency numbers readily available?
<b>Four-Person Homes Only</b>	
13	Has the fire alarm system been checked annually, and does it appear to be in working order? (Significant risk that must be addressed within 48 hours)
14	If the home has sprinklers, have they been checked annually and are they unobstructed?
15	Does the four-person home have a current fire marshal inspection using NFPA 101 Life Safety Code or International Fire Code? (Significant risk that requires immediate attention)

No.	Requirements
<b>Neighborhood and Home Exterior</b>	
16	Does the residence look similar to other residences in the neighborhood (does not stand out as a home in which persons receive services)?
17	Is the location accessible to generic services in the community?
18	Does the residence, neighborhood, and community meet the needs of the individuals and provide an environment that ensures the health, safety, comfort, and welfare of the individuals?
19	Is the outside area of the home in good condition (no safety hazards for falls; no toxins or fire dangers; no pest problems)?
20	Is the outside area free of garbage, trash, or excessive clutter?
21	Are the walkways clear to the front door without trip hazards?
22	If needed, is a ramp in place for access into the home?
<b>Home Interior and Individuals</b>	
23	Is the home modified to meet the needs of the individuals (e.g.: ramps, widened doors, grab bars)? (Significant risk that must be addressed within 48 hours)
24	Is all adaptive equipment in good repair (e.g.: shower chairs, lifts)? (Significant risk that must be addressed within 48 hours)
25	Is the living environment comfortable (e.g.: physical arrangement and space per person sufficient for movement in home, adequate bathrooms)?
26	Are furnishings adequate and in good repair (e.g.: no rips, stains, or broken pieces)?
27	Is the home clean and free of odors?
28	Is the home free of bugs and other infestations? (Significant risk that must be addressed within 48 hours)
29	Are the floors, walls, and ceilings in good condition?
30	Is the temperature of the home comfortable for the individual(s)? (Significant risk that must be addressed within 48 hours)
31	Is the bathroom in good repair?
32	Does the home have enough food for the individual(s)? (Significant risk that requires immediate attention)
33	Is a vehicle available for the home to use and does it meet the transportation needs of the individuals (e.g.: adapted for wheelchairs)?
34	Is the interior of the home free of excess trash?
35	Is the storage of chemicals and other toxins safe for the individuals who live in the home? (Significant risk that requires immediate attention)

No.	Requirements
36	Is the home free of safety hazards?
37	Is the kitchen accessible to the individual(s) for accessing water and food?
38	Is the water temperature 120 degrees or lower? (Significant risk that requires immediate attention)
39	Are the kitchen appliances (e.g.: stove, refrigerator, dishwasher) clean and in working order?
40	If there are any cats/dogs at the home, do they have current vaccinations?
<b>Medications</b>	
41	Are the medications secured as needed to safeguard the individuals? (Significant risk that requires immediate attention)
42	Are medication administration records available and completed accurately?
43	Are staff knowledgeable about the medications received by the individuals?
44	If staff are administering medications, have they been trained by a nurse? (Significant risk that requires immediate attention)
<b>Abuse and Neglect</b>	
45	Is the legal (contract) posting for the provider present and in view?
46	Do the staff know what constitutes abuse, neglect, and exploitation?
47	Do staff know the requirements for reporting abuse, neglect, and exploitation?
48	Do staff know how to prevent abuse, neglect, and exploitation?
<b>Staff Training</b>	
49	Have staff received the training necessary to deliver services as required by the needs and characteristics of the individuals living in the home?
50	Have staff received training in infection control and do staff follow proper infection control policies and procedures during the residential review?

Source: OIG Audit, based on Texas Health and Human Services, Form 3609: Waiver Survey and Certification Residential Checklist, HHS, <https://www.hhs.texas.gov/regulations/forms/3000-3999/form-3609-waiver-survey-certification-residential-checklist> (accessed June 28, 2022)

## Appendix D: Checklist Requirement Observations

During the period from September 1, 2019, through December 31, 2021, LTCR conducted 4,238 on-site residential reviews of homes managed by HCS program providers. While there is not an expected number of instances of noncompliance for individual checklist requirements, OIG Audit observed an uneven distribution of (a) noncompliance across the 50 checklist requirements and (b) residential review scores.

### Residential Review Observations

HCS program providers received a passing score for 3,798 of 4,238 (89.6 percent) residential reviews within the scope of this audit; however, noncompliance occurred more often for certain residential review checklist requirements. Specifically:

- 5 of the 50 checklist requirements represented 49 percent of all failed checklist requirements.
  - None of these five checklist requirements were classified as significant risks.
- 10 of the 50 checklist requirements represented 0.8 percent of all failed checklist requirements.
  - 4 of these 10 checklist requirements were classified as significant risks requiring prompt or immediate action.

Table D.1 on the following page lists the five checklist requirements that HCS program provider homes most frequently failed, the number of times LTCR residential reviews designated each checklist requirement as failed, and the relative percentage of each checklist requirement to the 2,977 total failed checklist requirements.

**Table D.1: Most Frequently Failed Residential Review Checklist Requirements**

Checklist No.	Requirement	Number	Percent
42	Are medication administration records available and completed accurately?	435	14.6%
9	Have fire drills been conducted as required during the past year?	346	11.6%
4	Is an emergency plan available and appropriate to the location of the home?	275	9.2%
50	Have staff received training in infection control and do staff follow proper infection control policies and procedures during the residential review?	263	8.8%
29	Are the floors, walls, and ceilings in good condition?	150	5.0%

Source: OIG Audit

Table D.2 lists the ten checklist requirements that HCS program providers least frequently failed. Individually, each checklist requirement listed accounts for less than one percent of the relative 2,977 total failed checklist requirements.

**Table D.2: Least Frequently Failed Residential Review Checklist Requirements**

Checklist No.	Requirement	Number	Percent
28	Is the home free of bugs and other infestations? (Significant risk that must be addressed within 48 hours)	5	0.17%
33	Is a vehicle available for the home to use and does it meet the transportation needs of the individuals (e.g.: adapted for wheelchairs)?	5	0.17%
1	Are exit doors unobstructed and accessible to all individuals? (Significant risk that must be addressed within 48 hours)	4	0.13%
30	Is the temperature of the home comfortable for the individual(s)? (Significant risk that must be addressed within 48 hours)	3	0.10%
16	Does the residence look similar to other residences in the neighborhood (does not stand out as a home in which persons receive services)?	2	0.07%
21	Are the walkways clear to the front door without trip hazards?	2	0.07%
35	Is the storage of chemicals and other toxins safe for the individuals who live in the home? (Significant risk that requires immediate attention)	2	0.07%
3	Are there two means of egress from the home?	1	0.03%
34	Is the interior of the home free of excess trash?	1	0.03%
17	Is the location accessible to generic services in the community?	0	0.00%

Source: OIG Audit

Of 4,238 residential reviews within the scope of this audit, 2,470 (58.3 percent) received the highest possible score of 100, which indicated that the home under review was compliant with all 50 checklist requirements. Table D.3 details the residential review scores for all homes reviewed as part of this audit.

**Table D.3: Residential Review Scores Distribution**

Score	Number of Homes
100	2,470
90–99	1,328
80–89	216
Less than or equal to 79	222
Score not documented	2
<b>Total</b>	<b>4,238</b>

Source: OIG Audit

## Appendix E: Background

The HCS program enables Medicaid beneficiaries with intellectual and developmental disabilities to live in community-based settings and avoid institutionalization in intermediate care facilities. These community-based settings include homes managed by private HCS program providers. HHSC contracts with private HCS program providers to coordinate and monitor the delivery of individualized services and supports to Medicaid beneficiaries. Private HCS program providers managing three- and four-person homes in the audit scope must maintain a property interest in their homes,<sup>51</sup> consistently comply with HHSC's certification standards, and utilize person-directed planning to enhance the health, well-being, and functional independence of the Medicaid beneficiaries within their care. The HCS program is available to Texans of any age not living in an institutional setting who meet HHSC's eligibility criteria.

Medicaid beneficiaries residing in homes receive around-the-clock residential assistance from staff employed by the managing HCS program provider. Depending upon an individual's needs, the HCS program provider may coordinate the delivery of other services and supports, such as adaptive equipment, occupational and physical therapy, nursing, and prescribed medications. HCS services are intended to supplement services provided by other HHSC programs or from natural supports, including families, neighbors, or community organizations.

### Home and Community-Based Services

This residential assistance supports Medicaid beneficiaries to perform various essential tasks, including the activities of daily living, such as grooming, eating, bathing, dressing, and personal hygiene. Staff may also reinforce behavioral support or specialized therapy activities and assist individuals with their medications and other nursing-related tasks.

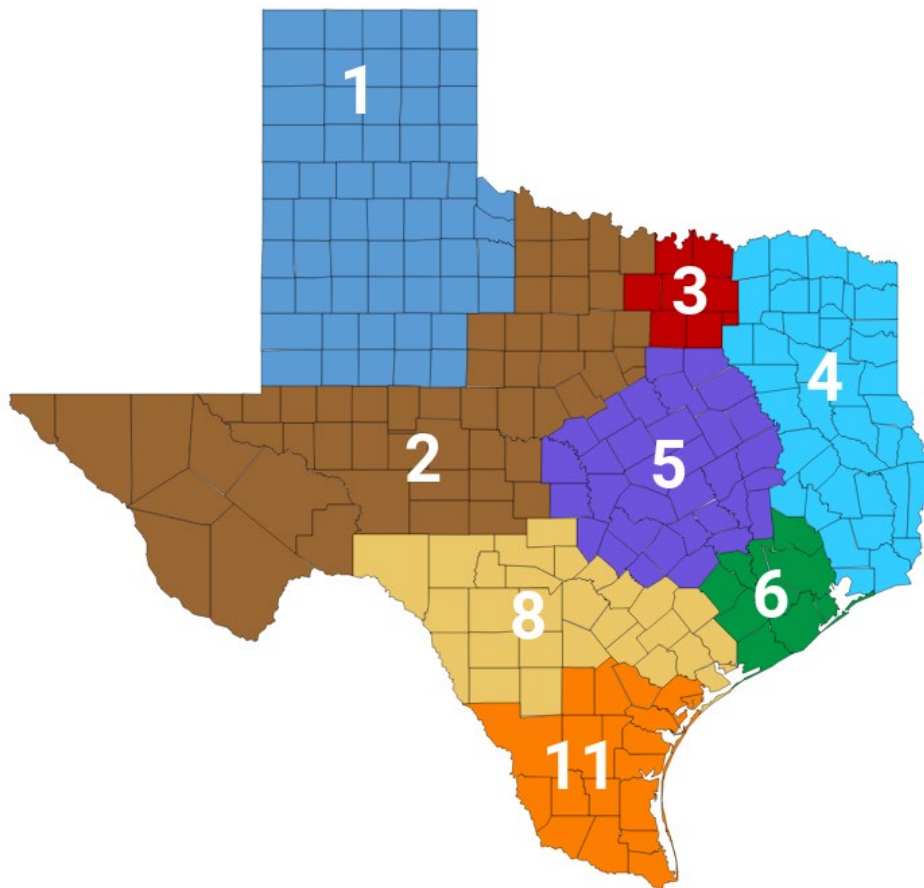
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<sup>51</sup> Private HCS program providers managing three- and four-person homes can only manage homes that they lease or own.

## HHS Long Term Care Regulation

LTCR (a) provides regulatory certification and oversight of HCS program providers, (b) conducts certification, recertification, and intermittent surveys, and (c) conducts residential reviews of each home managed by an HCS program provider. Figure E.1 outlines the LTCR regions used for residential review, survey, and investigation purposes.

**Figure E.1: HHS Long Term Care Regulation Regional Map**



Source: OIG Audit, based on Texas Health and Human Services, Long Term Care Regulatory Regions (updated Aug. 1, 2022), HHS, <https://www.hhs.texas.gov/sites/default/files/documents/about-hhs/hhs-ltcr-regional-map.pdf> (accessed September 19, 2022)



## Appendix F: Detailed Methodology

OIG Audit issued an engagement letter to LTCR on February 18, 2022, providing information about the upcoming audit, and conducted fieldwork to review LTCR from February 16, 2022, through July 20, 2022.

OIG Audit subsequently issued an engagement letter to CAPM on May 3, 2022, providing information about the upcoming audit, and conducted fieldwork to review CAPM from April 28, 2022, through July 20, 2022.

For LTCR and Regulatory Enforcement, OIG Audit also reviewed each entity's system of internal controls, including components of internal control,<sup>52</sup> within the context of the audit objectives by:

- Analyzing residential review data, including failed and significant risk results.
- Reviewing relevant documentation, such as policies, procedures, and evidence of correction.
- Performing selected tests of the relevant documentation.

### Data Reliability

To assess the reliability of data provided by LTCR, auditors analyzed three different residential review datasets, including significant risk and failed checklist requirements on the HHSC Residential Checklist and homes that received a passing residential review score with no significant risks, for (a) reasonableness and completeness and (b) validation against independently obtained sources, including a data dictionary. From the three residential review datasets, OIG Audit also vouched to source documents and recalculated residential review scores. OIG Audit determined that 57 of 10,556 (0.5 percent) data records did not have a corresponding Residential ID; however, this did not have a material effect on the audit objectives.

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<sup>52</sup> For more information on the components of internal control, see the United States Government Accountability Office's *Standards for Internal Control in the Federal Government*, (Sept. 2014), <https://www.gao.gov/assets/gao-14-704g.pdf> (accessed Apr. 16, 2021).

OIG Audit also (a) interviewed knowledgeable agency officials to confirm field contents, descriptions of data entry procedures, and other related information, (b) validated LTCR's use of field data using a data dictionary, and (c) reviewed the data for completeness, sufficiency, and appropriateness of related documentation.

Additionally, OIG Audit reconciled LTCR's data with data from the Client Assignment and Registration (CARE) system, an independent data source, for the period from September 1, 2019, through December 31, 2021; confirmed completeness of the data within the audit scope; and vouched the selection and samples of data to source documents. OIG Audit determined that this data was reliable for the purpose of this audit.

OIG Audit also assessed the reliability of data Regulatory Enforcement provided by reviewing enforcement remedies and inventory contracts, comparing the contracts at a high level, and interviewing key stakeholders in enforcement processes. OIG Audit determined that this data was reliable for the purpose of this audit.

### Testing Methodology

OIG Audit collected information for this audit through discussions, interviews, and electronic communications with LTCR, Regulatory Enforcement, and CAPM management and staff. Additionally, OIG Audit reviewed:

- Residential review files
- Residential review workload assessments
- HCS certification principles for checklist requirements
- Information about newly opened homes
- LTCR's residential reviews of homes managed by HCS program providers, which included:
  - Significant risk and failed checklist requirements.
  - Uncorrected residential review results.
  - Not applicable designations for checklist requirements when not permitted.

- Enforcement actions imposed by LTCR, Regulatory Enforcement, and CAPM.

### Sampling Methodology

OIG Audit selected a risk-based, nonstatistical sample of 30 residential reviews with failed checklist requirements that identified whether LTCR supported, reviewed, and followed up on results and evidence of correction. The test results as reported do not identify which items were randomly selected or selected based on risk; therefore, it would not be appropriate to project the test results to the population.

To determine whether residential reviewers reviewed facilities within 365 days and accessed previous residential review results to validate evidence that previously failed checklist requirements had been corrected, OIG Audit selected a second risk-based, nonstatistical sample of 30 residential reviews that identified some failed checklist requirements but still obtained a passing score. The sample design was chosen so the sample could be evaluated in the context of the population. The test results may be projected to the population, but the accuracy of the projection cannot be measured.

To determine whether LTCR residential reviewers complied with Residential Reviewer Manual procedures and to validate the accuracy of residential review scores, OIG Audit selected a third risk-based, nonstatistical sample of 30 residential reviews from the current LTCR residential review database. The test results as reported do not identify which items were randomly selected or selected based on risk; therefore, it would not be appropriate to project the test results to the population.

## Appendix G: Summary of Recommendations

**Table G.1: Summary of Recommendations to LTCR, Regulatory Enforcement, and CAPM**

No.	Recommendation
1a	LTCR should review all homes within required time frames.
1b	Consistent with its plan to address the backlog of residential reviews, LTCR should consider methods to increase residential reviewer availability to perform residential review functions by (a) streamlining tasks in the residential review process or (b) making other changes. LTCR should consider working with its highest performing residential reviewers to identify efficient residential review processes.
2.1a	LTCR should update the HHSC Residential Checklist to clearly distinguish which checklist requirements (a) can only be classified as significant risk and (b) do not permit a designation of not applicable.
2.1b	LTCR should update the Residential Reviewer Manual to be consistent with the HHSC Residential Checklist available to HCS program providers and the public.
2.1c	LTCR should periodically review the residential review database for misclassified checklist requirements until the database's functionality aligns with Residential Reviewer Manual requirements, including checklist requirements that (a) must be designated as significant risk when failed or (b) cannot be designated as not applicable.
2.2a	LTCR should develop controls to ensure (a) all elements of the HHSC Residential Checklist are fully and correctly completed, (b) residential review scores are correctly reflected in the residential review database, and (c) residential review reports accurately reflect residential review scores.
2.2b	LTCR should ensure that it (a) communicates residential review results to HCS program providers in a written form with consistent information and (b) retains evidence of this communication.
3.1a	LTCR should update the Residential Reviewer Manual to specify how LTCR staff document residential review elements, including when evidence of corrections are due, when follow-up should be conducted, and when evidence of corrections are received.
3.1b	LTCR should have policies and procedures that define how LTCR program managers demonstrate review and approval of evidence of corrections.
3.2	LTCR should ensure the Residential Reviewer Manual provides sufficient and clear guidance related to when photographs should be taken to support a residential review with failed significant risk checklist requirements identified.
3.3a	LTCR should update the Residential Reviewer Manual to require that, before each subsequent residential review, the assigned residential reviewer access the results of the previous review to ensure any identified failed checklist requirements were resolved.

No.	Recommendation
3.3b	LTCR should (a) update the site profile for each home to highlight previously failed checklist requirements and (b) require the site profile be present with the residential reviewer while conducting an on-site residential review.
3.3c	LTCR should periodically monitor residential review results for failed checklist requirements occurring across multiple residential reviews.
4a	LTCR, Regulatory Enforcement, and CAPM should identify opportunities to streamline the enforcement and referral process. This may include (a) clarifying roles and responsibilities between contract-based enforcement actions and regulatory enforcement actions to define each division's authority and responsibility related to HCS program oversight and (b) identifying other opportunities to efficiently address issues with HCS program provider compliance.
4b	<p>CAPM should:</p> <ul style="list-style-type: none"> <li>• Continue to use the revised contract template for new contracts.</li> <li>• Update all existing HCS program provider contracts using the revised contract template for community-based services. At a minimum, these updates should incorporate or reference currently available enforcement actions.</li> </ul>

Source: OIG Audit

## Appendix H: Abbreviations

### Abbreviations Used in This Report

CAPM	HHS MCS Contract Administration and Provider Monitoring
DADS	Texas Department of Aging and Disability Services
HCS	Home and Community-Based Services program
HHS	Health and Human Services
HHSC	Health and Human Services Commission
HHSC Residential Checklist	HHSC Waiver Survey and Certification Residential Checklist
Homes	Three- and four-person residences managed by HCS program providers
LTCR	HHS Long Term Care Regulation
MCS	HHS Medicaid and CHIP Services
OIG	Office of Inspector General
OIG Audit	OIG Audit and Inspections Division
Regulatory Enforcement	HHS Regulatory Enforcement

## Appendix I: Related Reports

- Health and Safety of Medicaid Beneficiaries in the HHSC Home and Community-Based Services Program: EduCare Community Living Corporation—Texas, [AUD-22-003](#), October 15, 2021
- Health and Safety of Medicaid Beneficiaries in the HHSC Home and Community-Based Services Program: Community Options, Inc., [AUD-21-026](#), August 26, 2021
- Health and Safety of Medicaid Beneficiaries in the HHSC Home and Community-Based Services Program: Kenmar Residential Services, Inc., [AUD-21-025](#), August 23, 2021

## Appendix J: Resources for Additional Information

The following resources provide additional information about the topics covered in this report.

### For more information on the HHSC HCS program:

"Home and Community-based Services Handbook," HHS,  
<https://www.hhs.texas.gov/handbooks/home-community-based-services-handbook> (accessed June 15, 2022)

"Home and Community-Based Services (HCS)" informational pamphlet, HHS,  
<https://www.hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/providers/long-term-care/hcs/what-is-hcs.pdf> (accessed June 15, 2022)

### For more information on HHS Long Term Care Regulation:

"Long-term Care Providers," HHS,  
<https://www.hhs.texas.gov/providers/long-term-care-providers> (accessed June 15, 2022)

"Health Care Facilities Regulation," HHS,  
<https://www.hhs.texas.gov/providers/health-care-facilities-regulation>  
(accessed June 15, 2022)

"14100, Long-Term Care Regulatory, HCS and TxHmL Overview," HHS,  
<https://www.hhs.texas.gov/handbooks/home-community-based-services-handbook/14100-long-term-care-regulatory-hcs-txhtml-overview>,  
(accessed June 15, 2022)

"Long-term Care Credentialing," HHS,  
<https://www.hhs.texas.gov/business/licensing-credentialing-regulation/long-term-care-credentialing> (accessed June 15, 2022)



## Appendix K: Report Team and Distribution

### Report Team

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## Appendix L: OIG Mission, Leadership, and Contact Information

The mission of OIG is to prevent, detect, and deter fraud, waste, and abuse through the audit, investigation, and inspection of federal and state taxpayer dollars used in the provision and delivery of health and human services in Texas. The senior leadership guiding the fulfillment of OIG's mission and statutory responsibility includes:

- Sylvia Hernandez Kauffman, Inspector General
- Audrey O'Neill, Principal Deputy Inspector General, Chief of Audit and Inspections
- Susan Biles, Chief of Staff, Chief of Policy and Performance
- Erik Cary, Chief Counsel
- Christine Maldonado, Chief of Operations and Workforce Leadership
- Steve Johnson, Chief of Investigations and Reviews

### To Obtain Copies of OIG Reports

- OIG website: [ReportTexasFraud.com](http://ReportTexasFraud.com)

### To Report Fraud, Waste, and Abuse in Texas HHS Programs

- Online: <https://oig.hhs.texas.gov/report-fraud-waste-or-abuse>
- Phone: 1-800-436-6184

### To Contact OIG

- Email: [OIGCommunications@hhs.texas.gov](mailto:OIGCommunications@hhs.texas.gov)
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