



# **Health and Human Services Executive Council August 19, 2021**



**Welcome and Opening Remarks**. The meeting was convened by Victoria Ford.

**Department of State Health Services Commissioner's remarks**—We are seeing an upward turn in the pandemic due to the Delta variant which is twice as contagious. Infection is going through the community rapidly. The virus has been in high infection mode about two weeks before the need for hospitalization. Positivity rates are at 18 percent compared to what is considered high being 10 percent. Infection prevention behaviors will address slowing down the transmission: social distancing and mask wearing.

**Inspector General's Quarterly Report-- Seven charged in \$110 million health care fraud scheme** The OIG was part of a multi-agency investigation that led to indictments against seven people in a \$110 million compound drug operation. [Read more about the investigation.](#)

**OIG recovers \$135 million in third quarter (QUARTERLY REPORT)**

The OIG released its Quarterly Report for the third quarter of fiscal year 2021. The report includes detailed performance metrics, highlights of provider investigations and settlements, an overview of fraud prevention efforts through outreach and education, and other agency work in the quarter. [Read the report.](#)

**Audit summary outlines recommendations to MCOs**

The OIG completed a summary of five recent audits of State of Texas Access Reform PLUS (STAR+PLUS) nursing facility claims paid by the five Texas MCOs that participate in the STAR+PLUS program and made recommendations for process improvements. [Read the report.](#)

**Rule proposals\***

[Administrative Procedures Act \(APA\) public comment period has closed†](#)

Texas Health and Human Services Commission (HHSC) proposes a new rule in TAC, Title 1, Part 15, Chapter 355, Reimbursement Rates, Subchapter J, Division 4, §355.8070, concerning the Hospital Augmented Reimbursement Program.

**Background.** The Texas Health and Human Services Commission (HHSC) proposes a new rule §355.8070, concerning the Hospital Augmented Reimbursement Program. The program will provide additional hospital funding to help offset Medicaid costs. HHSC intends to submit state plan amendments to CMS to request authorization to make payments as described under new §355.8070 to non-state government-owned and -operated hospitals and to private hospitals. State plan amendments to include various hospital ownership types may be submitted on individual timelines.



State plan amendment submission timelines will be determined outside of the rulemaking process in accordance with the state plan amendment administrative processes.

The payment calculation will be based on the individual participating hospital's Medicare payment gap and/or Average Commercial Reimbursement (ACR) gap. The hospital's maximum payment before any reductions will be the maximum of the Medicare payment gap and ACR gap for hospitals that submit ACR data and Medicare gap for those that did not submit ACR data. This total will be capped at the total aggregate Medicare Upper Payment Limit (UPL) gap. The most current Medicare UPL demonstration available at the time of calculation will be used.

**Fiscal Impact.** None reported.

**Rule Development Schedule.**

August 19, 2021	Present to HHSC Executive Council
September 2021	Publish proposed rules in <i>Texas Register</i>
January 2022	Publish adopted rules in <i>Texas Register</i>
January 2022	Effective date

**Submitted to the Texas Register – APA public comment period has not closed**

[HHSC proposes a new rule in TAC, Title 26, Part 1, Chapter 261, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program--Contracting, Subchapter C, §261.220, concerning Medicaid Bed Reallocation](#)

**Background.** This proposed new rule is to implement Texas Health and Safety Code §533A.062, as amended by HB 3117, 86th Legislature, Regular Session, 2019, requiring HHSC to develop a process to redistribute Medicaid beds in existing intermediate care facilities for individuals with an intellectual disability or related conditions as per the authority of the State Plan for Individuals in Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities (ICF/IID). Adding a new rule to TAC, Title 26, Chapter 261 will enable HHSC to reallocate available beds reverted to HHSC due to provider closure or expiration of beds in suspension. With the addition of new §261.220, ICF/IID providers can apply to HHSC to request up to a maximum of six additional beds if they choose. This new rule formalizes the current process for Medicaid bed reallocation authorized by the Long-Term Care Plan for Individuals with Intellectual Disabilities and Related Conditions, based on Texas Health and Safety Code §533A.062(b-1).



The purpose of the proposed new rule is to implement House Bill 3117, 86th Legislature, Regular Session, 2019, which requires HHSC to develop a process to redistribute existing intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID) Medicaid beds under the authority of the State Plan for Individuals with Intellectual and Developmental Disabilities. Adding a new rule to 26 TAC 261 will enable HHSC to reallocate available beds reverted to HHSC due to provider closure or expiration of beds in suspension. With the addition of new §261.220, ICF/IID providers can apply to HHSC to request up to a maximum of six additional beds.

**Fiscal Impact.** No fiscal impact was reported.

#### **Rule Development Schedule.**

July 2021	Publish proposed rules in Texas Register
August 12, 2021	Present to Medical Care Advisory Committee
August 19, 2021	Present to HHSC Executive Council
October 2021	Publish adopted rules in Texas Register
October 2021	Effective date

[HHSC proposes the amendments to rules, new rules, and repeal of a rule, in TAC, Title 26, Part 1, Chapter 742, Minimum Standards for Listed Family Homes, Chapter 743, Minimum Standards for Shelter Care, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs, Chapter 745, Licensing, Chapter 746, Minimum Standards for Child-Care Centers, Chapter 747, Minimum Standards for Child-Care Homes, and Chapter 748, Minimum Standards for General Residential Operations, concerning Epinephrine Auto-Injector Rules for Child Care](#)

The purpose of the proposal is to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019. H.B. 1849 added §42.067, Texas Human Resources Code (HRC), to allow a licensed child-care center to administer and store unassigned epinephrine auto-injectors, provided the child-care center meets certain requirements when an unassigned epinephrine auto-injector has been used on a child.

H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows certain entities to adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. These entities include child-care facilities, as defined in HRC §42.002 and any entity that the Texas Department of State Health Services (DSHS) identifies in rule as an entity that would benefit from the possession and use of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires DSHS to adopt rules

regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). These rules allow certain youth facilities, including child-care facilities, listed family homes, temporary shelter-care operations, and employer-based child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. With respect to minimum standards for child-care centers, the rules adopted on behalf of DSHS also generally address the requirements listed in HRC §42.067. This proposal further supports the rules adopted on behalf of DSHS to allow certain child-care operations to voluntarily adopt unassigned epinephrine auto-injector policies, provided the child-care operation follows the rules adopted on behalf of DSHS.

**Fiscal Impact.** None reported

#### **Rule Development Schedule**

July 30, 2021	Publish proposed rules in <i>Texas Register</i>
August 19, 2021	Present to HHSC Executive Council
November 2021	Publish adopted rules in <i>Texas Register</i>
November 2021	Effective date

[HHSC proposes a new rule in TAC, Title 26, Part 1, Chapter 306, Behavioral Health Delivery System, Subchapter X, §306.1251, concerning Disaster Rule Flexibilities for Community Behavioral Health Providers](#)

**Background.** The purpose of this proposal is to allow HHSC flexibility to waive certain requirements for the delivery of services in response to a declared disaster. The proposed new rule is based on the existing emergency rule created in TAC, Title 26, Subchapter Z, §306.1351, relating to COVID-19 Flexibilities. This proposal creates a standing rule, allowing providers subject to the rule to operate with the same flexibilities afforded by the emergency rule and it ensures continuity of services for individuals receiving community-based behavioral health services.

HHSC adopts rules to establish requirements and flexibilities to protect public health and safety during a disaster declared by the Governor. The requirements established in these rules are effective in all Texas counties or in a particular Texas county or counties during an active state of disaster as declared pursuant to Government Code, Section 418.014. The purpose of the proposal is

to allow HHSC the flexibility to waive certain requirements for behavioral health community providers in the event of a state of disaster. HHSC adopted an emergency rule in response to COVID-19 pandemic, however, the rule will expire on July 17, 2021, unless another set of emergency rules is approved. This new rule is based on the existing emergency rule created in Texas Administrative Code Title 26, Part 1, Chapter 306, Subchapter Z, §306.1351, relating to COVID-19 Flexibilities. This proposal creates a standing rule, allowing providers subject to the rule to operate with the same flexibilities afforded by the emergency rule and it ensures continuity of services for individuals receiving community-based behavioral health services. To the extent authorized under federal and state law, HHSC waives the types of rules outlined in proposed new subsection (b), in the event a state of disaster is declared by the Governor. The proposed rule requires providers to comply with all policy guidance applicable to the rules issued, including policy guidance issued by HHSC's Medicaid Services Department.

**Fiscal Impact.** None reported

**Rule Development Schedule.**

August 12, 2021	Present to the Medical Care Advisory Committee
August 19, 2021	Present to HHSC Executive Council
September 2021	Publish proposed rules in Texas Register
January 2022	Publish adopted rules in Texas Register
January 2022	Effective date

[HHSC proposes the repeal of rules in TAC, Title 40, Part 1, Chapter 5, Provider Clinical Responsibilities--Intellectual Disability Services, Subchapter D, and new rules in Title 26, Part 1, Chapter 304, Diagnostic Assessment, concerning Diagnostic Assessment](#)

The Health and Human Services Commission (HHSC) proposes the repeal of 40 Texas Administrative Code (TAC) Chapter 5, Subchapter D, and new rules in Title 26, Chapter 304, both of which concern diagnostic assessment. The reason for repealing 40 TAC Chapter 5, Subchapter D, and adopting new 26 TAC Chapter 304, is to consolidate HHSC rules in Title 26, Part 1.

The proposed new rules are substantially similar to the rules in Title 40, Chapter 5. The proposed new rules update licensure requirements for authorized providers who are employed or contract with local intellectual and developmental disability authorities (LIDDAs) or state supported living centers (SSLCs); identify authorized providers who are responsible for completing Determinations of Intellectual Disability (DID) which are required for admissions into Intellectual and Developmental Disability (IDD) Medicaid waiver programs and SSLCs; update diagnostic and other terminology while

aligning with HHSC technical guidelines; clarify the right to an administrative hearing; and address requirements in the rule that are unrelated to diagnostic responsibilities.

HHSC received questions and concerns regarding 26 TAC Chapter 304 from stakeholder groups representing community-based providers who are potentially impacted by the proposed rules. These providers may be requested to perform diagnostic assessments for individuals requesting services through the LIDDAs or SSLCs.

HHSC anticipates stakeholders may be concerned the new rules do not modify eligibility criteria for the IDD Medicaid waiver programs or Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs). Other anticipated concerns include whether intellectual quotient (IQ) is relevant in the determination of intellectual disability (ID), whether IQ testing is necessary, as well as possible considerations for adjustments to the frequency of testing requirements. Lastly, stakeholders have previously expressed for HHSC to develop a formal definition of ID as the current definition is not in alignment with the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) definition. A future rule project will be required to address these concerns.

**Fiscal Impact.** None Reported

#### **Rule Development Schedule**

July 30, 2021	Publish proposed rules in <i>Texas Register</i>
August 19, 2021	Present to HHSC Executive Council
November 2021	Publish adopted rules in <i>Texas Register</i>
November 2021	Effective date

[HHSC proposes the amendment to a rule and a new rule in TAC, Title 1, Part 15, Chapter 355, Reimbursement Rates, Subchapter C, §355.307 and §355.316, concerning Pediatric Long-term Care Facility Reimbursement](#)

**Background.** This proposal amends the payment rate methodology for pediatric nursing facilities, to base the methodology upon the unadjusted federal per diem rate for rural Medicare skilled nursing facilities for the most recent federal fiscal year. The proposal removes language related to the pediatric nursing facility rate methodology currently in TAC, Title 1, §355.307, and moves this language to a new rule in the same subchapter at §355.316. The amendment separates the pediatric care facility reimbursement methodology from the reimbursement methodology used for nursing facilities in general. The proposal also makes general edits to improve clarity. The reimbursement methodology revision will lead to higher reimbursement rates than exist under the current

methodology, leading to higher quality and greater access to care for medically fragile children in Texas.

The Texas Health and Human Services Commission (HHSC) proposes an amendment to Section 355.307, concerning Reimbursement Setting Methodology; and new Section 355.316, concerning Reimbursement Methodology for Pediatric Care Facilities. The proposal is necessary to comply with the 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 40), which requires HHSC to revise the reimbursement methodology for pediatric long-term care facilities to mirror that of Medicare reimbursement. The proposal amends the payment rate methodology for pediatric nursing facilities, to base the methodology upon the unadjusted federal per diem rate for rural Medicare skilled nursing facilities for the most recent federal fiscal year.

The proposal removes language related to the pediatric nursing facility rate methodology currently in Section 355.307, and moves this language to a new rule in the same subchapter. The amendment separates the pediatric care facility reimbursement methodology from the reimbursement methodology used for nursing facilities in general. The proposal also makes general edits to improve clarity.

The reimbursement methodology revision will lead to reimbursement rates that are calculated at higher levels than under the current methodology, leading to higher quality and greater access to care for medically fragile children in Texas

#### **Fiscal Impact.**

	<b>SFY 22</b>	<b>SFY 23</b>	<b>SFY 24</b>	<b>SFY 25</b>	<b>SFY 26</b>
<b>State</b>	\$ 686,497	\$ 766,328	\$ 794,934	\$ 827,281	\$ 862,921
<b>Federal</b>	\$ 1,166,397	\$ 1,188,591	\$ 1,232,959	\$ 1,283,129	\$ 1,338,409
<b>Total</b>	\$ 1,852,894	\$ 1,954,919	\$ 2,027,893	\$ 2,110,410	\$ 2,201,330

#### **Rule Development Schedule.**

August 2021	Publish proposed rules in Texas Register
August 12, 2021	Present to the Medical Care Advisory Committee
August 19, 2021	Present to HHSC Executive Council
October 2021	Publish adopted rules in Texas Register
October 2021	Effective date



[HHSC proposes the repeal of rules in TAC, Title 40, Part 1, Chapter 79, Legal Services, Subchapter S, §§79.1801 - 79.1806, concerning the Repeal of Obsolete Contracting Ethics Rules](#)

The Texas Health and Human Services Commission (HHSC) proposes to repeal Sections 79.1801-79.1806 in Texas Administrative Code, Title 40, Part 1, Chapter 79, Subchapter S, Contracting Ethics. The purpose of the proposal is to repeal obsolete rules of the former Department of Aging and Disability Services (DADS) in Chapter 79, Subchapter S, Contracting Ethics, which were last updated in 1999, and do not reflect subsequent agency changes and consolidation, or statutory changes made to Texas Government Code Chapter 572, Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest, and other ethics statutes.

The Office of Transformation & Innovation (OTI) recommended proposing the repeal of Chapter 79, Subchapter S as part of Initiative 12, Goal 4 of the HHS Business Plan related to streamlining the contracting process for nursing facilities, and the *Nursing Facility Change-of-Ownership and Payments* report that was submitted to the Office of the Governor and the Legislature, as required by Rider 171 of the 2020-21 General Appropriations Act, Article II, Health and Human Services Commission (HHSC), H.B. 1, 86th Legislature, Regular Session, 2019 (Rider 171). While advancing specific efficiency goals for nursing facilities, OTI's recommendation also contributes to streamlining contracting for community services as a whole. The recommendation to propose repeal of Chapter 79, Subchapter S, and to eliminate associated contracting forms, was approved by then-acting Executive Commissioner Phil Wilson in an action memo dated May 11, 2020.

Ethical standards addressed by the subchapter proposed for repeal would continue to be addressed, including for contracts for goods and services for which DADS previously contracted, through:

- HHSC rules in Title 1, Part 15, Chapter 391, Purchase of Goods and Services by the Texas Health and Human Services Commission, Subchapter D, Standards of Conduct for Vendors;
- self-implementation of longer standing and more recent statutory ethics provisions, particularly in Texas Government Code Chapter 572;
- the Health and Human Services Ethics Policy; and
- incorporation of applicable standards of conduct and restrictions into HHSC contracts.

**Fiscal Impact.** None Reported

**Rule Development Schedule.**

August 19, 2021	Present to HHSC Executive Council
August 20, 2021	Publish proposed rules in Texas Register
November 2021	Publish adopted rules in <i>Texas Register</i>
November 2021	Effective date

**Not yet submitted to the Texas Register for APA public comment**

[Department of State Health Services proposes the amendment to a rule in TAC, Title 25, Part 1, Chapter 229, Food and Drug, Subchapter P, §229.261, concerning the Assessment of Administrative Penalties](#)

**Background.** The amendment of Section 229.261 in Texas Administrative Code, Title 25, Chapter 229 revises the administrative penalty level ranges to facilitate transparent and efficient compliance actions. The Department of State Health Services is currently developing penalty matrixes to provide flexibility in assessing administrative penalties within food and drug programs and tattoo and body-piercing studios. An amendment to adjust penalty levels is necessary to avoid a conflict with the administrative penalty levels currently in the rule. No fiscal impact is expected, as the proposed amendment merely expands the minimum end of the penalty range.

The rule currently provides a set of ranges for administrative penalties based on severity level for food and drug programs as well as tattoo and body-piercing studios. The amendment revises the penalty range by stating that penalties can be assessed up to the maximum amount provided in each severity level. This change alleviates any conflicts with the rule that may arise when assessing administrative penalties using the penalty matrixes. The administrative penalty matrixes will be published in the *Texas Register*. Additional amendments remove two programs that are no longer DSHS's jurisdiction, correct grammar, and format the rule.

**Fiscal Impact.** None reported

**Rule Development Schedule.**

August 19, 2021	Present to HHSC Executive Council
September 2021	Publish proposed rules in <i>Texas Register</i>
January 2022	Publish adopted rules in <i>Texas Register</i>
January 2022	Effective date



[HHSC proposes new rules in TAC, Title 1, Part 15, Chapter 353, Medicaid Managed Care, Subchapter Q, §§353.1451 - 353.1454, concerning Electronic Visit Verification Payment Recoupments](#)

**Background.** SB 1991, 86th Legislature, Regular Session, 2019, amended Chapter 531, Texas Government Code, by adding new §§531.1131(f) and 531.1135 requiring HHSC to adopt rules describing the due process procedures an MCO must follow to recoup an overpayment made to a health care provider related to missing EVV information; and requiring that, as part of the process to recoup such an overpayment, an MCO gives a provider at least 60 days to correct a deficiency in a claim before the MCO begins any efforts to recoup overpayments. Texas Government Code §531.1131(e) requires HHSC to adopt rules describing due process procedures an MCO must follow when engaging in recoupment efforts related to fraud or abuse.

Senate Bill 1991, 86th Legislature, Regular Session, 2019, amended Texas Government Code by adding new §§531.1131(f) and 531.1135 requiring HHSC to adopt rules describing the due process procedures a managed care organization (MCO) must follow to recoup an overpayment made to a health care provider related to missing electronic visit verification information; and requiring that, as part of the process to recoup such an overpayment, an MCO give a provider at least 60 days to correct a deficiency in a claim before the MCO begins any efforts to recoup overpayments. Texas Government Code, §531.1131(e) requires HHSC to adopt rules describing the due process procedures an MCO must follow when engaging in recoupment efforts related to fraud or abuse. The purpose of the proposal is to implement Texas Government Code, §§531.1131(e) and (f) and 531.1135.

Several MCOs requested clarification about how a deficiency related to an electronic visit verification (EVV) visit transaction is corrected by a provider or financial management services agency (FMSA). In response, HHSC revised the proposed rules to explain that a deficiency to an EVV visit transaction or claim is corrected in accordance with HHSC or MCO policies.

One MCO requested that HHSC make the time period for providers and FMSAs to respond to a notice of intended recoupment 60 days, instead of 30 days, to be consistent with the 60-day time period required for providers and FMSAs to correct a deficiency to an EVV visit transaction or claim. HHSC did not make changes in response to this request because the time periods are required by Texas Government Code, §531.1131 and §531.1135.

Another MCO requested that HHSC revise the rule to state that the claims that are the basis of an intended recoupment because of a discovery of fraud or abuse were identified using an approved methodology of the Office of Inspector General. HHSC did not make changes in response to this

request because the Office of Inspector General does not specify the methodologies MCOs must use in reviewing claims.

One provider expressed support of the proposed rules and remarked that they were consistent with legislative intent.

**Fiscal Impact.** None Reported

**Rule Development Schedule.**

August 12, 2021	Present to the Medical Care Advisory Committee
August 19, 2021	Present to HHSC Executive Council
September 2021	Publish proposed rules in Texas Register
January 2022	Publish adopted rules in Texas Register
January 2022	Effective date

[HHSC proposes the amendments to rules in TAC, Title 1, Part 15, Chapter 353, Medicaid Managed Care, Subchapter M, §353.1155, and Title 40, Part 1, Chapter 9, Intellectual Disability Services-- Medicaid State Operating Agency Responsibilities, Subchapters D and M, §§9.157, 9.158, 9.566, 9.567, Chapter 42, Deaf Blind with Multiple Disabilities Program and Community First Choice Services, Subchapters B and D, §§42.202, 42.211, 42.402, and Chapter 45, Community Living Assistance and Support Services and Community First Choice Services, Subchapter B, §45.202 and §45.211, concerning HHSC Waiver Program Interest Lists](#)

The primary purpose of the proposed amendments is to implement Texas Government Code §531.0601, Long-term Care Services Waiver Program Interest Lists. That section provides that individuals who are enrolled in but become ineligible for the medically dependent children (MDCP) waiver program may have their names returned to the interest list or placed on that of Home and Community-based Services, Texas Home Living, Deaf-Blind with Multiple Disabilities, or Community Living Assistance and Support Services programs. The proposed amendments describe the circumstances under which these actions may be taken. They include the following sections: §9.157 in in TAC, Title 40, Chapter 9, Subchapter D, Home and Community-Based Services (HCS) Program and Community First Choice (CFC); §§9.158, 9.566, and 9.567 in TAC, Title 40, Chapter 9, Subchapter N, Texas Home Living (TxHmL) Program and Community First Choice (CFC); §§42.202, 42.211, and 42.402 in TAC, Title 40, Chapter 42, Deaf Blind with Multiple Disabilities (DBMD) and Community First Choice (CFC) Services; §45.202 and 45.211 in TAC, Title 40, Chapter 45, Community Living Assistance

and Support Services and Community First Choice (CFC) Services; and §535.1155 in TAC, Title 1, Chapter 353, Medically Dependent Children Program.

The purpose of the proposal is to implement Texas Government Code, §531.0601, Long-term Care Services Waiver Program Interest Lists. Section 531.0601 was added to the Texas Government Code by Senate Bill 1207, 86th Legislature, Regular Session, 2019. Section 531.0601 provides, in part, that individuals who are enrolled in but become ineligible for the Medically Dependent Children Program (MDCP) may, under some circumstances, have their names returned to the MDCP interest list or placed on the interest list of the Home and Community-based Services (HCS) Program, the Texas Home Living (TxHmL) Program, the Deaf Blind with Multiple Disabilities (DBMD) Program, or the Community Living Assistance and Support Services (CLASS) Program.

The proposed amendments describe the circumstances under which these actions may be taken. The proposed amendments apply to individuals who are determined ineligible for MDCP for not meeting the level of care criteria for medical necessity for nursing facility care or the criteria of being under 21 years of age after November 30, 2019 and before the date Texas Government Code §531.601 expires, which is currently December 1, 2021.

The proposed amendments also clarify HHSC's practices in managing the MDCP, HCS, TxHmL, DBMD, and CLASS interest lists, including when an individual who resides in Texas requests to be added to an interest list or when an individual who is determined diagnostically or functionally ineligible during the enrollment process for one waiver program requests to be added to the interest list of another waiver program. In addition, the proposed amendment to 1 TAC §353.1155 changes the description 1 of the settings in which an individual must live to be eligible for MDCP. Currently, the rule provides that to be eligible for MDCP an individual who is under 18 years of age must reside with a family member or in a "foster home that includes no more than four children unrelated to the individual."

The proposed amendment provides that, to be eligible for MDCP, an individual of any age must live in the individual's home or an "agency foster home as defined in Texas Human Resources Code §42.002." The term "agency foster home" is used to correctly refer to the type of foster home regulated by HHSC that meets the federal requirements for home and community-based settings in a waiver program. It is defined in §42.002 as "a facility that provides care for not more than six children for 24 hours a day, is used only by a licensed child-placing agency or continuum-of-care residential operation, and meets department standards."

The proposed amendment to 40 TAC §42.402 is made to ensure that service provider requirements are consistent with the DBMD Program waiver application approved by the Centers for Medicare & Medicaid Services by requiring a service provider of dental treatment to be licensed to practice dentistry or dental hygiene and prohibit a relative or guardian from being the service provider of an adaptive aid. The proposed amendment to §42.402 also clarifies that an intervener is required to complete a practicum in deafblind-related course work that is at least one semester credit hour at a college or university.

The rule currently references a “one-hour practicum.” The proposed amendments make other minor changes to the rules, such as replacing undefined terms with defined terms, replacing references to DADS with “HHSC” or “the HHSC website,” and using reformatting and minor editorial changes to clarify some of the current rules.

**Fiscal Impact.** None Reported

**Rule Development Schedule.**

August 12, 2021	Present to the Medical Care Advisory Committee
August 19, 2021	Present to HHSC Executive Council
September 2021	Publish proposed rules in Texas Register
January 2022	Publish adopted rules in Texas Register
January 2022	Effective date

[HHSC proposes the repeal of a rule in TAC, Title 25, Part 1, Chapter 412, Local Mental Health Authority Responsibilities, Subchapter F, §412.272, the amendment to a rule in Title 26, Part 1, Chapter 306, Behavioral Health Delivery System, Subchapter D, Division 4, §306.192, and a new rule in Chapter 902, Continuity of Services--Transferring Individuals from State Supported Living Centers to State Hospitals, §902.1, concerning Continuity of Services - Health & Specialty Care System Facilities](#)

**Background.** The Texas Health and Human Services Commission proposes the repeal of Section 412.272, concerning Transfer of an Individual from a State MR Facility to a State MH Facility; new Section 902.1, concerning Transfer of an Individual from a State Supported Living Center to a State Hospital; and amended Section 306.192, concerning Transfers Between a State Mental Health Facility and a State Supported Living Center.

The purpose of the proposal is to move an HHSC rule from Texas Administrative Code (TAC) Title 25, Chapter 412, Subchapter F to 26 TAC Chapter 902 to consolidate HHSC rules. Section 306.192 is amended to reference the new rule. This proposal reflects the move of the state hospitals from the Department of State Health Services to HHSC and the proposed new rule has updated agency information and population language.

**Fiscal Impact.** None Reported

**Rule Development Schedule.**

August 19, 2021	Present to HHSC Executive Council
September 2021	Publish proposed rules in <i>Texas Register</i>
January 2022	Publish adopted rules in <i>Texas Register</i>
January 2022	Effective date

[HHSC proposes the amendments to rules in TAC, Title 26, Part 1, Chapter 557, Medication Aides-- Program Requirements, concerning Medication Aide Legislative Implementation](#)

**Background.** HHSC is proposing amendments to §557.101, concerning Introduction; §557.107, concerning Training Requirements; Nursing Graduates; Reciprocity; §557.109, concerning Application Procedures; §557.113, concerning Determination of Eligibility; §557.115, concerning Permit Renewal; §557.119, concerning Training Program Requirements; §557.121, concerning Permitting of Persons with Criminal Backgrounds; §557.123, concerning Violations, Complaints, and Disciplinary Actions; §557.128, concerning Home Health Medication Aides; and §557.129, concerning Alternate Licensing Requirements for Military Services.

The proposed amendments implement House Bill (H.B.) 1342 and Senate Bill (S.B.) 1200, 86th Legislature, Regular Session, 2019. H.B. 1342 amends Chapter 51 of the Occupations Code, eliminating certain grounds for disqualification for an occupational license based on prior criminal convictions that are unrelated to the duties and responsibilities of the occupational license. S.B. 1200 adds §55.0041 to the Occupations Code to allow military spouses who have occupational licensing from other states to engage in that occupation in Texas without obtaining an additional license by notifying the applicable state agency. The proposed amendments add a requirement for medication aides to submit fingerprints to the Texas Department of Public Safety for a criminal background check.

Additionally, the proposed amendments also clarify the utilization of online courses in Medication Aide training programs.

The proposed amendments also update terminology and remove outdated references for clarity and consistency.

**Fiscal Impact.** None reported.

#### **Rule Development Schedule**

August 19, 2021	Present to HHSC Executive Council
September 2021	Publish proposed rules in <i>Texas Register</i>
January 2022	Publish adopted rules in <i>Texas Register</i>
January 2022	Effective date

#### **Recent Rule Adoptions - Information item not for discussion**

##### **Adoptions submitted to the *Texas Register* that are not yet effective**

[National Sex Offender Registry Check, published 8/6/21, effective 8/30/21\(link is external\)](#)

The purpose of the amended rules is to implement a portion of the federal Child Care Development Block Grant (CCDBG) Act of 2014, as it applies to 26 TAC Chapter 745, Licensing. The CCDBG Act of 2014 is codified in 42 United States Code 9858 *et seq.*, and requirements related to the CCDBG Act are codified in federal rules located in 45 Code of Federal Regulations Part 98. These federal statutes and rules contain requirements related to the Child Care and Development Fund, which is the primary federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for childcare and improving the quality of childcare for all children. Texas receives this funding through the Texas Workforce Commission. The Child Care Regulation (CCR) department of HHSC is responsible for implementing certain requirements, including those related to background checks.

The CCDBG Act of 2014 requires CCR to conduct a name-based check of the National Sex Offender Registry (NSOR) for any person requiring a fingerprint-based check at a child day care operation covered by the CCDBG Act. Currently, as part of an overall background check, a Texas Sex Offender Registry search is conducted as part of a name-based Texas criminal history check or a fingerprint-based criminal history check, and a fingerprint-based search of the FBI's sex offender database is conducted for anyone who requires an FBI background check. A sex offender registry check is also conducted in another state or territory if there is reason to believe the subject of a background



check is registered as a sex offender outside Texas or has lived outside Texas within the past five years.

The amended rules will ensure that another layer to the overall background check process is added in an effort to enhance child safety.

[Intellectual and Developmental Disabilities Habilitative Specialized Services, effective 9/1/21\(link is external\)](#)

The purpose of the new rules is to describe the requirements applicable to a service provider agency providing preadmission screening and resident review (PASRR) IDD habilitative specialized services (IHSS) to Medicaid-eligible nursing facility (NF) residents who are 21 years of age and older and who have been found through the PASRR process to need IHSS. PASRR is a federal requirement in 42 CFR Part 483, Subpart C. Since 2015, local intellectual and developmental disability authorities (LIDDAs) have provided certain specialized services to eligible NF residents funded by state general revenue funds. In accordance with a Medicaid state plan amendment approved by the Centers for Medicare & Medicaid Services, new Medicaid-funded services delivered as NF add-on services by service provider agencies will replace the state general revenue-funded specialized services LIDDAs currently provide.

A service provider agency is a community-based provider with experience delivering services to individuals with intellectual disabilities or developmental disabilities.

In accordance with the state plan amendment, a service provider agency is eligible to contract with HHSC to provide IHSS if the service provider agency is licensed or certified by HHSC to provide program services for the Home and Community-based Services waiver, Texas Home Living waiver, Community Living Assistance and Support Services waiver, or Deaf Blind with Multiple Disabilities waiver. The services the service provider agencies will be providing are behavioral support, day habilitation, independent living skills training, employment assistance, and supported employment. The new rules also describe the roles and responsibilities of a LIDDA related to the initiation and provision of IHSS.

Licensing Standards for Assisted Living Facilities, published 8/13/21, effective 8/31/21

Life Safety Code for Assisted Living Facilities, published 8/20/21, effective 8/31/21

Payments to Public Health Providers for Charity Care, published 8/20/21, effective 8/24/21



**Adoptions that are effective** Please follow the link to the adopted rule.

[Registration of Radiation Machine Use and Services, effective 7/18/21\(link is external\)](#)

[Minimum Standards for Independent Foster Homes, effective 7/29/21\(link is external\)](#)

[Nurse Aide Training and Competency Evaluation Program, effective 8/8/21\(link is external\)](#)

[Retail Food Establishments, effective 8/8/21\(link is external\)](#)

[Medicaid Substance Use Disorder, published 8/6/21, effective 8/10/21\(link is external\)](#)

[State of Texas Access Reform \(STAR\) Health Continuity of Care, published 8/6/21, effective 8/12/21\(link is external\)](#)

**Training Requirements, published 8/6/21, effective 8/13/21**

<https://www.sos.texas.gov/texreg/archive/August62021/Adopted%20Rules/25.HEALTH%20SERVICES.html#120>(link is external)

<https://www.sos.texas.gov/texreg/archive/August62021/Adopted%20Rules/40.SOCIAL%20SERVICES%20AND%20ASSISTANCE.html#139>(link is external)

Quality Incentive Payment Program Accelerated Payment and Metric Rule Change, published 8/13/21, effective 8/19/21

**Adjourn.** There being no further business, the meeting was adjourned.

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