



Health and Human Services Commission Executive Council

November 18, 2021



The Health and Human Services Commission Executive Council is established by Government Code, Section 531.0051, to receive public input and advise the HHSC Executive Commissioner regarding the operation of the commission. The Executive Council reviews policies related to the operation of the Health and Human Services system and its programs

Operation of the Executive Council is adopted in [Title 1, Texas Administrative Code, Part 15, Chapter 351, Subchapter A, Section 351.4\(link is external\)](#). The Executive Council seeks and receives public comment on:

- proposed rules;
- recommendations of advisory committees established under [Title 1, Texas Administrative Code, Chapter 351, Subchapter B\(link is external\)](#), concerning Advisory Committees;
- legislative appropriations request or other documents related to the appropriations process;
- the operation of health and human services programs; and
- other items the Executive Commissioner determines appropriate.

1. Welcome and Opening Remarks

Call to order. The meeting was called to order by the Commissioner, Cecile Young

Roll call was held

Explanation of proceedings using Microsoft Teams live event was provided by HHSC staff

Executive Commissioner's made opening comments expounding on:

- Winding down emergency declaration
- HB4 implementation building on SB670
- QIPP and Directed payment for Behavioral Health Services approval
- Realignment of offices in HHSC

Department of State Health Services Commissioner's remarks

Covid 19 Update stating we are experiencing plateauing of new cases

- Trends are decreasing since the end of August
- Delta variant is the dominant variant
- The last surge (August through September) was as high as the previous peak in January
- Over 71,000 deaths from COVID
- 185,000 children have received their first dose of vaccine
- Data shows vaccines are highly effective
- Unvaccinated people in their 40s were 55 times more likely to die from COVID than vaccinated people



- DSHS acted with urgency providing vaccines across the state

Inspector General's [quarterly report qtr4 fy2021.pdf \(texas.gov\)](#) Quarterly Report

The Office of Inspector General (OIG) recovered nearly \$120 million this quarter. For the fiscal year, net recoveries were more than \$424 million. In addition, we identified nearly \$754 million in potential future recoveries and achieved more than \$155 million in cost avoidance.

With a mission to prevent, detect and deter fraud, waste and abuse (FWA) in Texas health and human services delivery, the OIG's response to the ongoing COVID-19 pandemic has focused on how to assess program integrity within the evolving crisis. For example, a significant shift in service delivery using telemedicine gave rise to new issues for the OIG to explore, especially in areas where telehealth was not previously used. This office is committed to working collaboratively with Medicaid providers to prevent FWA from happening in the first place. The OIG's prevention strategy includes raising awareness of emerging issues in the health care environment through education and engagement with Medicaid providers, Medicaid clients and HHS staff.

The OIG continues to grow its data analytics abilities to identify trends related to the pandemic and billing and service utilization that may warrant a deeper look. Being data-driven allows the OIG to focus its work and build solid, evidence-based cases. This fiscal year, the OIG began developing new detection methods that will use existing and new data sets to display billing trends within Medicaid. The goal is to generate insightful information to continue to enhance efficiencies for fraud detection, clinical reviews and investigative purposes.

The outstanding work performed by the OIG team during the fiscal year reflects our commitment to our core values — Accountability, Integrity, Collaboration and Excellence. As we begin a new fiscal year, we remain steadfast in our dedication to our mission: ensuring that funds dedicated to providing services to those who need them are spent only for their intended purpose. I am honored to work alongside this outstanding team.

2. Information Presentation*

Rider 24 Cost Containment Report—The cost containment rider directs HHSC to reduce costs by \$350 million.

24. Health and Human Services Cost Containment. The Health and Human Services Commission (HHSC) shall develop and implement cost containment initiatives to achieve savings of at least \$350,000,000 in General Revenue Funds for the 2022-23 biennium throughout the health and human services system. These initiatives shall include:

- (a) increasing fraud, waste, and abuse prevention and detection;

- (b) seeking to maximize federal flexibility under the Medicaid program in compliance with Government Code, Chapter 537;
- (c) insourcing services provided under contract as of the effective date of this Act that would be more effectively performed by state personnel;
- (d) encouraging the utilization of telemedicine, telehealth, or telephone services;
- (e) applying to the Centers for Medicare and Medicaid Services for a waiver of the institutions of mental disease exclusion, if such a waiver would result in a net cost savings; and
- (f) achieving other programmatic and administrative efficiencies, including efficiencies identified in Rider 27, Medicaid Program Efficiencies.

HHSC shall provide an annual report on the implementation of cost containment initiatives to the Legislative Budget Board by December 1. It is the intent of the legislature that HHSC shall achieve savings without adjusting amount, scope, or duration of services or otherwise negatively impacting access to care. It is the intent of the legislature that prior to making any changes, HHSC shall consider stakeholder input, including complying with any statutory requirements related to rulemaking and public hearings. This rider shall not be construed as limiting HHSC's ability to maximize federal flexibility under the Medicaid program, including federal flexibility that may impact amount, scope, or duration of services.

Exceptional Item Request Development, Legislative Appropriations Request Timeline, and Stakeholder Feedback Requests, Public Input was sought on October 15 mail out CFOstakeholderfeedback@HHS.Texas.gov

No public comment was offered

3. Rule proposals

Administrative Procedures Act (APA) public comment period has closed

[Texas Health and Human Services Commission \(HHSC\) proposes amendments to rules in TAC, Title 1, Part 15, Chapter 355, Reimbursement Rates, Subchapter A, §355.108 and §355.109, concerning Updates to Inflation and Cost Adjustment Methods](#)

Background and Proposal. The Texas Health and Human Services Commission (HHSC) proposes amendments to Section 355.108, concerning Determination of Inflation Indices, and Section 355.109, concerning Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs.

The purpose of the proposed amendments is to clarify the agency's inflation methodologies. The inflation methodologies pertaining to the proposed amendments are used to calculate payment rates for long-term services and supports programs. Calculating rates of inflation and applying them to appropriate costs allows HHSC to account for economic inflation when estimating the costs of rate changes implemented as a result of Legislative direction, calculating periodic rate changes such as biennial fee reviews, establishing rates for new programs, and completing other special analyses. In addition to general clarifying revisions to the structure and language of Section 355.108, the proposed amendments:

- Add language to Section 355.108 that specifies the inflation index used to project the costs of wages and salaries of licensed vocational nurses and nurse aides.
- Add language to Section 355.108 that summarizes how certain variables may be multiplied and divided to calculate a rate of inflation.
- Clarify and move language relating to state unemployment taxes and federal unemployment taxes from Section 355.108 to Section 355.109.

Fiscal Impact.

	SFY22	SFY23	SFY24	SFY25	SFY26
State	\$1,290,006	\$2,653,481	\$2,725,011	\$2,803,437	\$2,922,454
Federal	\$2,012,102	\$4,124,697	\$4,235,641	\$4,357,282	\$4,541,880
Total	\$3,302,108	\$6,778,178	\$6,960,652	\$7,160,719	\$7,464,334

Rule Development Schedule.

September 17, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
February 2022	Publish adopted rules in Texas Register
February 2022	Effective date

[HHSC proposes an amendment to a rule in TAC, Title 1, Part 15, Chapter 353, Medicaid Managed Care, Subchapter O, §353.1305, concerning Uniform Hospital Rate Increase Program](#)

Background and Proposal. The Texas Health and Human Services Commission proposes an amendment to §353.1305, relating to Uniform Hospital Rate Increase Program for program periods before September 1, 2021. The purpose of the amendment is to extend the Uniform Hospital Rate Increase Program (UHRIP) program an additional year (to include program periods before



September 1, 2022) or for the time period as approved by the Centers for Medicare and Medicaid Services.

Fiscal Impact.

	SFY 23	SFY 24	SFY 25	SFY 26	SFY 27
State/Other	\$1,232,067,032	\$0	\$0	\$0	\$0
Federal	\$2,093,350,059	\$0	\$0	\$0	\$0
Total	\$3,325,417,091	\$0	\$0	\$0	\$0

Rule Development Schedule

October 8, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
January 2022	Publish adopted rules in Texas Register
January 2022	Effective date

[Department of State Health Services \(DSHS\) proposes the repeal of rules and new rules in TAC, Title 25, Part 1, Chapter 157, Emergency Medical Care, Subchapter G, §§157.122, 157.132, and 157.133, concerning Stroke Facility Designation and Trauma Service Areas](#)

Background and Proposal. The EMS/Trauma Systems Section, in the DSHS Consumer Protection Division, designates facilities for Trauma, Stroke, Neonatal, Maternal, and Centers of Excellence for Fetal Diagnosis and Therapy, and regulates emergency medical services (EMS) and trauma service areas (TSAs). The section provides technical assistance concerning facility designation and the regulation of EMS and TSAs.

The proposal updates the content and processes with the advances and practices that have developed since the rules were last revised. The repeal and new §157.122, updates the geographic alignment change to a TSA and the process for realignment of a county to a TSA.

House Bill (H.B.) 7, 84th Legislature, Regular Session, 2015, removed the funds from regional trauma account No. 5137 and reallocated the funds to the designated trauma facility and EMS account No. 5111. The repeal of §157.132 removes the regional trauma account in order to align with the legislative direction of H.B. 7.

The repeal and new §157.133 aligns the Texas systems with national stroke standards. Per Texas Health and Safety Code §773.024, the Governor's EMS and Trauma Advisory Council (GETAC) Stroke Committee shall consult the criteria for stroke facilities established by national medical

organizations, such as The Joint Commission, in developing the stroke emergency transport plan and stroke facility criteria. The extensive revisions to the rule text and reorganization of the subsections necessitate repeal and replacement, rather than an amendment to the section.

Fiscal Impact. None reported

Rule Development Schedule.

September 2021	Present proposed rules to GETAC
September 24, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
January 2022	Publish adopted rules in Texas Register
January 2022	Effective date

[DSHS proposes amendments to rules in TAC, Title 25, Part 1, Chapter 289, Radiation Control, Subchapter F, §§289.252, 289.256, and 289.257, concerning Licensing, Medical and Veterinary Use, and Packaging and Transportation of Radioactive Material](#)

Background and Proposal. The proposed amendments in Texas Administrative Code, Title 25, §§289.252, 289.256, and 289.257 are necessary to comply with compatibility requirements of the United States Nuclear Regulatory Commission (NRC), to which Texas is subject as an Agreement State. The amendments update NRC information and are the result of the NRC's adoption of rules related to the reporting and notification requirements for a medical event for permanent implant brachytherapy and the training for radiation safety officers, associate radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, teletherapy or medical physicists, authorized users, and nuclear pharmacists. The amendments allow associate radiation safety officers to be named on a medical license and several clarifying amendments; and exempt certain board-certified individuals from certain training and experience requirements (i.e., "grandfather" these individuals).

Other proposed amendments to §§289.252, 289.256, and 289.257 clarify terms and conditions of licenses for medical use of radioactive material, establish new definitions, update license application processes, and update facility radiation protection programs. The amendments also include changes to update, correct, improve, or clarify rule citation references, terminology, language and format consistency, grammar, and minor typographical and formatting errors.

Fiscal Impact. None Reported

Rule Development Schedule.

June 25, 2021	Review by Texas Radiation Advisory Board
October 8, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
January 2022	Publish adopted rules in Texas Register
January 2022	Effective date

[HHSC proposes the repeal of rules in TAC, Title 25, Part 1, Chapter 417, Agency and Facility Responsibilities, Subchapter C, §§417.101 - 417.110, and Title 40, Part 1, Chapter 7, DADS Administrative Responsibilities, Subchapter C, §§7.101 - 7.110, and new rules in Title 26, Part 1, Chapter 910, Charges for Services in State Facilities, §§910.1 - 910.10, concerning Charges for Services in State Facilities](#)

Background and Proposal. The Texas Health and Human Services Commission (HHSC) proposes the repeal of the rules in Texas Administrative Code (TAC) Title 25, Chapter 417, Subchapter C, relating to Charges for Services in TDMHMR Facilities, and 40 TAC Chapter 7, Subchapter C, relating to Charges for Services in State Facilities, and proposes new rules in 26 TAC Chapter 910, relating to Charges for Services in State Facilities.

This proposal reflects the move of the state hospitals from the Department of State Health Services and the state supported living centers from the Department of Aging and Disability Services to HHSC. The move consolidates HHSC rules into 26 TAC. The proposed new rules have updated agency information, population language, and a new fee schedule.

Fiscal Impact. There is expected to be a reduction in fees paid to the agency as a result of the new fee schedule, however, HHSC does not have sufficient information to provide an accurate estimate of the reduction at this time

Rule Development Schedule.

September 17, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
January 2022	Publish adopted rules in Texas Register
January 2022	Effective date

[HHSC proposes a new rule in TAC, Title 26, Part 1, Chapter 556, Nurse Aides, §556.100, concerning Nurse Aide Transition from Temporary Status to Permanent Rule](#)

Background and Proposal. The purpose of this proposal is to put into permanent rule a certification process for temporary nurse aides hired under the waiver put in place during the COVID-19 public health emergency issued by the United States Secretary of Health and Human Services (COVID-19 public health emergency). This proposal implements the same process as the emergency rule implemented on May 20, 2021.

The governor's March 13, 2020, proclamation certified that the COVID-19 virus posed an imminent threat of disaster in the state and declared a state of disaster for all counties in Texas. In the governor's proclamation, the governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with the disaster. HHSC accordingly found that an imminent peril to the public health, safety, and welfare of the state required adoption of an emergency rule to provide nurse aide transition from temporary status, which became effective May 20, 2021, and is set to expire in September 2021, unless extended by 60-days. To ensure consistency in the process for certifying nurse aides, the Health and Human Services Commission (HHSC) proposes to adopt this process into permanent rule.

This proposal will help prevent workforce shortages in nursing facilities once the COVID-19 public health emergency ends. Nursing facilities are prohibited by state and federal law from allowing an uncertified nurse aide to work in the facility for more than four months. This requirement was waived during the COVID-19 public health emergency. As the COVID-19 public health emergency has continued for more than a year, many nursing facilities are now dependent on a workforce that was hired under this waiver. HHSC adopted an emergency rule to put a certification process in place for nurse aides hired under the waiver. This proposal puts into permanent rule a process that will help prevent a disruption in the available nurse aide workforce once the waiver ends.

Fiscal Impact. None reported

Rule Development Schedule.

September 10, 2021	Publish proposed rule in Texas Register
November 18, 2021	Present to HHSC Executive Council
November 2021	Publish adopted rule in Texas Register
November 2021	Effective date

[HHSC proposes amendments to rules and new rules in TAC, Title 25, Part 1, Chapter 117, End Stage Renal Disease, Subchapter D, §117.49, Chapter 133, Hospital Licensing, Subchapter C, §133.45, Chapter 135, Ambulatory Surgical Centers, Subchapter A, §135.30, Chapter 137, Birthing Centers, Subchapter D, §137.55, Chapter 139, Abortion Facility Reporting and Licensing, Subchapter D, §139.60, Chapter 140, Health Professions Regulation, Subchapter I, §140.435, Chapter 229, Food and Drug, Subchapter J, §229.144, and Chapter 448, Standard of Care, Subchapter I, §448.912, and an amendment to a rule and new rules in Title 26, Part 1, Chapter 506, Special Care Facilities, Subchapter C, §506.38, Chapter 509 Freestanding Emergency Medical Care Facilities, Subchapter C, §509.68, and Chapter 510, Private Psychiatric Hospitals and Crisis Stabilization Units, Subchapter C, §510.44, concerning Human Trafficking Signage Requirements and Prohibiting Organ Transplant Recipient Discrimination](#)

Background and Proposal. HHSC is proposing new Title 25 Texas Administrative Code (TAC) §117.49, concerning Miscellaneous Policies and Protocols, §135.30, concerning Miscellaneous Policies and Protocols, §140.435, concerning Miscellaneous Policies and Protocols, §448.912, concerning Miscellaneous Policies and Protocols; and new 26 TAC §506.38, concerning Miscellaneous Policies and Protocols, and §509.68, concerning Miscellaneous Policies and Protocols; amended 25 TAC §133.45, concerning Miscellaneous Policies and Protocols, §137.55, concerning Other State and Federal Compliance Requirements, §139.60, concerning Other State and Federal Compliance Requirements, and §229.144, concerning State and Federal Statutes and Regulations; and amended 26 TAC §510.44, concerning Miscellaneous Policies and Protocols.

The proposal is necessary to comply with H.B. 119, 87th Legislature, Regular Session, 2021, which requires HHSC to adopt rules prohibiting health care facilities from discriminating against an organ transplant recipient based on a patient's or client's disabilities; these facilities include abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities, and health care providers, including licensed chemical dependency counselors. The proposal is also necessary to comply with House Bill (H.B.) 3721, 87th Legislature, Regular Session, 2021, which requires HHSC to adopt rules requiring abortion facilities and hospitals to comply with the human trafficking signage requirements required by Texas Health and Safety Code §245.025.

This proposal updates the rules in 25 TAC Chapters 117, 133, 135, 137, 139, 140, 229, 448 and 26 TAC Chapters 506, 509, and 510 to comply with H.B. 119 and H.B. 3721.

Fiscal Impact. HHSC lacks the data to provide an estimate of the amounts at this time.

Rule Development Schedule

October 8, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
November 2021	Publish adopted rules in Texas Register
December 2021	Effective date

[HHSC proposes amendments to rules in TAC, Title 25, Part 1, Chapter 448, Standards of Care, Subchapters D, H, and I, §§448.401, 448.801, 448.803, and 448.911, concerning Chemical Dependency Treatment Facility Satellite Office Exemption and Telehealth Service Delivery](#)

HHSC is amending 25 TAC §448.401, concerning License Required; §448.801, concerning Screening; §448.803, concerning Assessment; and §448.911, concerning Treatment Services Provided by Electronic Means.

This proposal is necessary to comply with House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021, which requires HHSC to adopt rules to permit a licensed chemical dependency treatment facility (CDTF) to provide outpatient treatment services to adult and adolescent clients using telecommunications or information technology. H.B. 4 also requires HHSC to adopt rules relating to the minimum standards for CDTFs to provide intakes, screenings, and assessments using telecommunications or information technology.

The proposal is also necessary to implement H.B. 4298, 86th Legislature, Regular Session, 2019, which exempted a satellite office or location operating under the supervision of a licensed outpatient CDTF and providing services within the scope of the outpatient CDTF's license from the requirement to obtain a CDTF license under Texas Health and Safety Code Chapter 464.

The proposal is also necessary to ensure consistency with Texas Health and Safety Code §464.003 by updating the rule language to align with current statute. Senate Bill (S.B.) 219, 84th Legislature, Regular Session, 2015, and S.B. 1314, 85th Legislature, Regular Session, 2017, made non-substantive amendments to §464.003 to update the references for juvenile justice facilities and programs and licensed acute care facilities already exempt from licensure and to use person-first language. This proposal updates the rules in Title 25 Texas Administrative Code Chapter 448 to comply with H.B. 4 and H.B. 4298.

Fiscal Impact.

	SFY21	SFY22	SFY23	SFY24	SFY25
State	-\$2,719	-\$3,625	-\$3,625	-\$3,625	-\$3,625
Federal	0	0	0	0	0
Total	-\$2,719	-\$3,625	-\$3,625	-\$3,625	-\$3,625

Rule Development Schedule

October 8, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
November 2021	Publish adopted rules in Texas Register
December 2021	Effective date

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

[DSHS proposes new rules in TAC, Title 25, Part 1, Chapter 229, Food and Drug, Subchapter A, §§229.1 - 229.4, concerning Prescription Drug Price Disclosure](#)

Background and Proposal. The Department of State Health Services (DSHS) proposes new rules in Texas Administrative Code, Title 25, Chapter 229, Subchapter A, §§229.1 - 229.4, concerning Prescription Drug Price Disclosure. The proposal complies with House Bill 1033, 87th Legislature, Regular Session, 2021.

DSHS requires prescription drug manufacturers to report certain cost data for prescription drugs and price increases. The promulgation of rules allows DSHS to administer fines for failures to disclose price increases. The proposed new rules specify the fee of \$250 that is required when drug manufacturers submit each report.

The new rules provide the purpose of the subchapter, definitions, fee collection, and administrative penalties as it relates to drug price reporting.

Fiscal Impact

	SFY22	SFY23	SFY24	SFY25	SFY26
State	\$756,670	\$701,032	\$422,020	\$422,563	\$423,124
Federal	0	0	0	0	0
Total	\$756,670	\$701,032	\$422,020	\$422,563	\$423,124

Rule Development Schedule

October 22, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
December 2021	Publish adopted rules in Texas Register
January 2022	Effective date

[DSHS proposes an amendment to a rule in TAC, Title 25, Part 1, Chapter 97, Communicable Diseases, Subchapter A, §97.7, concerning COVID-19 School Exclusion Criteria](#)

Background and Proposal. To protect children returning to school and the public health, safety, and welfare of the state during the COVID-19 pandemic, DSHS is amending §97.7 in Texas Administrative Code, Title 25 to add COVID-19 to the list of diseases requiring exclusion from schools. The rule describes the criteria for COVID-19 that require exclusion from schools and provides guidance on readmission criteria.

Medical evidence on the appropriate criteria continues to evolve and linking to the DSHS website in the rule for this guidance enables DSHS to be immediately responsive to changing science without having to amend the rule. There is no guidance on readmission written into the rule itself.

Fiscal Impact. No fiscal impact reported

Rule Development Schedule

November 5, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
January 2022	Publish adopted rules in Texas Register
January 2022	Effective date

[HHSC proposes an amendment to a rule in TAC, Title 26, Part 1, Chapter 558, Licensing Standards for Home and Community Support Services Agencies, Subchapter C, Division 4, §558.303, and proposes new rules in Chapter 570, Long-Term Provider Rules During a](#)



Contagious Disease Outbreak, Epidemic, or Pandemic, concerning Long-Term Care Provider Rules During a Contagious Disease Outbreak, Epidemic, or Pandemic

Background and Proposal. The Texas Health and Human Services Commission (HHSC) proposes an amendment to §558.303 in Texas Administrative Code (TAC) Title 26, relating to Standards for Possession of Sterile Water or Saline, Certain Vaccines or Tuberculin, and Certain Dangerous Drugs, and proposes new Chapter 570 in TAC Title 26, relating to Long-term Care Provider Rules During a Contagious Disease Outbreak, Epidemic, or Pandemic.

The purpose of the proposal is to create provider rules that apply to Assisted Living Facilities (ALFs), Day Activity Health Services (DAHS), Home and Community Support Services Agencies (HCSSAs), Prescribed Pediatric Extended Care Centers (PPECCs), Nursing Facilities (NFs), Intermediate Care Facilities for Individuals with and Intellectual Disability or Related Condition (ICF/IIDs), Home and Community-based Services (HCS) program providers, and Texas Home Living (TxHmL) program providers during a contagious disease outbreak, epidemic, or pandemic.

The proposal implements Texas Health and Safety Code §142.0062(a) amended by House Bill 797, 87th Legislature, Regular Session, 2021. Section 142.0062(a) allows an HCSSA to purchase, store, or transport for administering any vaccine approved, authorized for emergency use, or otherwise permitted by the United States Food and Drug Administration to treat or mitigate the spread of a communicable disease.

The proposal implements Texas Health and Safety Code, Chapter 260B, Right to Essential Caregiver Visits for Certain Residents, created by Senate Bill (S.B.) 25, 87th Legislature, Regular Session, 2021. Chapter 260B requires that all residents of an ALF, NF, or ICF/IID and individuals receiving services through an HCS program provider in a residence have the right to designate an essential caregiver and have essential caregiver visits. A facility or program provider may not prohibit in-person visitation with an essential caregiver, except for certain limited periods of time as provided in Chapter 260B.

The proposal also implements Texas Health and Safety Code, Chapter 260C, In-Person Visitation with Religious Counselor, created by S.B. 572, 87th Legislature,

Regular Session, 2021. Chapter 260C protects the religious liberty of each client or resident of an HCSSA, NF, or ALF by prohibiting the HCSSA, NF, or ALF from preventing a resident or client from receiving in-person visitation with a religious counselor during a public health emergency unless there is a federal law or a federal agency that prohibits in-person visitation during that period.

The proposed rules were developed based on issues and concerns that arose during the COVID-19 pandemic and lessons learned that might be helpful to providers. The intent is to provide minimum standards for what a facility, DAHS, HCSSA, PPECC, and must do during a contagious disease outbreak, epidemic, or pandemic related to visitation, testing, screening, reporting, quarantining or isolating of residents and individuals, and other infection prevention and control measures.

Fiscal Impact. No fiscal impact reported

Rule Development Schedule

November 10, 2021	Present to Medical Care Advisory Committee
November 12, 2021	Publish proposed rules in Texas Register
November 18, 2021	Present to HHSC Executive Council
January 2022	Publish adopted rules in Texas Register
January 2022	Effective date

[HHSC proposes amendments to rules in TAC, Title 26, Part 1, Chapter 745, Licensing, Subchapter N, §§745.8913, 745.8933, 745.9025 - 746.9027, and 745.9030, concerning Alternative Administrator's Licenses for Military Members, Spouses, and Veterans](#)

Background and Proposal. The proposal is to implement House Bill (H.B.) 139, 87th Legislature, Regular Session, 2021, which amended §55.001, 55.004, and 55.0041 of Texas Occupations Code. The proposed changes will update the current requirements for a military member, spouse, or veteran that applies for an administrator's license for a general residential operation, child-placing agency, or both, including a military spouse with an equivalent license in another state seeking to act as an administrator without obtaining an administrator's license. Specifically the changes (1) expand military members of armed forces to include members of the space force; (2) clarify that a military member, spouse, or veteran must receive credit for any training, education, or experience that meets a requirement for an administrator's license; and (3) require a military spouse with a license in another state seeking to act as an administrator without obtaining an administrator's license to submit a copy of the permanent change of station order for the military member to whom the spouse is married to establish residency. In addition, HHSC is proposing changes to the rules, including the addition of citations, to improve the readability and understanding of the rules.

Fiscal Impact. No fiscal impact reported

Rule Development Schedule.

October 29, 2021	Publish proposed rules in Texas Register
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November 18, 2021	Present to HHSC Executive Council
December 2021	Publish adopted rules in Texas Register
December 2021	Effective date

Not yet submitted to the Texas Register for APA public comment

[HHSC proposes amendments to rules, new rules, and the repeal of rules in TAC, Title 26, Part 1, Chapter 748, Minimum Standards for General Residential Operations, concerning the Comprehensive Rule Review for Chapter 748](#)

Background and Proposal. The purpose of the proposal is to implement Texas Human Resources Code (HRC) §42.042(b), which requires Child Care Regulation (CCR), a division of HHSC, to conduct a comprehensive review of all minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 748, Minimum Standards for General Residential Operations. In addition, the purpose of the proposal is to implement a section of statute added by House Bill (H.B.) 700, 87th Texas Legislature, Regular Session, 2021.

Fiscal Impact. No fiscal impact reported

Rule Development Schedule.

November 18, 2021	Present to HHSC Executive Council
December 2021	Publish proposed rules in Texas Register
April 2022	Publish adopted rules in Texas Register
April 2022	Effective date

[HHSC proposes amendments to rules, new rules, and the repeal of rules in TAC, Title 26, Part 1, Chapter 749, Minimum Standards for Child-Placing Agencies, concerning the Comprehensive Rule Review for Chapter 749](#)

Background and Proposal. The purpose of the proposal is to implement Texas Human Resources Code (HRC) §42.042(b), which requires Child Care Regulation (CCR), a division of HHSC, to conduct a comprehensive review of all minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 749, Minimum Standards for Child-Placing Agencies.

In addition, the purpose of the proposal is to implement sections of statute that were amended by House Bill (H.B.) 700, H.B. 1387, and H.B. 1927, 87th Texas Legislature, Regular Session, 2021. H.B. 700 adds §264.1214(c) to Texas Family Code to allow an adult in care to share a bedroom with a child in care who is at least 16 years old, and the age difference is not more than 24 months. H.B. 1387 amends HRC §42.042(e-1) to allow foster homes to store their firearms and ammunition in the same locked location without trigger locks. H.B. 1927 amends HRC §42.042(e-2) to allow a foster parent to transport a foster child in the same vehicle as a handgun if the foster parent “is not otherwise prohibited by law from carrying a handgun,” which replaces the current requirement that the foster parent be “licensed to carry” a handgun.

Fiscal Impact. No fiscal impact reported.

Rule Development Schedule

November 18, 2021	Present to HHSC Executive Council
December 2021	Publish proposed rules in Texas Register
April 2022	Publish adopted rules in Texas Register
April 2022	Effective date

[HHSC proposes the repeal of rules in TAC, Title 40, Part 1, Chapter 93, Employee Misconduct Registry, §§93.1 - 93.9, and new rules in Title 26, Part 1, Chapter 561, Employee Misconduct Registry, §§561.1 - 561.9, concerning Employee Misconduct Registry](#)

Background and Proposal. The purpose of the proposal is to update and relocate the Employee Misconduct Registry (EMR) rules from Texas Administrative Code (TAC) Title 40 Chapter 93, to 26 TAC Chapter 561. The relocation is necessary to implement S.B. 200, 84th Legislature, Regular Session, 2015, which transferred the functions of the legacy Department of Aging and Disability Services (DADS) to HHSC, effective September 1, 2017. Therefore, the Executive Commissioner of HHSC proposes the repeal of §93, concerning Employee Misconduct Registry in Title 40, Chapter 93, §§93.1 - 93.9, concerning Employee Misconduct Registry, and new rules in 26 TAC Chapter 561, §§561.1 - 561.9, concerning Employee Misconduct Registry.

The new rules are substantially the same as rules proposed for repeal, but the proposed new rules update HHSC agency and organizational definitions, references, and authority to reflect the transfer of functions from DADS to HHSC. The proposed new rules also revise the informal review process to provide for non-regional Regulatory Services Division staff to conduct or participate in the informal

review process and in the decision-making process. Citations are updated to reflect the transition from 40 TAC to 26 TAC.

Fiscal Impact. No fiscal impact reported

Rule Development Schedule.

November 18, 2021	Present to HHSC Executive Council
December 2021	Publish proposed rules in Texas Register
April 2022	Publish adopted rules in Texas Register
April 2022	Effective date

[HHSC proposes amendments to rules and the repeal of rules in TAC, Title 26, Part 1, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, concerning Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Legislative Implementation and Updates](#)

Background and Proposal. The purpose of the amendments and repeals is to implement the changes made to Texas Health and Safety Code, Chapter 81, by House Bill (H.B.) 1848, 86th Legislature, Regular Session, 2019 and changes made to Texas Health and Safety Code, Chapter 252, by H.B. 3720, 87th Legislature, Regular Session, 2021. H.B. 1848 amends the requirements of a long-term care facility's infection prevention and control program to include monitoring key infectious agents including multidrug-resistant organisms and procedures for making rapid influenza diagnostic tests available to facility residents. H.B. 3720 sets the maximum amount of an administrative penalty that can be assessed for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations.

Additionally, the amendments and repeals also reflect the transition from paper applications to the use of the online licensure portal, called the Texas Unified Licensure Information Portal (TULIP), and clarify other processes relating to licensure. The amendments and repeals also update rule language to reflect the administrative transfer of the rules from 40 TAC Chapter 90 and the change of regulating agency from the Department of Aging and Disability Services (DADS) to the Health and Human Services Commission (HHSC).

Fiscal Impact. No fiscal impact reported

Rule Development Schedule.

November 18, 2021	Present to HHSC Executive Council
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December 2021	Publish proposed rules in Texas Register
April 2022	Publish adopted rules in Texas Register
May 2022	Effective date

[HHSC proposes the amendment to a rule in TAC, Title 1, Part 15, Chapter 351, Coordinated Planning and Delivery of Health and Human Services, Subchapter B, Division 1, §351.805, concerning the State Medicaid Managed Care Advisory Committee](#)

Background and Proposal. The Texas Health and Human Services Commission proposes to amend §351.805, relating to State Medicaid Managed Care Advisory Committee. The primary purpose of amending §351.805 is to implement changes recommended by the State Medicaid Managed Care Advisory Committee (SMMCAC) in March 2020 and to make additional changes recommended by HHSC staff. Additional edits reorganize and format the rule so that the SMMCAC rule is consistent with other HHSC advisory committee rules established under Texas Government Code §531.012. Based on the recommendations, the proposed amendment extends the SMMCAC membership terms from two to three years. This change gives members more time to use the experience they gain over time as committee members. The date of abolition is changed from December 31, 2023, to December 31, 2024, to extend the advisory functions of the SMMCAC for one additional year. The proposed amendment changes the maximum number of SMMCAC members from 23 to 24, the maximum allowed by Texas Government Code §2110.002(a). The proposed increase to 24 members allows for the total number of 24 members who may be appointed from the three membership categories.

The proposed amendment removes, adds, and reorganizes the nineteen categories used to select and appoint representatives to the SMMCAC into three categories. The first category has subcategories of people enrolled in Medicaid managed care from which 10 people can be appointed as members. The second category has subcategories of providers contracted with Texas Medicaid managed care organizations (MCOs) from which 10 members can be appointed. The third category provides for the appointment of representatives of four MCOs participating in Texas Medicaid, including both national and community-based plans, and dental maintenance organizations. These proposed changes make the composition of the SMMCAC more equal between persons enrolled and providers and allows for the appointment of four MCO representatives as members.

The proposed amendment, for each subcategory of person enrolled, allows HHSC, to appoint the person or to appoint the person's family member or an advocate representing people in the person's subcategory. The term "family member" is defined in §351.801 as a "parent, spouse, grandparent, adult sibling, adult child, guardian, or legally authorized representative." These

proposed changes may make it easier for HHSC to appoint a representative from each subcategory of persons enrolled in Medicaid managed care.

The proposed amendment adds a subcategory for a person who is 21 years of age or older and is dually enrolled in Medicaid and Medicare and adds a subcategory of providers serving Medicaid recipients who are 21 years of age or older and have a disability. These changes help ensure additional representation on the SMMCAC for dual eligible adults and providers serving adults with disabilities.

Fiscal Impact. No fiscal impact reported

Rule Development Schedule.

November 18, 2021	Present to HHSC Executive Council
December 2021	Publish proposed rules in Texas Register
March 2022	Publish adopted rules in Texas Register
March 2022	Effective date

[HHSC proposes the repeal of rules in TAC, Title 40, Part 2, Chapter 101, Administrative Rules and Procedures, Subchapter C, Division 3, a new rule in Title 15, Part 1, Chapter 351, Coordinated Planning and Delivery of Health and Human Services, Subchapter B, Division 1, §351.843, and amendments to rules in Title 26, Part 1, Chapter 350, Early Childhood Intervention Services, concerning Early Childhood Intervention](#)

Background and Proposal. The Texas Health and Human Services Commission (HHSC) proposes the amendment of Sections 350.103, 350.201, 350.203, 350.207, 350.209, 350.215, 350.217, 350.218, 350.233, 350.309, 350.310, 350.313, 350.315, 350.403, 350.409, 350.415, 350.417, 350.501, 350.505, 350.507, 350.617, 350.706, 350.708, 350.811, 350.817, 350.823, 350.1004, 350.1007, 350.1009, 350.1104, 350.1105, 350.1205, 350.1207, 350.1211, 350.1413, 350.1419, 350.1425, 350.1431, and 350.1435; the repeal of Sections 101.501, 101.503, 101.505, 101.507, 101.509, 101.511, 101.513, 101.515; and new Section 351.843.

Early Childhood Intervention (ECI) provides developmental and therapeutic services to Texas children with disabilities and significant developmental delays from birth to 36 months. Proposed amendments to the rules governing ECI contractors provide administrative efficiencies for ECI contractors. The amendments add requirements related to criminal background checks that are currently in the HHSC contract with agencies that provide ECI services.

Other proposed amendments strengthen transition services for children and families by requiring ECI providers to share information related to Medicaid waiver programs with families of children who are likely to qualify for those programs.

The proposed amendments also contain non-substantive changes that improve clarity, update references based on the administrative transfer of ECI rules to Texas Administrative Code (TAC) Title 26, Chapter 350, align abbreviations with HHSC rule conventions, and move the ECI Advisory Committee requirements from 40 TAC Chapter 101 to 1 TAC Chapter 351.

Fiscal Impact. No fiscal impact reported.

Rule Development Schedule.

November 18, 2021	Present to HHSC Executive Council
November 2021	Publish proposed rules in Texas Register
March 2022	Publish adopted rules in Texas Register
March 2022	Effective date

4. State Medicaid Managed Care Advisory Committee Recommendations*

Committee Recommendations from 2020:

Recommendation 1 HHSC should develop a list of exceptions to telehealth/telemedicine and ensure fee for service align with the intent of Senate Bill 670 (86th Texas Legislature, Regular Session).

Recommendation 2 HHSC should ensure all telehealth and telemedicine is included in the medical portion of the Medical Loss Ratio.

Recommendation 3 HHSC is encouraged to conduct an environmental scan regarding any barriers administratively that may limit or discourage utilization of telehealth and telemedicine.

Recommendation 4 HHSC should review potential means for including telehealth and telemedicine in network adequacy standards.

Recommendation 5 Recommend HHSC consider covering audio only, telehealth/telemedicine services and extending indefinitely the modalities to have increased access to care, and more

services be covered by telehealth/telemedicine in line with national coverage standards (e.g., Medicare).

Recommendation 6 Recommend that HHSC permanently allow service coordination assessments and face-to-face visits to occur by way of a telehealth modality if medically appropriate, is the member's choice, and is technologically and physically feasible for the member; in order to reduce costs, improve access to service coordination, and improve efficiency.

Recommendation 7 Recommend review for relief from the duplicative and burdensome (provider) enrollment and credentialing process, request a more streamlined and tighter sequencing of processes, review federal requirements and best practices to streamline the process so that providers can start providing services more quickly, and to allow retro date for service reimbursement to date of enrollment and allow one enrollment to be completed for approval by all MCOs and TMHP.

Recommendation 8 Recommend HHSC consider and explore any potential access and quality issues due to issues resulting from reimbursement rates set for Durable Medical Equipment (DME) and if there is a need for establishing a separate recognition and coverage for Complex Rehab Technology products and the services that incorporate the customized nature of the technology and the broad range of services necessary to meet the unique medical and functional needs of people with significant disabilities and complex medical conditions.

Recommendation 9 HHSC should consider any potential barriers to ensuring people receive appropriate treatment with respect to COVID-19, analyze the impact of existing policy changes on access to care, and determine which temporary policy changes should remain in the Medicaid program following the public health pandemic.

Recommendation 10 Recommendation that HHSC move to extend the SMMCAC member terms from two years to three years.

Recommendation 11 Recommend that HHSC review the composition of the SMMCAC for more balance between the three primary groups of SMMCAC membership and ensure representation of the adult Medicaid population.

Recommendation 12 Recommend amending the necessary service coordination verbiage (utilizing service coordination for what is currently service coordination and service management) targeted to

be effective March 1, 2022 to reflect HHSC's standardization of phrases and terminology as previously recommended in 2019.

Recommendation 13 Recommend HHSC work with stakeholders such as Texas Association of Health Plans (TAHP), Meadows Mental Health Policy Institute, and Texas Council of Community Centers during the review of cost effectiveness of proposed in lieu of services in order to ensure appropriate aspects are being considered, including factors that may be unique to Texas.

Recommendation 14 Recommend HHSC to convene a workgroup of dentists representing dental school faculty, Medicaid practicing dentists, state policy staff, and the dental maintenance organizations to thoroughly review and comprehensively update the amount, duration, and scope of the Medicaid dental benefit policies as they impact DMOs.

Follow the live link above for background detail on the recommendations.

5. Recent Rule Adoptions - Information item not for discussion

Adoptions submitted to the Texas Register that are not yet effective

- Repeal of Obsolete Contracting Ethics Rules, published 11/19/21, effective 11/22/21
- Vital Statistics Process for Fee Waivers, Death Certificate for Religious Purposes, and Death Certificate Amendments, published 11/19/21, effective 11/24/21
- Uncompensated Care Program Application Fee, published 11/19/21, effective 11/28/21

See [Texas Register November 19, 2021](#)

Adoptions that are effective

Preadmission Screening and Resident Review, effective 9/1/21

[https://www.sos.texas.gov/texreg/archive/August272021/Adopted%20Rules/26.HEALTH%20AND%20HUMAN%20SERVICES.html#118\(link is external\)](https://www.sos.texas.gov/texreg/archive/August272021/Adopted%20Rules/26.HEALTH%20AND%20HUMAN%20SERVICES.html#118(link%20is%20external))

Coordination of Care from Specialty Providers, effective 9/1/21

[https://www.sos.texas.gov/texreg/archive/August272021/Adopted%20Rules/1.ADMINISTRATIVE%20RULES.html#93\(link is external\)](https://www.sos.texas.gov/texreg/archive/August272021/Adopted%20Rules/1.ADMINISTRATIVE%20RULES.html#93(link%20is%20external))



Inpatient Hospital Reimbursement, effective 9/20/21

<https://www.sos.texas.gov/texreg/archive/September172021/Adopted%20Rules/1.ADMINISTRATION.html#131>(link is external)

Hospital Augmented Reimbursement Program, effective 9/29/21

<https://www.sos.texas.gov/texreg/archive/September242021/Adopted%20Rules/1.ADMINISTRATION.html#96>(link is external)

e-Health Advisory Committee, effective 10/6/21

<https://www.sos.texas.gov/texreg/archive/October12021/Adopted%20Rules/1.ADMINISTRATION.html#74>(link is external)

Pediatric Long-term Care Facility Reimbursement, effective

10/19/21 <https://www.sos.texas.gov/texreg/archive/October152021/Adopted%20Rules/1.ADMINISTRATION.html#45>(link is external)

Home and Community-based Services Waiver Add-on Payment Extension, effective 10/24/21

<https://www.sos.texas.gov/texreg/archive/October222021/Adopted%20Rules/1.ADMINISTRATION.html#91>(link is external)

Outpatient Hospital Reimbursement, effective 10/24/21,

<https://www.sos.texas.gov/texreg/archive/October222021/Adopted%20Rules/1.ADMINISTRATION.html#93>(link is external)

Epinephrine Auto-Injector Rules for Child Care, effective 10/25/21

<https://www.sos.texas.gov/texreg/archive/October222021/Adopted%20Rules/26.HEALTH%20AND%20HUMAN%20SERVICES.html#111>(link is external)

Medicaid Bed Reallocation, effective 11/8/21

<https://www.sos.texas.gov/texreg/archive/November52021/Adopted%20Rules/26.HEALTH%20AND%20HUMAN%20SERVICES.html#150>(link is external)

COVID-19 Fund Reporting, effective 11/8/21

<https://www.sos.texas.gov/texreg/archive/November52021/Adopted%20Rules/1.ADMINISTRATION.html#104>(link is external)



Texas Environmental Lead Reduction, effective 11/9/21

[https://www.sos.texas.gov/texreg/archive/November52021/Adopted%20Rules/25.HEALTH%20SERVICES.html#144\(link is external\)](https://www.sos.texas.gov/texreg/archive/November52021/Adopted%20Rules/25.HEALTH%20SERVICES.html#144(link%20is%20external))

Disaster Rule Flexibilities for Community Behavioral Health Providers, effective 11/15/21

[https://www.sos.texas.gov/texreg/archive/November52021/Adopted%20Rules/26.HEALTH%20AND%20HUMAN%20SERVICES.html#152\(link is external\)](https://www.sos.texas.gov/texreg/archive/November52021/Adopted%20Rules/26.HEALTH%20AND%20HUMAN%20SERVICES.html#152(link%20is%20external))

Nursing Facility Administrators Licensing Program, published 11/12/21; effective 11/14/21

Low-THC Cannabis for Compassionate Use; published 11/12/21; effective 11/17/21

Public Comment

Linda Litzinger, Texas Parent to Parent commented on fragile children who become fragile adults. These people still require coordination of benefits. Sometimes a change in MCOs results. This can impact the provider of choice for transitioning children. As well coordination of benefits is necessary for Tricare covered individuals. The language should be updated to comply with recent legislative changes.

Adrian Trigg, TexMed (?) encouraged the continuation of community care for children living at home. She opposed the rule that restricts benefits for the medically complex individuals.

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

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