



**HHSC: Medical Care
Advisory Committee,
August 13th, 2020**



The Medical Care Advisory Committee is a federally mandated committee that reviews and makes recommendations to the state Medicaid director on proposed rules that involve Medicaid policy or affect Medicaid-funded programs.

Members are presented below.

<p>Colleen Horton, Chair Advocate, Mental Health Austin</p> <p>Mary Helen Tieken, RN, BSN, Vice Chair Registered Nurse Floresville</p> <p>Salil Deshpande, M.D. Managed Care Organization Representative Houston</p> <p>Lou Driver Nursing Home Administrator Houston</p> <p>Robert Hilliard, Jr., M.D. Physician, Ob/Gyn Houston</p> <p>Cynthia Jumper, M.D., M.P.H. Physician, Internal Medicine Lubbock</p> <p>Donna S. Smith Physical Therapist Austin</p>	<p>Diana Strupp, HPAC Chair Hospital Representative Dallas</p> <p>Doug Svien Provider Stephenville</p> <p>Susan Swartz, R.N. Registered Nurse San Angelo</p> <p>Edgar A. Walsh, Jr., R.Ph. Pharmacy Harlingen</p> <p>Non-voting members</p> <p>Ryan D. Van Ramshorst, M.D. Texas Health and Human Services Commission Austin</p> <p>Peter Hajmasy Texas Department of State Health Services Austin</p>
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Welcome, roll call, introductions, and opening remarks. The meeting was convened by Colleen Horton, Chair.

Approval of February 13, 2020 meeting minutes. The minutes were approved as written.

Medicaid and Children's Health Insurance Program activities. The update focused on the COVID-19 response, since that has occupied a great deal of effort by HHSC.

- Program flexibilities have been granted to facilitate service delivery
- Weekly stakeholder calls
- Website communication

The flexibilities included:

- Telehealth or telephone
- Provider enrollment flexibilities

- Suspending face-to-face requirements
- Prior authorization requirement suspension
- CHIP co-pay waived for office visits
- COVID-19 testing is covered with no prior authorization (PA)
- Appeals and fair hearing flexibilities

The regular work also continues.

Questions/Answers/Comments

Are there internal discussions about keeping the flexibilities after the crisis, especially in telehealth? HHSC stated that the health plans do not have to rigidly follow the telehealth restrictions, per legislation passed last session. There have been initial discussions about maintaining the flexibilities.

Regarding extensions in flexibilities, they would like to learn about it from the MCOs sooner than the day before. HHSC stated that they have been doing extensions month-to-month. Recently, extensions have been longer than a month. The MCOs are doing the best they can, given the timing that comes from HHSC.

Some families experienced contradictory correspondence. This was mentioned at the last meeting. There was a need for stakeholders to participate in the solution. The response that the Chair got from HHSC was to testify at one of the other committees. The Chair felt this was inappropriate.

ACTION ITEMS:

Intellectual and Developmental Disability (IDD) habilitative specialized services

- Anne McGonigle, Program Services Manager, HHSC IDD Services and Anthony Jalomo, IDD Director, HHSC Business Operations. ***Item withdrawn from the agenda.***

Rule Summary. The purpose of the proposal is to describe the requirements applicable to a service provider agency providing preadmission screening and resident review IDD habilitative specialized services (IHSS) to Medicaid-eligible nursing facility residents aged 21 years and older found through PASRR to need such services.

Long term care regulatory certification principle re-write - Kristin Priddy, Senior Policy Specialist, HHSC Long-term Care Regulatory Services

Rule Summary. HHSC proposes to draft new rules describing regulatory certification principles for the Home and Community-based Services (HCS) Medicaid waiver program providers. The new rules will describe certification principles regarding service delivery,

individual rights, requirements related to abuse, neglect and exploitation, staff member and service provider requirements, and quality assurance.

The comingling of rules is addressed through this project. Regulatory is separated from the program rules. Physical requirements are addressed and clarified on the checklist. The checklist items are put into rules. Also restraint rules are addressed especially enclosure beds.

Background. As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1, govern functions previously performed by DADS that have transferred to HHSC.

The purpose of this proposal is to draft new rules that describe the regulatory certification principles for the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Medicaid waiver program providers. The proposed new Chapter 565, Home and Community-based Services, and Chapter 566, Texas Home Living, in Title 26, update the content of the existing rules describing HCS and TxHmL certification principles and rules regarding regulatory processes for HCS and TxHmL waiver programs that are in 40 TAC, Chapter 9, Subchapters D and N. The rules in those chapters will be administratively transferred to 26 TAC. The date of those transfers has not been determined

A crosswalk was prepared between the old and new rules but had not yet been shared with stakeholders. The crosswalk will be shared soon, however. HHSC will be delaying implementation because of the pandemic until March of 2021. The dental restraints mentioned in the rule will be pulled from the rule before publication. The portion related to enclosure beds may be modified as well.

MCAC Discussion.

- Stakeholders have requested pulling the rule back but HHSC is requesting moving the rule forward.
- Stakeholders should have more input, given the extensive response to this rule.
- The rule is being moved to a new code, but it is also being changed.
- The document says that all stakeholder issues have been resolved, but that does not appear to be the case.

The Chair raised several issues she had with the rules:

- All stakeholder comments were not resolved

- Personal assistant services and habilitation have been combined into meaning the same thing
- Transition assistance services items are needed no matter where a person is transitioned to
- Voting assistance should be included with voter registration
- Focus is on controlling behavior and not on mental health recovery
- More discussion is needed on the appropriateness of enclosure beds (Medicaid adaptive aid)
- Definition of "seclusion" is not accurate in TxHmL portion
- The Chair was not happy with the way this was being managed (for administrative purposes)

HHSC Response: HHSC is open to working on the proposed changes to the rules. This is the second part of the project. The focus is health and safety issues right now. They are getting comments that they did not receive in May. The project is broken in half; the health and safety portion is being done first.

Interpretive guidance is needed for these rules; in the intent it creates more rules.

Fiscal Impact. None.

Rule Development Schedule

August 13, 2020 - Present to the Medical Care Advisory Committee

August 20, 2020 - Present to HHSC Executive Council

September 2020 - Publish proposed rules in Texas Register

January 2021 - Publish adopted rules in Texas Register

January 2021 - Effective date

Public Comment.

Susan Murphree, Disability Rights Texas:

- The site and grounds rules still have subjectivity in them and cultural differences should be safeguarded
- Protective devices: they are opposed to restraints, but they do not want an "always" rule that forces people to live in a more restrictive setting
- Pulling the dental behavioral plan requirement is a good move

We support people growing up in families, so family-based alternatives must be safeguarded. Community integration should be the focus along with health and safety.

HHSC stated they are committed to joint training (on rules) and will train on anything that is written and they are committed to providing interpretation. Again, the focus is on health and

safety and all reviews are colored by that approach. There is no timeline for rule initiation project. The intent is to move forward as soon as these rules move forward. It will involve stakeholder meetings.

Carole Smith, PPAT, stated they have submitted comments along with Texas Council and the concerns included:

- Significant changes have been made to the rules, which were billed as simply being moved from one section of the TAC to another
- A crosswalk is necessary, as is better communication
- Host homes will be deterred under the rules
- Lack of clarity is exacerbated under the rules

Cathy Griffith, Caregiver, expressed her opposition to moving forward with the proposed changes; more time is needed for vetting. She stated she has some concerns with the wording and possible misinterpretations thereof. Host providers will be discouraged because it is too prescriptive. A workgroup of stakeholders should be convened to review the proposed rule.

Isabel Casas, Texas Council of Community Centers, stated that they have submitted written comments. It should be delineated that sometimes there is a grey area and a new requirement can pop up from the clarifications provided in the rules. The rules should not be more restrictive than ICF rules. 565.60, 565.70 and 565.80 should be further reviewed.

Sandy Frizzell Batton, PACSTX, stated that they wanted three criteria:

- Short and clear
- Not more punitive than nursing facilities
- Not more than federal or state law requires

We did not want to be treated the same as institutions, which deters the host home folks. One rule now has been expanded to 40 rules. HHSC should reconvene the workgroup to review the rules.

Written public comments were read and are summarized below:

- Sites and grounds rules impede host home participation and crosses boundaries
- There are issues regarding enclosed beds as medically necessary items, which could restrict options for residents
- Opposition to Agenda Item 5 because they have not had the opportunity to meaningfully comment on the rules due to timing and COVID-19
- Rules should not move forward at this time
- Dental sedation is considered a chemical restraint, and this is not in sync with dental practice
- Disagreement with the RTC rules; the rules do not have the support of the stakeholders



The Chair stated that there is a large group of stakeholders who object to moving the rules forward. There were concerns about the checklist because of unintended consequences.

MOTION: Refer the new rules back to the Commissioner for reworking with a stakeholder workgroup - prevailed.

HCS/Texas Home Living (TxHmL) respite and day habilitation reimbursement
- Samuel West, Manager, HHSC Research, Development and Methodology

Rule Summary: The proposed amendments ensure compliance with the 21st Century Cures Act, which added Section 1903(l) to the Social Security Act to require all states to implement the use of electronic visit verification (EVV) for all Medicaid personal care services requiring an in-home visit by a service provider. Currently, HCS and TxHmL providers bill day habilitation (DH) and respite using service codes that do not distinguish between in-home and out-of-home service provision. The proposed amendments establish separate service codes for in-home and out-of-home care to allow HHSC to compare service claims for in-home DH and respite with the information in the EVV aggregator regarding the provision of those services.

Background: The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.112 and §355.723 to ensure compliance with the 21st Century Cures Act, which added Section 1903(l) to the Social Security Act to require all states to implement the use of electronic visit verification (EVV). Section 1903(l) requires that EVV be used for all Medicaid personal care services requiring an in-home visit by a service provider. EVV is a computer-based system that verifies that a service is provided and electronically documents information about the service visit such as the name of the individual who received the service, the name of the service provider, the date and time the service begins and ends, and the location at which the service was provided.

Currently, Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) providers bill day habilitation (DH) using a service code that does not distinguish between in-home and out-of-home DH and bill respite using a service code that does not distinguish between in-home and out-of-home respite. The proposed amendments establish separate service codes for in-home and out-of-home DH and respite to allow HHSC to compare service claims for in-home DH and in-home respite with the information in the EVV aggregator regarding the provision of those services. Further, the proposed amendments establish multiple service codes for out-of-home respite based on the location in which the service is provided to allow HHSC to collect appropriate service cost and claims information. HHSC is currently working to transition HCS and TxHmL claims processing to the Texas Medicaid & Healthcare Partnership. The proposed changes to service codes will be effective when that transition is complete.

Fiscal Impact. No fiscal impact.

Rule Development Schedule

July 2020 - Publish proposed rules in Texas Register

August 13, 2020 - Present to the Medical Care Advisory Committee

August 20, 2020 - Present to HHSC Executive Council

November 2020 - Publish adopted rules in Texas Register

November 2020 - Effective date

MOTION: *Approval of the rule - prevailed.*

EVV - Jordan Nichols, Director, HHSC EVV

Rule Summary. This proposal is to consolidate the EVV rules into one location, implement federal and state requirements for the Texas EVV system, and remove unnecessary or duplicative rules from the Texas Administrative Code. Texas EVV began as a state-mandated system and is in the process of changing to comply with current state law and newly enacted federal law. An EVV system electronically verifies information relating to the delivery of services, such as the type of service provided, names of the member and provider, and dates and times of services provided. The proposed new rules list the services subject to the use of EVV and to whom they apply.

Background. In 2011, the Texas legislature recommended the use of electronic visit verification (EVV) for various long-term services and support and as a result, the Texas Health and Human Services Commission (HHSC) formerly known as the Department of Aging and Disability Services initiated an EVV pilot program in certain regions across the state. In 2013, the legislature expanded their direction for HHSC to implement a statewide EVV program to include personal assistance services in the managed care programs, and personal care services in acute care fee-for-service and community first choice. The HHSC EVV program became operational statewide on June 1, 2015.

On December 13, 2016, the 21st Century Cures Act was signed into law which, Section 12006 requires all states to use EVV for Medicaid-funded personal care services beginning January 1, 2019. On July 30, 2018, Federal legislation changed the original 2019 deadline for EVV to be required for all personal care services to begin January 1, 2020. The state's federal medical assistance percentage (FMAP) will be reduced by .25 percentage points each year, up to a maximum of one percentage point, if HHSC does not require the use of EVV for all Medicaid-funded personal care services provided in a calendar quarter, beginning on or after January 1, 2020.

However, on September 5, 2019, the Centers for Medicare & Medicaid Services granted HHSC a good faith effort exemption to delay the FMAP reductions in calendar year 2020 because



the state encountered unavoidable delays when implementing its EVV system for new program, services, and service delivery options affected by the 21st Century Cures Act. The delays were a result of developing an open model for selecting and using an EVV system, implementation of EVV vendors, and complexities in allocating consumer directed services (CDS) employer funding for EVV devices, among other timeline challenges.

HHSC currently has rules concerning EVV in Titles 1 and 40 of the Texas Administrative Code (TAC). This proposal consolidates the EVV rules into one location, implements federal and state requirements for the Texas EVV system, and removes unnecessary or duplicative rules from TAC. The proposed new rules in 1 TAC Chapter 354, Subchapter O also implement the requirements for the Texas EVV system to electronically verify that Medicaid-funded personal care services are provided to a member in accordance with a prior authorization or plan of care, as applicable to the program in which the member receives the service.

The proposed new rules are based on federal and state laws that require HHSC to implement EVV, specifically, Title XIX, Section 1903(l) of the Social Security Act [42 United States Code Section 1396b], as amended by Section 12006 of the 21st Century Cures Act; Texas Government Code Section 531.024172, as amended by Senate Bill 894, 85th Legislature, Regular Session, 2017; and Texas Human Resources Code Section 161.086.

Fiscal Impact.

	SFY21	SFY22	SFY23	SFY24	SFY25
State	\$708,840.35	\$715,831.84	\$722,900.44	\$730,020.45	\$737,217.57
Federal	\$2,106,521.06	\$2,127,495.52	\$2,148,701.32	\$2,170,061.34	\$2,191,652.70
Total	\$2,815,361.41	\$2,843,327.36	\$2,871,601.76	\$2,900,081.79	\$2,928,870.27

Rule Development Schedule

July 2020 - Publish proposed rules in Texas Register
August 13, 2020 - Present to the Medical Care Advisory Committee
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November 2020 - Publish adopted rules in Texas Register
November 2020 - Effective date

MOTION: *The rule as drafted was approved.*

Claims payment deadlines exceptions - Caryl Chambliss, Director, HHSC Operations Management Claims Administration

Rule Summary. Under Texas Administrative Code Title 1 §354.1003, most Medicaid providers must submit claims to the claims administrator within 95 days of the date of service or they will be denied for late filing. Additionally, providers must adhere to claims filing and appeal deadlines, and all claims must be finalized within 24 months of the date of service. On occasion, circumstances beyond the providers' control result in claims being finalized outside of this 24-month requirement. The purpose of this amendment is to add an exception to the rule that allows HHSC to consider such situations as exceptions to the provider 24-month time limit for filing claims if the provider shows good cause and to the extent permitted by state and federal law. Exceptions for this reason are currently made on a case-by-case basis, and adding this additional exception will bring the rule into alignment with current practice.

Background. Under §354.1003, most Medicaid providers must submit claims to the Medicaid claims administrator within 95 days from the date of service or the claims will be denied for late filing. Additionally, providers must adhere to claims filing and appeal deadlines, and all claims, including all appeals processes, must be finalized within 24 months of the date of service. On occasion, circumstances either partially or wholly beyond the providers' control result in claims being finalized outside of this 24-month timeliness requirement. The purpose of this amendment is to add an exception to the rule that allows HHSC to consider situations not already listed as exceptions to the provider 24-month time limit for filing claims, to the extent permitted by state and federal law, if the provider shows good cause. Exceptions for this reason are currently made on a case-by-case basis and adding this additional exception will bring the rule into alignment with current practice.

Fiscal Impact. None.

Rule Development Schedule.

August 13, 2020 - Present to the Medical Care Advisory Committee

August 20, 2020 - Present to HHSC Executive Council 2

September 2020 - Publish proposed rules in Texas Register

January 2021 - Publish adopted rules in Texas Register

January 2021 - Effective date

MOTION: *Approval of the rule - prevailed.*

HHSC 2020 advisory committee amendments and repeals - Kimberly Oltrogge, Attorney, HHSC Legal Services Division

Rule Summary. The purpose of the proposal is to amend certain rules to extend advisory committees that are set to be abolished, revise certain committees' membership and tasks to incorporate duties related to persons on the autism spectrum, align the rules with statute and statutory interpretations, clarify terms, and repeal a rule for an advisory committee that no longer functions.

Background. The Texas Health and Human Services Commission proposes to amend certain rules to extend advisory committees that are set to be abolished, to revise certain committees' membership and tasks to incorporate duties related to persons on the autism spectrum, to align the rules with statute and statutory interpretations, to clarify terms, and to repeal a rule for an advisory committee that no longer functions.

In 2015, the Texas Legislature removed 38 advisory committees from HHSC that were established by statute and, by adopting Texas Government Code §531.012, authorized the Executive Commissioner to establish advisory committees by rule. The Executive Commissioner's advisory committee rules were effective July 1, 2016. The Policy Council for Children and Families and the Texas Council on Consumer Direction are set to be abolished in 2020, and HHSC intends to continue them for four years. In addition, the rule governing the Palliative Care Interdisciplinary Council (which is established by statute other than §531.012) is amended to extend the Council for so long as the statute establishing the Council remains in effect. The Promoting Independence Advisory Committee rule indicates that the Committee was abolished in 2017, but the rule has yet to be repealed.

The rules for the Policy Council for Children and Families, the Texas Council on Consumer Direction, the Texas Council on Consumer Direction, and the Palliative Care Interdisciplinary Council are further amended to delete obsolete language, to align language with Advisory Committee Coordination Office guidance on term limits and reports, and to remove language stating that, in the selection of members, ethnic and minority representation and, in the case of the Policy Council 2 for Children and Families, diverse disability representation, are considered. Diversity in geographic representation is provided in §351.801(f).

In rules effective on January 27, 2020, and published in the January 24, 2020, issue of the Texas Register (45 TexReg 523), HHSC extended the Texas Autism Council until December 31, 2020. HHSC announced at that time that it would work to identify other, already existing advisory committees that could effectively address issues faced by persons on the autism spectrum. These proposed rules revise two advisory committee rules to accommodate those issues concerning children: §351.815, concerning the Policy Council for Children and Families; and §351.833, concerning the STAR Kids Managed Care Advisory Committee. We continue to look for a new "home" committee to accommodate autism-spectrum related issues for adults.

Finally, the rule for advisory committees generally amends the definition of "quorum" to include nonvoting members, in recognition of an Attorney General Opinion, and to define the term "family member." The definition aligns with Advisory Committee Coordination Office policy. The general rule also clarifies that every advisory committee, not just a committee established under Texas Government Code §531.012, is subject to Texas Government Code Chapter 2110 unless the statute establishing that committee expressly provides otherwise.

Fiscal Impact.

	SFY21	SFY22	SFY23	SFY24	SFY25
State	\$18,080	\$18,080	\$18,080	\$18,080	\$18,080
Federal	0	0	0	0	0
Total	\$18,080	\$18,080	\$18,080	\$18,080	\$18,080

Rule Development Schedule

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There was discussion about the impact of nonvoting members on quorum and voting. The Chair commented on the need for a place for adult people with Autism.

MOTION: *to not approve the rule (due to non-voting members being included as part of the quorum).*

Public Comment. No additional public comment was received.

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

This summary contains supplemental information from third-party sources where that information provides clarity to the issues being discussed. Not every comment or statement from the speakers in these summaries is an exact transcription. For the purpose of brevity, their statements are often paraphrased. These documents should not be viewed as a word-for-word account of every meeting or hearing, but a summary. Every effort has been made to ensure the accuracy of these summaries. The information contained in this publication is the property of Texas Insight and is considered confidential and may contain proprietary information. It is meant solely for the intended recipient. Access to this published information by anyone else is unauthorized unless Texas Insight grants permission. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted in reliance on this is prohibited. The views expressed in this publication are, unless otherwise stated, those of the author and not those of Texas Insight or its management.
