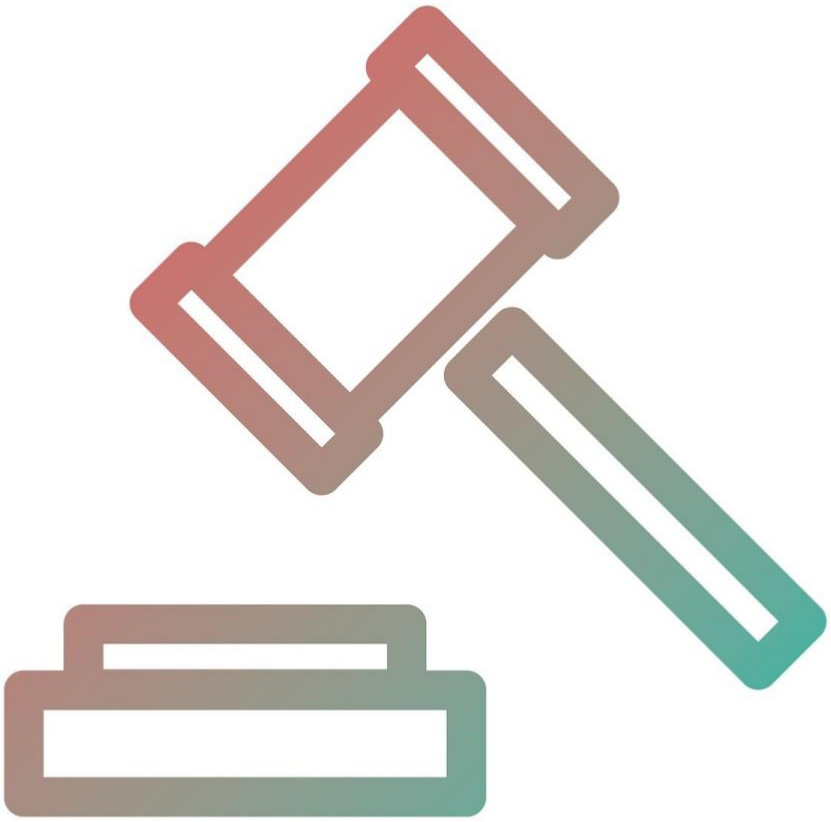

Health and Human services Commission Executive Council, November 19th, 2020

Welcome and Opening Remarks. The meeting was convened by the Executive Commissioner and a quorum was present. The Executive Commissioner commented on efforts around the pandemic and is working for a challenging legislative session. The LAR reflects the required 5% reduction without impacting services.

Chief Operating Officers' remarks Maurice McCreary stated that they are focused on data to drive decisions on strategic planning. Other areas of focus include:

- Procurement
- Development of a five-year procurement plan
- Rider 175 report
- Assessment of IT

Chief Policy and Regulatory Officer Victoria Ford

- Response to the COVID needs
- ICF facilities
- Holiday planning for residents
- Expanding visitation
- Procurement reform
- Improving the use of data

Chief Program and Services Officer

- Access to services through adaptation
- SSLCs and State Hospitals are still caring for patients safely
- SNAP serves thousands of Texans
- Mental health support line is operative and active
- Grant Funds to support family care givers with respite services
- Looking at lessons learned during the pandemic flexibility period
- LAR Submission

Commissioner of Health's remarks Deputy Commissioner Simms

- August 20th a decrease of COVID but now a surge has us at 1 million cases and 20,000 deaths.
- Working with local officials in Lubbock and EL Paso but all communities must take action.
- Prevention measures are the only way to protect each other.
- Personal hygiene is important as well
- Staff have been redeployed during the pandemic
- Vaccination plan has been submitted to the CDC
- 3,000 providers have signed up

Inspector General's Quarterly Report

The Office of Inspector General recovered nearly $121 million this quarter, capping off a record year for the OIG. For the fiscal year, recoveries were more than $503 million, the most ever collected in a single year. In addition, we identified nearly $626 million in potential future recoveries and achieved $106 million in cost avoidance. That a record-breaking year in terms of productivity occurred during the serious disruption caused by the COVID-19 global pandemic speaks to the outstanding work performed by the OIG team. When Governor Abbott declared a state of emergency in March, we quickly shifted to teleworking to protect the health and safety of our staff. Our dedicated staff quickly adapted and continued to be productive despite some of the initial challenges of working from home. This office also took steps to help providers by adjusting reporting requirements and deadlines to allow them to focus on patient needs and kept them informed and updated through a dedicated page on our website, ReportTexasFraud.com. We continue to be flexible as the pandemic situation changes, ensuring safety is first and foremost in our actions. The outstanding work performed by the OIG team during the fiscal year, in particular during the pandemic, 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. While some uncertainty remains regarding the pandemic, there is no doubt that the OIG team will continue to serve the citizens of Texas with professionalism and vigor. I am honored to work with this outstanding team.

Fiscal Year 2020 data:
Audit reports issued 34; Audits in progress 10; Inspections reports issued 1; Inspections in progress 7; Total investigations opened 21,282; Total investigations completed 20,085; Client investigations completed 16,582; EBT retailer investigations completed 418; Internal Affairs investigations completed 197; State center investigations of abuse, neglect and exploitation completed 710; Medicaid provider investigations completed Preliminary 1,918; Full-scale 260; PI cases transferred to full-scale investigation 235; PI cases referred to Medicaid Fraud Control Unit 520; Hospital claims reviewed 23,964; Nursing facility reviews completed 157; Medicaid and CHIP provider enrollment screenings performed 93,623; Medicaid providers excluded 224; Fraud hotline calls answered 26,603;

Follow this link for the full report

Legislative Appropriations Request Update* Trey Wood made the presentation. 31.8 billion in General revenue. Changes GR needed for client services, change in FMAP and 5% cut to GR-related programs. No service reductions should be impacted. There are 15 exceptional items covering the following areas:

- Ensure basic client services
- Comply with federal requirements
- Operational effectiveness for future cost savings
- IT infrastructure

These total 1.9 billion in General Revenue.

Rule proposals*

a. Administrative Procedures Act (APA) public comment period has closed†
b. Submitted to the Texas Register – APA public comment period has not closed‡

Texas Health and Human Services Commission (HHSC) proposes the amendment to a rule in TAC, Title 1, Part 15, Chapter 355, Reimbursement Rates, Subchapter J, Division 11, §355.8201, concerning Uncompensated Care Secondary Reconciliation for Demonstration Years 6-8

Background. This proposal is to revise the secondary reconciliation process applied to hospitals that requested an adjustment to their interim hospital-specific limit for purposes of calculating uncompensated care payments in demonstration years 6 through 8 (October 1, 2016, to September 30, 2019), and to describe the methodology HHSC will use to redistribute recouped funds.

The Texas Health and Human Services Commission proposes to amend Texas Administrative Code Title 1, Part 15, Chapter 355, Subchapter J, Division 11, Section 355.8201, relating to Waiver Payments to Hospitals for Uncompensated Care. The purpose of the proposal is to revise the secondary reconciliation process applied to hospitals that requested an adjustment to their interim hospital-specific limit (HSL) for purposes of calculating uncompensated care (UC) payments in demonstration years (DYs) 6 through 8 (October 1, 2016, to September 30, 2019), and to describe the methodology HHSC will use to redistribute recouped funds. The amendment to the secondary reconciliation is in response to a petition for rulemaking.

As part of the UC application process, a hospital can submit a request for an adjustment to cost and payment data to reflect increases or decreases in costs resulting from changes in operation or circumstance. If a hospital requested an adjustment on its UC application that impacted its interim HSL (now referred to as the state payment cap), it would be subject to an additional reconciliation. The purpose of this secondary reconciliation is to ensure that a hospital that inaccurately adjusts its interim HSL does not benefit from that inaccuracy. Under the current secondary reconciliation process, HHSC compares a hospital's adjusted interim HSL for the demonstration year to its final HSL for the demonstration year. If the final HSL is less than the adjusted interim HSL, the hospital's UC payment is calculated for the demonstration year using the final HSL instead of the adjusted interim HSL, with no other changes being made to the data used in the original calculation of the hospital's UC payment. HHSC then recoups any payment received by the hospital that is greater than the recalculated payment.

The interim HSL is defined by HHSC and is calculated in the payment year for hospitals that participate in the Disproportionate Share Hospital (DSH) and UC programs. The final HSL is

governed by federal law and is calculated two years after the payment year using actual program year data. HHSC's understanding of the federal regulation governing the final HSL has changed since HHSC calculated the adjusted interim HSL for UC payments in DYs 6 through 8 and will require a different methodology to be used to calculate the final HSL for those years.

As a result, there is a risk that a hospital that submitted a request on its UC application to adjust its interim HSL in DYs 6 through 8 could have a final HSL that is less than its adjusted interim HSL due only to the change in HSL methodology. Under the current secondary reconciliation provision, HHSC would recoup any payment received by the hospital that is greater than the recalculated UC payment.

HHSC proposes to amend §355.8201(i)(3) to revise the secondary reconciliation process applied to hospitals that adjusted their interim HSL in DYs 6 through 8. This proposed change is in response to a petition for rulemaking from Texas Children's Hospital and is intended to prevent recoupments from hospitals that are solely the result of a change in the federal regulation related to the final HSL calculation. For DYs 6 through 8, HHSC proposes to compare a hospital's adjusted interim HSL for the demonstration year to a proxy-final HSL for the demonstration year.

The proxy final HSL will be calculated using the same methodology described in §355.8066(c)(2) for the demonstration year, except that it will not offset third-party and Medicare payments for claims and encounters where Medicaid was a secondary payer. If the proxy-final HSL is less than the adjusted interim HSL, HHSC will recalculate the hospital's UC payment for the demonstration year using the proxy-final HSL. HHSC proposes to amend §355.8201(k) to describe the methodology HHSC will use to redistribute recouped funds to providers eligible for additional payments.

A provider is eligible for an additional payment if it has allowable uncompensated costs that were not reimbursed through its initial UC payment for the demonstration year. Recouped funds from state providers will be redistributed proportionately to eligible state providers based on the percentage that each eligible state provider's remaining final uncompensated cost of care (UCC) calculated in the reconciliation described in §355.8201(i) is of the total remaining final UCC of all eligible state providers. Recouped funds from non-state providers will be redistributed proportionately to eligible non-state providers, except for in DYs 7 and 8 (October 1, 2017 to September 30, 2019).

For DYs 7 and 8, recouped funds from non-state providers will be redistributed to eligible non-state providers using a weighted allocation methodology. First, HHSC will calculate a weight that will be applied to all non-state providers. The weight is calculated based on the provider's final remaining UCC with and without the offset of payments for third-party and Medicare claims and encounters where Medicaid was a secondary payer to determine how significantly

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the provider's UCC was impacted by not offsetting these payments. Providers who did not have a significant change in their UCC will receive a larger weight.

Then, HHSC will make a first pass allocation to determine a provider's additional payment amount. HHSC will limit a provider's payment to the amount of the provider's final remaining UCC. If a provider is allocated a payment amount that is higher than its remaining UCC, HHSC will make a second pass allocation to redistribute the excess funds using the remaining UCC for all non-state providers without applying the weight.

Fiscal Impact. There is no anticipated fiscal impact on state government. HHSC does not have sufficient data to determine how specific hospitals would be impacted by this rule amendment. The proposed rule will have both a positive and negative impact on local governments, depending on the amount of Medicare and third-party payments each local governmental hospital had. The fiscal impact will not be known until the final UC reconciliation is completed for each of the affected demonstration years.

Rule Development Schedule.
October 2020 - Publish proposed rules in Texas Register
November 5, 2020 - Present to the Hospital Payment Advisory Committee
November 12, 2020 - Present to the Medical Care Advisory Committee
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish adopted rules in Texas Register
December 31, 2020 - Effective date

No Public Comment was offered.

HHSC proposes a new rule TAC, Title 1, Part 15, Chapter 355, Reimbursement Rates, Subchapter B, §355.205, concerning COVID-19 Rate Increase Attestation Process
The proposed new rule outlines the process wherein HHSC will restrict eligible Medicaid providers from using temporarily increased reimbursement rates to increase hourly wages paid to direct care staff on an ongoing basis. In accordance with the contingencies placed upon use of the funds for staff compensation, they are limited to overtime payments, lump sum bonuses, bonuses for hazard pay, or other types of compensation that will not result in future reductions to hourly wages when the emergency temporary reimbursement rate increase is discontinued.

The Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC) Title 1, Part 15, Chapter 355, Subchapter B, §355.205, relating to Rule for Emergency Temporary Reimbursement Rate Increases and Limitations on Use of Emergency Temporary Funds for Medicaid in Response to Novel Coronavirus (COVID-19), to describe the process by which HHSC will restrict providers from using the increased reimbursement rates to increase hourly wages paid to direct care staff on an ongoing basis in accordance with the

contingencies placed upon use of the funds. Use of the funds for staff compensation is limited to overtime payments, lump sum bonuses, bonuses for hazard pay, or other types of compensation that will not result in future reductions to hourly wages when the emergency temporary reimbursement rate increase is discontinued.

Reimbursement rates were increased effective April 1, 2020, to ensure that these providers are able to purchase personal protective equipment, ensure adequate staff-to-client ratios, and take other necessary steps to serve clients individually rather than in congregate settings to protect the health and safety of the clients in their care. This new rule is based on an existing emergency rule adopted in response to the COVID-19 pandemic: §355.205, Emergency Rule for Emergency Temporary Reimbursement Rate Increases and Limitations on Use of Emergency Temporary Funds for Medicaid in Response to Novel Coronavirus (COVID-19). The provisions of this new rule are the same as the emergency rule. Except for a minor edit in the title of the rule and a clarifying edit in the text, there are no changes.

Fiscal Impact. None reported

Rule Development Schedule
October 23, 2020 - Publish proposed rules in Texas Register
November 12, 2020 - Present to the Medical Care Advisory Committee
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish adopted rules in Texas Register
December 2020 - Effective date

No Public Comment was offered.

HHSC proposes the amendment to a rule in TAC, Title 1, Part 15, Chapter 355, Reimbursement Rates, Subchapter J, Division 14, §355.8261, concerning Federally Qualified Health Center Services Reimbursement
Background. The proposed amendments specify that (1) a new FQHC included on the cost report of another FQHC should be assigned the rate of the other FQHC, and (2) telemedicine and telehealth services are to be included in the definition of "visit" and a "medical visit." This change increases transparency and provides additional detail on the existing reimbursement structure for FQHCs.

The Texas Health and Human Services Commission (HHSC) proposes to amend Texas Administrative Code (TAC) Title 1, Part 15, Chapter 355, Subchapter J, Division 14, §355.8261, related to Federally Qualified Health Center Services Reimbursement to ensure that a Federally Qualified Health Center Services (FQHC) is reimbursed for a covered telemedicine medical service or telehealth service delivered by a health care provider to a Medicaid recipient at the facility.

The amendment to this rule is proposed to comply with SB 670, 86th Legislature, Regular Session, 2019, which requires HHSC to ensure that a FQHC may be reimbursed for a covered telemedicine medical service or telehealth service delivered by a health care provider to a Medicaid recipient. The proposed amendment will also clarify how rates are set for newly enrolled FQHCs that are authorized to be included on a consolidated cost report of another FQHC.

Fiscal Impact. None reported.

Rule Development Schedule.
November 2020 - Publish proposed rules in Texas Register
November 12, 2020 - Present to Medical Care Advisory Committee
November 19, 2020 - Present to HHSC Executive Council
February 2021 - Publish adopted rules in Texas Register
February 2021 - Effective date

No Public Comment was offered.

HHSC proposes the amendments to rules, new rules, and repeal of rules in TAC, Title 26, Part 1, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs, Chapter 746, Minimum Standards for Child-Care Centers, and Chapter 747, Minimum Standards for Child-Care Homes, concerning Physical Activity, Nutrition, and Screen Time for Licensed Day Care Operations, Child-Care Centers, and Registered Child-Care Homes
Background. The purpose of the proposal is to implement Senate Bill (S.B.) 952, 86th Legislature, Regular Session, 2019, which adds Subsections 42.042(e-3), (e-4), and (e-5) to the Texas Human Resources Code (HRC). The new Subsections require Texas Health and Human Services Commission (HHSC) Child Care Regulation (CCR) to align the minimum standards for child-care centers and registered child-care homes with standards for physical activity and screen time in Caring for Our Children (CFOC), 4th edition, and with the nutrition standards of the federal Child and Adult Care Food Program.

CCR is extending these requirements to School-Age and Before and After-School Programs in Chapter 744 and Licensed Homes in Chapter 747, so that the minimum standards for physical activity, nutrition, and screen time are congruent throughout Chapters 744, 746, and 747.

Fiscal Impact. None reported.

Rule Development Schedule.
November 19, 2020 - Present to HHSC Executive Council
November 20, 2020 - Publish proposed rules in Texas Register
March 2021 - Publish adopted rules in Texas Register
March 2021 - Effective date

No Public Comment was offered.

HHSC proposes new rules in TAC, Title 26, Part 1, Chapter 742, Minimum Standards for Listed Family Homes, Subchapters A – H, concerning Regulation of Listed Family Homes

Background. The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code, Title 26, Part 1, new Chapter 742, concerning Minimum Standards for Listed Family Homes.

The purpose of the proposal is to implement the portions of Senate Bill (S.B.) 569, 86th Legislature, Regular Session, 2019, that add Human Resources Code (HRC) §42.042(d-1) and §42.0495, which respectively require HHSC to establish minimum standards and add liability insurance requirements for listed family homes.

S.B. 569 states that the minimum standards must: (1) promote the health, safety, and welfare of children; (2) promote safe, comfortable, and healthy homes for children; (3) ensure adequate supervision of children by capable, qualified, and healthy personnel; and (4) ensure medication is administered in accordance with HRC §42.065.

Child Care Regulation (CCR) will evaluate for compliance with these requirements by investigating complaints of minimum standard deficiencies, which will include an evaluation of the complaint and any obvious standard deficiencies seen during the investigation.

Fiscal Impact. None

Rule Development Schedule.
November 19, 2020 - Present to HHSC Executive Council
November 20, 2020 - Publish proposed rules in Texas Register
March 2021 - Publish adopted rules in Texas Register
March 2021 - Effective date

No Public Comment was offered.

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

The Department of State Health Services proposes the amendments to rules, new rules, and repeal of rules in Texas Administrative Code (TAC), Title 25, Part 1, Chapter 217, Milk and Dairy, Subchapter A, §§217.1, 217.2, and Subchapter B, §§217.21 – 217.34, concerning Grade Specifications and Requirements for Milk, and Grade A Raw Milk and Raw Milk Products

Background. The Department of State Health Services (DSHS), proposes to amendments to Title 25 Texas Administrative Code (TAC), Chapter 217, Subchapter A, §217.1 and §217.2, concerning Grade Specifications and Requirements for Milk; and Subchapter B, repeal of

§§217.21 – 217.33 and new §§217.21 – 217.34, concerning Grade A Raw for Retail Milk and Milk Products. The proposed rules are necessary to clarify and reflect current knowledge industry practices, update language and best practices, address long-standing issues pertaining to the sale of raw milk and the delivery of raw milk to individual purchasers, and address labeling requirements.

Subchapters A and B are also being revised to comply with Texas Government Code, §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001.

Fiscal Impact. None.

Rule Development Schedule.
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish proposed rules in Texas Register
April 2021 - Publish adopted rules in Texas Register
April 2021 - Effective date

No Public Comment was offered.

HHSC proposes the repeal of rules in TAC, Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter C, and proposes new rules in Title 26, Part 1, Chapter 360, Office of Deaf and Hard of Hearing Services, Subchapter C, concerning the Specialized Telecommunications Assistance Program

Background. The Texas Health and Human Services Commission proposes the repeal of Texas Administrative Code (TAC) Title 40, Part 2, Chapter 109, Subchapter C, relating to the Specialized Telecommunications Assistance Program, and new 26 TAC Chapter 360, Subchapter C, relating to Specialized Telecommunications Assistance Program.

The Specialized Telecommunications Assistance Program (STAP) helps people, who have a disability that interferes with their access to telephone networks to purchase basic specialized assistive equipment or services. Qualified applicants receive vouchers which typically cover the cost of most equipment included in the voucher categories. Applicants exchange vouchers with registered vendors to obtain equipment and services. Vendors use the online STAP system to initiate exchanges and request reimbursement for equipment provided.

The purpose of the proposal is to update and relocate the STAP rules from 40 TAC Chapter 109, Subchapter C to 26 TAC Chapter 360, Subchapter C. The relocation of the rules is necessary to implement Senate Bill 200, 84th Legislature, Regular Session, 2015, which transferred the functions of the legacy Department of Assistive and Rehabilitative Services (DARS) to HHSC.

Fiscal Impact. None.

Rule Development Schedule.
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish proposed rules in Texas Register
April 2021 - Publish adopted rules in Texas Register
April 2021 - Effective date

No Public Comment was offered.

HHSC proposes the amendments to rules in TAC, Title 1, Part 15, Chapter 354, Medicaid Health Services, Subchapter A, Division 22, §354.1311 and §354.1312, concerning Medicaid Substance Use Disorder

Background. HHSC is modifying Rule §354.1311, Benefits and Limitations, to allow SUD treatment services to exceed current limits when medically necessary in response to federal mental health and substance use disorder parity requirements and state Medicaid SUD medical policy updates. Rule §354.1312, Conditions for Participation, has been updated to remove obsolete references to the Department of State Health Services as the licensing entity for substance abuse treatment facilities, replacing them with references to HHSC. Furthermore, Rule §354.1312 proposes expanding the providers who may deliver medication assisted treatment, consistent with both federal and state legislation.

The proposed amendments update rules for Substance Abuse Dependency and Treatment Services and are necessary to comply with the Mental Health Parity and Addiction Equity Act of 2008 and the Centers for Medicare & Medicaid Services (CMS) Medicaid and CHIP Mental Health Parity Final Rule issued March 2016, related to mental health parity requirements for Medicaid and CHIP managed care organizations. The final CMS Medicaid/CHIP parity rule requires that quantitative treatment limits (limits on scope or duration) for mental health and substance use disorder (SUD) benefits cannot be more restrictive than substantially all medical or surgical benefits in a classification (e.g., outpatient services.) With the proposed amendments, providers may be reimbursed for services for adults that extend beyond benefit limitations with documentation of the supporting medical necessity for continued services. Previously, only children under the age of 21 could exceed benefit limits for these services.

The following treatment limits may be exceeded with documentation of medical necessity:

- SUD residential treatment services: 35 days per episode with a maximum of two episodes per rolling six-month period, and four episodes per rolling year.
- SUD individual counseling: a maximum of 104 units (26 hours) of service per calendar year.
- SUD group counseling: a maximum of 135 sessions per year.

The proposed amendments also expand the types of providers who may deliver medication assisted treatment, consistent with the Comprehensive Addiction and Recovery Act of 2016; the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018; Senate Bill 1564, 86th Legislature, Regular Session, 2019; and Medicaid SUD medical policy updates to the Texas Medicaid Provider Procedures Manual that became effective 1 January 1, 2019. In addition to physicians, the proposed amendments allow other qualified prescribers to provide medication assisted treatment in an office setting. These other qualified prescribers include physician assistants, advanced practice registered nurses, clinical nurse specialists, nurse midwives, and nurse anesthetists who meet certain requirements to prescribe buprenorphine for opioid use disorder.

Fiscal Impact.

	SFY2021	SFY2022	SFY2023	SFY2024	SFY2025
State	$55,289	$62,079	$65,557	$69,176	$72,995
Federal	$97,442	$99,082	$104,500	$110,269	$116,356
Total	$152,731	$161,162	$170,058	$179,445	$189,350

The costs are related to extending beyond the treatment limits.

Rule Development Schedule
November 12, 2020 - Present to the Medical Care Advisory Committee
November 19, 2020 - Present to HHSC Executive Council
January 2021 - Publish proposed rules in Texas Register
April 2021 - Publish adopted rules in Texas Register
April 2021 - Effective date

No Public Comment was offered.

HHSC proposes new rules in TAC, Title 26, Part 1, Chapter 280, §§280.1, 280.3, and 280.5, concerning the Pediatric Tele-Connectivity Resource Program for Rural Texas

Background. HHSC proposes new §280.1, concerning Purpose; §280.3, concerning Definitions; and §280.5, concerning Grant Program Administration rules in the Texas Administrative Code (TAC), Title 26, Chapter 280, concerning the Pediatric Tele-Connectivity Resource Program for Rural Texas. The purpose of these proposed rules is to implement Texas Government Code, Chapter 541, added by House Bill (H.B.) 1697, 85th Legislature, Regular Session, 2017.

Chapter 541 directs HHSC to establish a pediatric tele-connectivity resource program for rural Texas to award grants to nonurban health care facilities to connect facilities with pediatric

specialists and pediatric subspecialists who provide telemedicine services. Rider 94 of the 2020-21 General Appropriations Act (H.B. 1, 86th Legislature, Regular Session, 2019, Article II, Special Provisions) appropriates funds to HHSC to implement Chapter 541.

The purpose of the grant program is to provide financial assistance to enable eligible, nonurban healthcare facilities to connect with pediatric specialists who provide telemedicine services and to cover related expenses, including necessary equipment.

Fiscal Impact.

	SFY20	SFY21	SFY22	SFY23	SFY24
State	1,210,808	1,234,177	1,783,925	1,783,925	0
Federal	1,289,192	1,265,823	716,075	716,075	0
Total	2,500,000	2,500,000	2,500,000	2,500,000	0

Rule Development Schedule.
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish proposed rules in Texas Register
April 2021 - Publish adopted rules in Texas Register
April 2021 - Effective date

No Public Comment was offered

HHSC proposes new rules in TAC, Title 26, Part 1, Chapter 368, Subchapters A- H, concerning Intellectual and Developmental Disabilities Habilitative Specialized Services
Background. The Health and Human Services Commission (HHSC) proposes in Texas Administrative Code, Title 26, new Chapter 368, relating to Intellectual and Developmental Disabilities (IDD) Habilitative Specialized Services.

The proposed new rules 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 such services. PASRR is a federal requirement in 42 CFR Part 483, Subpart C. The services are behavioral support, day habilitation, independent living skills training (ILST), employment assistance, and supported employment.

Since 2015, local IDD authorities (LIDDAs) have provided these five specialized services to eligible residents through state general revenue funds. In accordance with a Medicaid state plan amendment (SPA) approved by Centers for Medicare & Medicaid Services (CMS), new Medicaid-funded IHSS delivered as NF add-on services by service provider agencies will replace these five specialized services LIDDAs currently provide. A service provider agency is a community-based provider with experience delivering services to individuals with intellectual disabilities (ID) or developmental disabilities (DD). Service provider agencies must be licensed or certified by HHSC to provide program services for the Home and Community-based Services (HCS) waiver, Texas Home Living (TxHmL) waiver, Community Living Assistance and Support Services (CLASS) waiver, or Deaf Blind and Multiple Disabilities (DBMD) waiver.

The proposed new rules also describe the roles and responsibilities of a LIDDA related to the initiation and provision of IHSS.

Fiscal Impact.

	SFY 21	SFY 22	SFY 23	SFY 24	SFY 25
State	($1,637,343)	($2,325,686)	($2,325,686)	($3,262,169)	($3,249,277)
Federal	$2,681,279	$13,903,557	$13,903,557	$5,400,107	$5,438,783
Total	$1,043,936	$11,577,871	$11,577,871	$2,137,938	$2,189,506

Rule Development Schedule
November 12, 2020 - Present to Medical Care Advisory Committee
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish proposed rules in Texas Register
April 2021 - Publish adopted rules in Texas Register
April 2021 - Effective date

Public Comments.

Susan Murphree, Disability Rights Texas, requested the following:

- Remove language related to termination of PASARR
- Allow flexibility to allow additional entities, IDD authorities, to provide the services
- Add language making Disability Rights Texas the advocacy entity

Isabel Casas, Texas Council of Community Centers, wrote in comments. Comments on the PASARR rules. They support transition of PASARR to Medicaid. There are two areas for refinement:

- Continuity of care for PASARR IHSS. All 39 IDD authorities should be permitted to be providers. Under the proposal, six IDD authorities would not be permitted to provide the services. All IDD authorities should be allowed to provide services.
- Extending time to complete PASARR IHSS because of the different requirements with different timeframes. A review and update of the timeline should occur.

HHSC proposes the amendments to rules and a new rule in TAC, Title 1, Part 15, Chapter 393, Informal Dispute Resolution and Informal Reconsideration, §§393.1 – 393.3, concerning Informal Dispute Resolution

Background. The Texas Health and Human Services Commission (HHSC) proposes amendments to §393.1, concerning the Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID); §393.2, concerning the Informal Dispute Resolution for Assisted Living Facilities; and new §393.3, concerning the Informal Dispute Resolution process for Texas Home Living (TxHmL) and Home and Community-based Service (HCS) providers.

The purpose of the amendment to §393.1 is to comply with S.B. 304, 84th Legislature, Regular Session, 2015, which modified §531.058 Texas Government Code by requiring HHSC to contract with a disinterested non-profit organization to perform Informal Dispute Resolution (IDR) reviews for nursing facilities. To foster consistency, former executive leadership instructed staff to include all three facility types IDR serves in the procurement. Additionally, amendments to this rule also align with H.B. 2025, 85th Legislature, Regular Session, 2017, which modified Texas Health and Safety Code Chapters 242, 247, and 252. H.B. 2025 required a system to be developed to record and track the severity and scope of licensure violations for Intermediate Care Facilities (ICF/IIDs) and Assisted Living Facilities (ALFs).

The purpose of the amendment to §393.2 is to comply with S.B. 924 from the 85th Legislature, Regular Session, 2017, which modified Texas Health and Safety Code §247.051 concerning the IDR process for ALF. This statute was modified to include the language in Texas Government Code §531.058 from S.B. 304 regarding the outsourcing of the IDR process to ensure it was also required of ALF. Other modifications to that statute included provisions for Assisted Living Facility providers to be able to obtain documentation regarding the survey/investigation. Additionally, amendments to this rule also align with H.B. 2025. H.B. 2025 required a system to be developed to record and track the severity and scope of licensure violations for ICF/IIDs and ALFs.

The purpose of new §393.3 is to comply with H.B. 2590, 85th Legislature, Regular Session, 2017, which modified Texas Human Resources Code by adding a new Section 161.0892. Section 161.0892 directs HHSC to establish and outsource an IDR process for Texas Home Living (TxHmL) and Home and Community-based Service (HCS) providers.

Fiscal Impact.

	SFY21	SFY22	SFY23	SFY24	SFY25
State	591,694	1,014,333	1,011,833	1,014,333	1,011,833
Federal	591,695	1,014,334	1,011,834	1,014,334	1,011,834
Total	1,183,389	2,028,667	2,023,667	2,028,667	2,023,667

Rule Development Schedule.
November 2020 - Publish proposed rules in Texas Register
November 19, 2020 - Present to HHSC Executive Council
February 2021 - Publish adopted rules in Texas Register
February 2021 - Effective date

No Public Comment was offered

HHSC proposes the amendments to rules, new rules, and repeal of a rule in TAC, Title 26, Part 1, Chapter 558, Subchapters A - H, concerning Licensing Standards for Home and Community Support Services Agencies

Background. The Texas Health and Human Services Commission (HHSC) proposes amendments to §§558.1 - 558.3, 558.11, 558.13, 558.15, 558.17, 558.19, 558.21, 558.23, 558.25, 558.27, 558.29 - 558.31, 558.202, 558.208, 558.213, 558.214 - 558.220, 558.222, 558.241 - 558.250, 558.252, 558.255 - 558.257, 558.259, 558.260, 558.281 - 558.287, 558.289, 558.290, 558.291, 558.292, 558.295 - 558.299, 558.301 - 558.303, 558.321, 558.322, 558.401, 558.402, 558.404 - 558.407, 558.501, 558.503, 558.505, 558.507, 558.521, 558.523, 558.525, 558.527, 558.601 - 558.604, 558.701, 558.801, 558.810, 558.811, 558.820, 558.821, 558.823, 558.830, 558.832, 558.834, 558.842 - 558.845, 558.852-558.857, 558.859, 558.860, 558.870, §558.871, and 558.880; the repeal of §558.861; and new §§558.12, 558.861, 558.862, and 558.863 in Title 26, Part 1, Chapter 558, concerning Licensing Standards for Home and Community Support Services Agencies.

The proposal implements changes made to the Texas Health and Safety Code Chapter 142 and the Texas Occupations Code Chapters 56 and 57, made by SB 916 and 37, and HB 2594 and 3193, all enacted during the 86th Legislature, Regular Session, 2019.

HB 3193 increases the licensing period from two years to three years and increases the maximum amount that HHSC may charge for licensure fee.

SB 916 removes "palliative care for terminally ill clients" from services described as being included in the statutory definition of "hospice services." It also establishes a definition for "supportive palliative care services."

SB 37 deletes the provision that prohibits adverse licensure action against a person based on the person's default on a student loan.

HB 3079 gives HHSC the authority to investigate abuse, neglect, and exploitation of a home and community support services agency (HCSSA) client receiving inpatient hospice services.

HB 2594 allows a health care professional employee of a hospice provider who meets certain requirements to dispose of a patient's controlled substance prescriptions.

This proposal also amends the licensure process to reflect the transition from paper applications to the use of the online licensure portal called Texas Unified Licensure Information Portal (TULIP) and clarifying other processes relating to licensure.

Additionally, the proposal updates rule references throughout the chapter as a result of the administrative transfer of the chapter from 40 TAC Chapter 97 to 26 TAC Chapter 558 in May 2019. The proposal also updates the agency name throughout the chapter from "DADS" to "HHSC."

Fiscal Impact.

	SFY21	SFY22	SFY23	SFY24	SFY25
State	$131,367	$0	$0	$0	$0
Federal	$86,807	$0	$0	$0	$0
Total	$218,174	$0	$0	$0	$0

Rule Development Schedule.
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish proposed rules in *Texas Register*
April 2021 - Publish adopted rules in *Texas Register*
April 2021 - Effective date

No Public Comment was offered.

HHSC proposes the amendments to rules and new rules in TAC, Title 25, Part 1, Chapter 133, Hospital Licensing, Subchapter C, Chapter 135, Ambulatory Surgical Centers, Subchapter A, Chapter 137, Birthing Centers, Subchapter D, Chapter 139, Abortion Facility Reporting and Licensing, Subchapter D, Chapter 229, Food and Drug, Subchapter J, and in Title 26, Part 1, Chapter 506, Special Care Facilities, Subchapter C, Chapter 507, End Stage Renal Disease Facilities, Subchapter D, Chapter 509, Freestanding Emergency Medical Care Facilities, Subchapter C, Chapter 510, Private Psychiatric Hospitals and Crisis Stabilization Units, Subchapter C, and Chapter 564, Treatment Facilities for Individuals with Substance-related Disorders, Subchapter B, concerning Medical and Health Care Billing

Background. The amendments and new rules in Texas Administrative Code (TAC) Title 25 and Title 26 are necessary to comply with S.B. 1264, 86th Legislature, Regular Session, 2019, which amended Texas Insurance Code, Chapters 38, 752, 1271, 1301, 1456, 1467, 1551, 1575, and 1579 regarding medical and health care billing. S.B. 1264 requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including 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 and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

This proposal updates the rules in TAC Title 25 Chapter 133, Chapter 135, Chapter 137, Chapter 139, and Chapter 229, and in Title 26 Chapter 506, Chapter 507

Fiscal Impact. None

Rule Development Schedule.
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish proposed rules in Texas Register
April 2021 - Publish adopted rules in Texas Register
April 2021 - Effective date

No Public Comment was offered.

HHSC proposes the amendments to rules and new rules, in TAC, Title 26, Part 1, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs, Chapter 746, Minimum Standards for Child-Care Centers, Chapter 747, Minimum Standards for Child-Care Homes, Chapter 748, Minimum Standards for General Residential Operations, and Chapter 749, Minimum Standards for Child-Placing Agencies, concerning Regulation of Child-Care Facilities

Background. The purpose of this proposal is to implement the portions of Senate Bill (S.B.) 568, 86th Legislature, Regular Session, 2019, that amended Chapter 42, Human Resources Code (HRC) to require HHSC Child Care Regulation (CCR) to establish minimum standards for

safe sleeping, expand liability insurance requirements, and alter reporting requirements for certain incidents and deficiencies.

Fiscal Impact. None.

Rule Development Schedule.
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish proposed rules in Texas Register
April 2021 - Publish adopted rules in Texas Register
April 2021 - Effective date

No Public Comment was offered.

HHSC proposes the amendments to rules, new rules, and repeal of rules in TAC, Title 26, Part 1, Chapter 745, Licensing, and Chapter 748, Minimum Standards for General Residential Operations, concerning Legislative and Other Updates for Chapter 745 and Chapter 748
Certain bills from the 86th Legislature, Regular Session, 2019, amended Texas Human Resources Code (HRC), Chapter 42. The purpose of this proposal is to implement those amendments as they apply to Texas Administrative Code, Title 26, Part 1, Chapters 745 and 748.

Senate Bill (S.B.) 568 amended (1) HRC §42.049 to (A) extend liability insurance requirements to registered and licensed child-care homes; and (B) add a requirement that all operation types provide timely notice to the parents of each child in care if an operation does not carry the required insurance; (2) HRC §42.050 and §42.052 to create a more robust process for evaluating renewal applications; (3) HRC §42.072 to add "refusal to renew a permit" as a type of adverse action that will affect a person's ability to apply for a permit for a period of five years; and (4) HRC §42.078 to provide additional bases for issuing an administrative penalty and the recommended amounts for those penalties.

S.B. 569 (1) created HRC §42.0495 to establish liability insurance requirements for listed family homes, including a requirement that a home provide timely notice to the parents of each child in care if a home does not carry the required insurance; and (2) amended HRC §42.046 to add a safe sleep training requirement for listed family home applicants.

S. B. 781 (1) amended HRC §42.071 to eliminate "evaluation" as a type of enforcement action that Child Care Regulation (CCR) can take against an operation, and amended a multitude of other sections to eliminate the mention of "evaluation" in HRC Chapter 42; (2) amended HRC §42.072 to prohibit CCR from issuing a permit to an applicant for five years from when the applicant voluntarily closes or relinquishes a permit after receiving notice that CCR was taking a certain type of enforcement action; and (3) created Chapter 42, Subchapter H, which contains requirements for a General Residential Operation (GRO) that will provide treatment

services to children with emotional disorders, including (A) a requirement that an application must include an operational plan; (B) guidelines for how CCR must evaluate or deny a permit; and (C) a public hearing for a renewal permit upon request by the Commissioner's Court located in the same county as the GRO.

House Bill (H.B) 3390 amended an exemption in HRC §42.041 that applies to a child or sibling group that is placed by the Department of Family and Protective Services.

H.B. 4090 amended HRC §42.048 to state that a change in location for a school-age program operating exclusively during the summer or any other time school is not in session does not automatically revoke the program's license or certification.

These legislative changes impact Subchapters A, C, D, and L of Chapter 745. CCR is also updating these subchapters with non-legislative changes to (1) update names of entities and titles; (2) update citations, including changing all of the figures from Title 40 to Title 26; (3) delete outdated definitions and rules; (4) add definitions for clarity throughout the chapter; (5) update rules to be consistent with current statutes and policy; (6) amend rules so the language is consistent throughout the chapter; and (7) clarify the rules by making them more readable and easier to understand.

Fiscal Impact. None

Rule Development Schedule
November 19, 2020 - Present to HHSC Executive Council
December 2020 - Publish proposed rules in Texas Register
April 2021 - Publish adopted rules in Texas Register
April 2021 - Effective date

No Public Comment was offered

Advisory Committee Recommendations* A summary was presented on the recommendations of each advisory committee. Please follow the links for the recommendations. **There were no public comments on any of the four items**.

- Palliative Care Interdisciplinary Advisory Council
- STAR Kids Managed Care Advisory Committee
- Texas Autism Council
- Texas Brain Injury Advisory Council

Recent Rule Adoptions - Information item not for discussion

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

- Annual Reporting of Employees Leaving Child-Care Centers, effective 12/15/20

- Delivery System Reform Incentive Payment Program Demonstration Years 9-10, effective 12/2/20
- Human Trafficking Prevention Training Requirements, effective 12/2/20
- Data Request Process for Public Health Practice Purposes, effective 2/1/21

Adoptions that are effective

Texas HIV Medication Advisory Committee, effective 10/5/20 https://www.sos.state.tx.us/texreg/archive/October22020/Adopted%20Rules/25.HEALTH%20SERVICES.html#175

Certificate of Public Advantage, effective 10/25/20 https://www.sos.state.tx.us/texreg/archive/October232020/Adopted%20Rules/26.HEALTH%20AND%20HUMAN%20SERVICES.html#84

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

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