



# **HHSC: Medical Care Advisory Committee August 12, 2021**



[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. Membership:

**Colleen Horton, Chair**

Advocate, Mental Health  
Austin

**Mary Helen Tieken, RN, BSN, Vice Chair**

Registered Nurse  
Floresville

**Salil Deshpande, M.D.**

Managed Care Organization Representative  
Houston

**Lou Driver**

Nursing Home Administrator  
Houston

**Robert Hilliard, Jr., M.D.**

Physician, Ob/Gyn  
Houston

**Cynthia Jumper, M.D., M.P.H.**

Physician, Internal Medicine  
Lubbock

**Donna S. Smith**

Physical Therapist  
Austin

**Diana Strupp, HPAC Chair**

Hospital Representative  
Dallas

**Doug Svien**

Provider  
Stephenville

**Susan Swartz, R.N.**

Registered Nurse  
San Angelo

**Edgar A. Walsh, Jr., R.Ph.**

Pharmacy  
Harlingen

**Non-Voting Members**

**Ryan D. Van Ramshorst, M.D.**

Texas Health and Human Services Commission  
Austin

**Lisa Steffek**

Texas Department of State Health Services  
Austin

**1. Welcome, introductions, and opening remarks.** The meeting was convened by Colleen Horton, Chair. A quorum was present.

**2. Consideration of June 10, 2021, meeting minutes.** The minutes were approved as written

**3. Medicaid and Children's Health Insurance Program (CHIP) activities.** Emily Zalkovsky made the presentation. HHSC highlighted three directives:

- HB4 related to teleservices and COVID flexibilities.
- HB133 and Women's Health and the transition of HTW into managed care and extending postpartum services an additional 6 months.
- Applied Behavioral Analysis and Rider 28 which provide funding with an implementation date of February 1, 2022.

**Questions/Answers/ Comments**

The chair inquired about telehealth and LMHAs and audio only services. How does HHSC plan to engage stakeholders in the policies and procedures? When will standards be in place? HHSC stated that stakeholder input will be part of the plan and will follow regular processes and procedures. There is new policy development needed as well. The communication plan will be made available to this committee by the next meeting.

Are the COVID flexibilities still in place? There are updates every month and none of the telehealth benefits have been ended.

Announcement on home equity and policy performance by DSHS. How this will be implemented at HHSC is still up in the air.

**4. 1115 waiver update** Brittany Bilse made the presentation. The Health and Human Services Commission (HHSC) announced its intent to submit a “Fast Track” extension application to the Centers for Medicare & Medicaid Services (CMS) for the Texas Healthcare Transformation and Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. The extension request is for five years, which will provide the 1115 waiver authority through Sept. 30, 2027.

The requested extension would have allowed Texas continued flexibility to pursue the goals of the existing 1115 waiver:

- Expand risk-based managed care to new populations and services.
- Support the development and maintenance of a coordinated care delivery system.
- Improve outcomes while containing cost growth.
- Transition to quality-based payment systems across managed care and providers.

The extension would have created financial stability for Texas Medicaid providers, as HHSC works to transition the valuable work identified through Delivery System Reform Incentive Payment (DSRIP) innovations. The extension better aligns the DSRIP transition timeline with the overall goals to create a sustainable program. There are no significant policy changes requested under this extension application.

Under the “Fast Track” extension, CMS seeks to align the review process with timelines typically used for decisions on requests like a State Plan Amendment, or 90 days.

### **Public Health Emergency**



Responding to the public health emergency has put pressure on the state's health care system. Therefore, this application also requests that the Secretary exercise his authority under 42 CFR § 431.416(g) to waive certain notice procedures in order to expedite a decision. Approval of this "Fast Track" extension will sustain the achievements of the demonstration and support the needs of beneficiaries and Texans.

On July 14, 2021, Texas submitted to CMS its request to extend and to amend the Texas Healthcare Transformation Quality Improvement Program waiver under section 1115 of the Social Security Act. Below please find links to the submitted cover letter, Extension Appendices, and Preliminary Evaluation Findings (Supplement A-Preliminary Draft Results).

- [1115 Transformation Waiver Extension Cover Letter \(PDF\)](#)
- [1115 Transformation Waiver Extension Appendices \(PDF\)](#)
- [1115 Transformation Waiver Preliminary Evaluation Findings \(Supplement A-Preliminary Draft Results\) \(PDF\)](#)

On July 28<sup>th</sup> CMS sent a completeness letter. We are under a public comment period at CMS. Additionally: request for approval by September 30<sup>th</sup> this year. HHSC is still operating under the January 2021 terms and conditions.

As part of the application, there is a study being done around COVID 19 and disparities.

#### **1115 Recent Updates**

- On July 29, 2021, HHSC posted the [Total Payments to Date for DY1-10 \(Excel\)](#) on the [RHP Summary Information page](#).
- On July 29, 2021, HHSC has posted the [April DY10 Category C Milestone Summary \(Excel\)](#) and [April DY10 Category and Measure Summary \(Excel\)](#) on the [1115 Medicaid Waiver Tools & Guidelines for Regional Healthcare Partnership Participants](#) page.
- On July 14, 2021, at 9:30 a.m. HHSC will hold a virtual only public forum to present updates on the Texas Healthcare Transformation and Quality Improvement Program 1115 waiver extension that was approved on Jan. 15, 2021.
  - [View the most recent 1115 annual report, Demonstration Year 9 \(Oct. 2019-Sept. 2020\)\(PDF\)](#).
  - [Register for the public hearing\(link is external\)](#)
- On June 21, 2021, at 1 p.m. HHSC will hold a virtual only public forum to present updates on the Texas Healthcare Transformation and Quality Improvement Program 1115 waiver and receive public comments.
  - [View the most recent 1115 annual report, Demonstration Year 9 \(Oct. 2019-Sept. 2020\)\(PDF\)](#).
  - [Register for the public hearing\(link is external\)](#).

- On Jan. 15, 2021, HHSC received Federal approval for the [Texas Healthcare Transformation and Quality Improvement 1115 Demonstration Waiver\(link is external\)](#).
- HHSC has posted the [1115 waiver Special Terms and Conditions, "Fast Track" application template, and Extension Appendices for public comment on the 1115 Waiver Renewal page](#).

## Action Items:

### **ITEM WITHDRAWN – 5. State Medicaid Managed Care Advisory Committee (SMMCAC)**

*Michelle Erwin, Deputy Associate Commissioner, Health and Human Services Commission (HHSC)  
Medicaid/CHIP Services*

~~The primary purpose of amending Title 1, Texas Administrative Code (TAC), §351.805 is to implement changes recommended by SMMCAC in March 2020 and to make additional changes recommended by HHSC staff. These 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.~~

### **6. [Electronic Visit Verification \(EVV\)](#)**

**[Erica Brown, Deputy Director, HHSC Office of Policy and Program](#)**

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

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



Government Code, §531.1131(e) requires HHSC to adopt rules describing the due process procedures an MCO must follow when engaging in recoupment efforts related to fraud or abuse. The purpose of the proposal is to implement Texas Government Code, §§531.1131(e) and (f) and 531.1135.

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

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

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

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

**Fiscal Impact.** None Reported

**Rule Development Schedule.**

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

**Questions/Answers/ Comments**

The Chair made comments about her daughter and the need for protections for providers due to software problems and ongoing maintenance.

If the federal government changes the requirement for EVV, will Texas continue using EVV. Staff stated that they will have to get back to the panel and this applies only to a narrow part of EVV. HHSC stated that if federal requirements changed they would take a look at that.

Is the state doing a cost benefit analysis? HHSC stated that they are looking at cost avoidance data.

**MOTION:** approval of rules prevailed.

7. [HHSC Interest Lists waiver programs](#)

[Dana Williamson, Director of Policy Development Support, HHSC Medicaid/CHIP Services](#)

The primary purpose of the proposed amendments is to implement Texas Government Code §531.0601, Long-term Care Services Waiver Program Interest Lists. That section provides that individuals who are enrolled in but become ineligible for the medically dependent children (MDCP) waiver program may have their names returned to the interest list or placed on that of Home and Community-based Services, Texas Home Living, Deaf-Blind with Multiple Disabilities, or Community Living Assistance and Support Services programs. The proposed amendments describe the circumstances under which these actions may be taken. They include the following sections: §9.157 in in TAC, Title 40, Chapter 9, Subchapter D, Home and Community-Based Services (HCS) Program and Community First Choice (CFC); §9.158, 9.566, and 9.567 in TAC, Title 40, Chapter 9, Subchapter N, Texas Home Living (TxHmL) Program and Community First Choice (CFC); §42.202, 42.211, and 42.402 in TAC, Title 40, Chapter 42, Deaf Blind with Multiple Disabilities (DBMD) and Community First Choice (CFC) Services; §45.202 and 45.211 in TAC, Title 40, Chapter 45, Community Living Assistance and Support Services and Community First Choice (CFC) Services; and §353.1155 in TAC, Title 1, Chapter 353, Medically Dependent Children Program.

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

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

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

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

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

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

**Fiscal Impact.** None Reported

**Rule Development Schedule.**

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

**Questions/Answers/Comments**

6 bed expansion around MDCP and does this only apply to foster homes. HHSC stated there is not a plan to expand this past MDCP.

If you are in MDCP and deemed ineligible, this rule will penalize those who limited their waiver list application. There is inequity in the rule.

When someone calls in for MDCP they should be advised to put their name on every wait list.

**MOTION:** approval of the rule prevailed.

**Informational Items:**

8. [Disaster Rule Flexibilities for Community Behavioral Health Providers](#)  
[-Lizet Alaniz, Rules Coordinator, HHSC Behavioral Health Services Operations](#)

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

HHSC adopts rules to establish requirements and flexibilities to protect public health and safety during a disaster declared by the Governor. The requirements established in these rules are

effective in all Texas counties or in a particular Texas county or counties during an active state of disaster as declared pursuant to Government Code, Section 418.014. The purpose of the proposal is to allow HHSC the flexibility to waive certain requirements for behavioral health community providers in the event of a state of disaster. HHSC adopted an emergency rule in response to COVID-19 pandemic, however, the rule will expire on July 17, 2021, unless another set of emergency rules is approved. This new rule is based on the existing emergency rule created in Texas Administrative Code Title 26, Part 1, Chapter 306, Subchapter Z, §306.1351, relating to COVID-19 Flexibilities. This proposal creates a standing rule, allowing providers subject to the rule to operate with the same flexibilities afforded by the emergency rule and it ensures continuity of services for individuals receiving community-based behavioral health services. To the extent authorized under federal and state law, HHSC waives the types of rules outlined in proposed new subsection (b), in the event a state of disaster is declared by the Governor. The proposed rule requires providers to comply with all policy guidance applicable to the rules issued, including policy guidance issued by HHSC's Medicaid Services Department.

**Fiscal Impact.** None reported

**Rule Development Schedule.**

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

9. [Medicaid Bed Reallocation](#)

[Diana Conces, Director of HHSC Long Term Care Policy & Rules](#)

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

beds if they choose. This new rule formalizes the current process for Medicaid bed reallocation authorized by the Long-Term Care Plan for Individuals with Intellectual Disabilities and Related Conditions, based on Texas Health and Safety Code §533A.062(b-1).

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

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

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

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

#### **Questions/Answers/Comments**

How many beds are off line that will be coming on line. Previously 18 beds were added. There is a smaller number than that for the new batch of beds.

Have the funds been allocated all along since there was no fiscal impact. The speaker stated that budget office would have to answer that question.

10. [Hospital Augmented Reimbursement Program \(HARP\)](#)  
[- Eva Dorman, Financial Analyst, HHSC Provider Finance Department](#)

**Background.** The proposed new rule describes a new program to preserve financial resources many Texas hospitals depend on to provide access and quality care to Medicaid clients and the uninsured. Subject to approval by the Centers for Medicare and Medicaid Services (CMS), HARP would be created through the Medicaid state plan. State plan programs and services do not impact

1115 Waiver budget neutrality. HHSC intends to submit state plan amendments to CMS requesting authorization to make payments as described under new TAC, Title 1, §355.8070 to non-state government owned and operated hospitals and to private hospitals.

The Texas Health and Human Services Commission (HHSC) proposes a new rule §355.8070, concerning the Hospital Augmented Reimbursement Program. The program will provide additional hospital funding to help offset Medicaid costs. The initial program design will be limited to publicly-owned and publicly-operated hospitals and to private hospitals, with other types of hospitals added in subsequent time periods. The payment calculation will be based on the individual participating hospital's Medicare payment gap and/or Average Commercial Reimbursement (ACR) gap. The hospital's maximum payment before any reductions will be the maximum of the Medicare payment gap and ACR gap for hospitals that submit ACR data and Medicare gap for those that did not submit ACR data. This total will be capped at the total aggregate Medicare Upper Payment Limit (UPL) gap for hospital services. The most current Medicare UPL demonstration available at the time of calculation will be used

**Fiscal Impact.** None Reported

### **Rule Development Schedule**

July 2021	Publish proposed rules in Texas Register
August 5, 2021	Present to Hospital Payment Advisory Committee
August 12, 2021	Present to the Medical Care Advisory Committee
August 19, 2021	Present to HHSC Executive Council
September 2021	Publish adopted rules in Texas Register
September 2021	Effective date

### **Questions/Answers/ Comments**

The single source IGT has been an issue. HHSC stated that at the time the rule was written, stakeholders were involved. They received comments related to the IGT and they are being reviewed.

11. [Pediatric long-term care facility reimbursement](#)  
[Samuel West, Director, HHSC Provider Finance for Long-term Services and Supports](#)

**Background.** This proposal amends the payment rate methodology for pediatric nursing facilities,

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

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

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

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

**Fiscal Impact.**

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

### **Rule Development Schedule.**

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

**Public Comment.** No public comment was offered.

**Proposed next meeting:** November 10, 2021, at 9:00 a.m.

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

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