



# **HHSC: Long-term Care Facilities Council September 30, 2021**



[Long-term Care Facilities Council](#) shall study and make recommendations regarding a more consistent survey and informal dispute resolution process for long-term care facilities, the Medicaid quality-based payment systems for these facilities, and the allocation of Medicaid beds in these facilities.

**1. Welcome and opening remarks** The meeting was convened by Ryan Harrington.

**2. Consideration of June 16, 2021, meeting minutes** The minutes were approved as written.

**3. Draw terms for public members**. Public member terms were assigned based on a drawing.

#### **4. Report from subcommittees**

**Licensing**—Allow permanent online training for nurse's aids and HHSC is entertaining online training for certified medication aid. Removal of requirements of medical records certification and HHSC has agreed. They looked at administrators licensing and eliminating administrative burdens. Barriers to certified nurse training programs. Wireless alarm systems and fire alarms. They are presently allowed but clarification is sought. Temporary telemedicine rules should become permanent.

**Regulatory**—There are no current active tasks.

**Reimbursement**—Two primary areas reviewed

- Medicaid Costs and allowable vs nonallowable; occupancy requirement.
- Medicaid cycle analysis

**Intermediate Care Facilities for Individuals with Intellectual Disabilities**. No report

**5. Briefing on the Payment Methodology Advisory Committee** Two tables were presented. Only one was made available to the public. The speaker went over the tables, but with being able to see them the description was meaningless. The second table appears below.

MDS 3.0 (Data Source)				RUG IV Code Output (Additional Coding/ Calculation )	PDPM LTC Group Assignment (Additional Coding/Calculation)					FY 2018 Billing Claims (Data Source)				FY 2018 Cost Reports (Data Source)		
Unique Assessment ID Source: (Logic data is available)	RUG III MDS Item Z0200A (Logic data is available)	BIMS Score MDS Item C0500 (Logic data is available)	NPI used to tie MDS to CR (Logic data is available)	RUG IV Nursing Group RUG IV Grouping Code (Logic data is available)	PDPM LTC BIMS Group MDS Item C0500 (Logic data is available)	Nursing Group Regroupin g from RUG IV (Logic data is available)	Nursing Group CMI preliminary (Logic data is available)	NTA Group NTA Groupin g Code (Logic Data in process)	NTA Group CMI (Logic Data in process)	HIV/AIDS add-on Checked before NTA Group is calculated, Claim includes ICD-10 "B20" (Logic data is available)	RUG III Claim (Logic Data in process)	Billing Start Date (Logic Data in process)	Billing End Date (Logic Data in process)	NPI partially matched (Logic data is available)	Costs (Logic Data in process)	Basic Rate (Logic Data in process)
1	RAA	8	XXX	CA1	Y	CA	0.95	EF		no	RAA	02/09/2018	02/20/2018	A	XXXX	XXXX
2	CB1	8	XXX	LD1	Y	LB	1.59	EF		no	CC1	02/16/2018	03/01/2018	B	XXXX	XXXX
3	IA1	8	XXX	BA1	Y	BP	1.20	CD		no	RAA	02/13/2018	08/31/2018	C	XXXX	XXXX
4	RAB	14	XXX	PC1	Y	PA	0.99	CD		no	PD1	02/14/2018	02/14/2018	D	XXXX	XXXX
5	SE2	0	XXX	LE1	X	LB	1.59	CD		no	PD1	02/07/2018	03/01/2018	E	XXXX	XXXX
6	RAC	0	XXX	PD1	X	BP	1.20	AB		yes	PD1	01/29/2018	03/01/2018	F	XXXX	XXXX

## 6. Briefing on the HHSC Quality Incentive Payment Program (QIPP) Workgroup.

### General Information

- During the 83rd Legislative Session, the Texas Legislature outlined its goals for adding managed care to nursing facilities. The Texas Health and Human Services Commission was directed to encourage transformative efforts in the delivery of nursing facility services, including "efforts to promote a resident-centered care culture through facility design and services provided."
- In 2014, HHSC established the Minimum Payment Amount Program, which became effective in 2015. MPAP establishes minimum payment amounts for qualified nursing facilities in STAR+PLUS. The STAR+PLUS managed care organizations pay the minimum payment amounts to qualified nursing facilities based on state direction. The program was intended to be a short-term program that would ultimately transition to a performance-based initiative.
- HHSC Budget Rider 97 in the 2016-2017 budget directs HHSC to transition the Minimum Payment Amount Program to the Quality Incentive Payment Program (QIPP).
- The Quality Incentive Payment Program encourages nursing facilities to improve the quality and innovation of their services, using the Centers for Medicare & Medicaid five-star rating system as its measure of success.

### Methodology / Rules

- The [General Provision](#) for QIPP Year 1 & 2 is located at Title 1 of the Texas Administrative Code, Part 15, Chapter 353, Subchapter O, Rule §353.1301. Additional information on [Quality Incentive Payment Program for Nursing Facilities before September 1, 2019](#) is located at Title 1 of the Texas Administrative Code, Part 15, Chapter 353, Subchapter O, Rule §353.1303.

The [General Provision](#) for QIPP Year 3 is located at Title 1 of the Texas Administrative Code, Part 15, Chapter 353, Subchapter O, Rule §353.1301. Additional information on [Quality Incentive Payment Program for Nursing Facilities after September 1, 2019](#) is located at Title 1 of the Texas Administrative Code, Part 15, Chapter 353, Subchapter O, Rule §353.1302

## Quality Incentive Payment Program Scorecards

QIPP Year 4 (SFY21)

[Monthly Payments](#)

[Quarterly Payments](#)

[Related Documents](#)

QIPP Year 5 (SFY22)

[Related Documents](#)

The quality monitoring program is done in partnership with the finance department. The workgroup charge is to prepare for year six (2022) and is designed to bring all stakeholders together. CMS has provided direct input and stressed the need for similarities among related programs. CMS has requested some changes:

- Components for non-state-owned facilities has been an issue
- Payments are based on historic utilization with a threshold. CMS wants actual utilization.
- CMS wants to see year over year improvement and for HHSC to establish a floor on measures. HHSC is currently working on this request.

HHSC has taken the input from stakeholders to try to reach a balance between quality and the targets and measures that are achievable. HHSC is looking at weighting the rates for the NSGOs. There are potential measures that could be added to the existing process: Infection control (should be included for NSGOs and non-NSGOs. The recommendations will be made available to the public once some decisions have been made.

## Questions/Answers/Comments

How many members make up the workgroup? There are 10 that are non-state staff.

Will there be any impact on the payment and re-allocation for unearned funds. Mr. Vasquez stated that this would be a provider finance question and he will find out the answer.

If you are a top ten provider with declining performance may not achieve metrics if declining then eligibility would be denied. Mr. Vasquez stated that this is a problem across the board. One new patient can impact that rate of decline/improvement. Variance should be mapped to national variance. For each measure QIPP were outperforming Non-QIPP providers.

Mr. Vasquez stated that CMS is also requiring Medicaid managed care individual data be used for quality determination and not just facility level data

#### 7. Briefing on any pending or proposed rules relating to Long-term Care (LTC) facilities

##### **Adopted:**

August 8 rules on nurse aides

Assisted living facility rules various impacts and areas addressed including COVID and rapid testing

Assisted living life safety rules

##### **Public comment Process Complete**

Nursing facility rules implementing legislation from 2019

ICF bed reallocation

Nursing Facility Administrator rules come into alignment with national standards

##### **Proposed Rules**

Making permanent temporary rules related to nurse's aids

Medication aid rules allowing training to occur online, requiring finger print checks.

##### **Rules in Development**

ICF facilities legislation from 2020 and 2021 (rapid flu tests, Calculating administrative penalties

Transfer misconduct rules to a new TAC section

Expand temporary licensure after a change in ownership

Make Permanent and bring together outbreak rules into one section including COVID

##### **Drafting and Discussion Phase rules:**

2021 legislation nursing facilities related to flood plain construction, defibrillators, Alzheimer's disclosure; out of state background checks

Implementation this council's recommendations for bed allocation

Emergency communication

**Questions/Answers/Comments**

National standards for nursing facilities? HHSC stated it has to do with reciprocity and training

**8. LTC facilities vaccination requirements** [LTCRPolicy@hhs.Texas.gov](mailto:LTCRPolicy@hhs.Texas.gov) or [Catherine.Anglin@hhs.Texas.gov](mailto:Catherine.Anglin@hhs.Texas.gov)

**LTC Provider Types**

- Assisted Living Facility (ALF)
- Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID)
- Nursing Facility (NF)

**Vaccine Requirements for ALFs**--According to the recently updated ALF Visitation Rules, an ALF must offer a complete series of a one or two-dose COVID-19 vaccine to all residents and staff and document each resident's choice to vaccinate or not vaccinate. [ALF Visitation Rules 08.20.21 \(texas.gov\)](https://www.texas.gov)

TITLE 26 HEALTH AND HUMAN SERVICES  
PART 1 HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 553 LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES  
SUBCHAPTER K COVID-19 EMERGENCY RULE  
EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, Subchapter K, COVID-19 Emergency Rule, new §553.2003, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

**BACKGROUND AND PURPOSE**

The purpose of the emergency rulemaking is to support the Governor's March 13,

2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Assisted Living Facility COVID-19 Response--Expansion of Reopening Visitation.

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require limited indoor and outdoor visitation in an assisted living facility. The purpose of the new rule is to describe the requirements related to such visits.

#### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §§247.025 and 247.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC. Texas Health and Safety Code §§247.025 and 247.026 require the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 247 and to adopt rules prescribing minimum standards to protect the health and safety of assisted living facility residents. The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247. The agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

In this context, "offer" means:

- Administer; or
- Arrange/assist; or
- Educate/give information AND
- Document the resident's choice to vaccinate or not to vaccinate

**Vaccine Requirements for ICF/IID**--CMS issued QSO-21-21-ICFIID on August 23, 2021 [Interim Final Rule - COVID-19 Vaccine Immunization Requirements for Clients and Staff in Intermediate Care](#)

[Facilities for Individuals with Intellectual Disabilities \(ICFs/IID\) \(cms.gov\)](#) According to this memo, ICFs must:

- Educate all staff and residents on the benefits, risks, and potential side effects of the COVID-19 vaccine
- Offer the COVID-19 vaccine
- Document education received and receipt or refusal of a COVID-19 vaccine

#### **Memorandum Summary**

CMS is committed to taking critical steps to ensure America's healthcare facilities continue to respond effectively to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE).

On May 11, 2021, CMS published an interim final rule with comment period (IFC). This rule establishes Long-Term Care (LTC) Facility Vaccine Immunization Requirements for Residents and Staff. This includes new requirements for educating clients or client representatives and staff regarding the benefits and potential side effects associated with the COVID-19 vaccine, and offering the vaccine. Furthermore, ICFs/IID are encouraged to report COVID-19 vaccine and therapeutics treatment information to the Centers for Disease Control and Prevention's (CDC) National Healthcare Safety Network (NHSN).

**Vaccine Requirements for NFs--** CMS issued QSO-21-19-NH on May 11, 2021. [QSO-21-19-NH \(cms.gov\)](#) According to this memo, NFs must:

- Educate all staff and residents on the benefits, risks, and potential side effects of the COVID-19 vaccine
- Offer the COVID-19 vaccine
- Document education received and receipt or refusal of a COVID-19 vaccine

#### **Memorandum Summary**

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Transparency: CMS will post the new information reported to the NHSN for viewing by facilities, stakeholders, or the general public on CMS's COVID-19 Nursing Home Data website.

Updated Survey Tools: CMS has updated tools used by surveyors to assess compliance with these new requirements

**Vaccine Requirements for ICFs and NFs--Education on the COVID-19 Vaccine**

- All staff and residents must be educated on the COVID-19 vaccine they are offered in a manner they can understand, and receive the FDA COVID-19 EUA Fact sheet before being offered the vaccine
- Education must cover the benefits and potential side effects of the vaccine

Offering the COVID-19 Vaccine-- The vaccine may be offered directly by the facility or indirectly, such as through an arrangement with a pharmacy partner, local health department, or other appropriate health entity.

Documentation for the COVID-19 Vaccine -- ICFs and NFs must maintain appropriate documentation to indicate that the facility provided the required COVID-19 vaccine education, and whether the resident, client, or staff member received the vaccine.

**9. Public Comment**, Public comment was not offered

**10. Adjourn** . December 7<sup>th</sup> is the next meeting. There being no further business, the meeting was adjourned.

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