TO: Medical Care Advisory Committee

DATE: February 16, 2017

FROM: Mary Haifley, HHSC MCD Medical Benefits Director

Agenda Item No.: 7

SUBJECT: Substitute Dentists

Amendments to: 1 TAC §354.1121, Definitions; §354.1221, Authorized Dentists' Services

BACKGROUND: 选 Federal Requirement 选 Legislative Requirement 选 Other: HHSC Initiative

Current federal Medicaid rules allow Medicaid-enrolled dentists to arrange for a substitute Medicaid-enrolled dentist to serve in the billing physician's practice on a short or long-term basis. However, current Texas Medicaid rules do not include this option for dentists. The proposed rule amendments would extend this billing arrangement option to Medicaid dentists. The substitute dentists would be required to be enrolled in Medicaid, and time limits apply unless the reason for the billing agent dentist's absence is active duty as a member of a reserve component in the U.S. Armed Forces.

ISSUES AND ALTERNATIVES:
None known. The proposed changes are expected to be received positively, as they offer an option to current Medicaid dentists that is currently unavailable to them.

STAKEHOLDER INVOLVEMENT:
The proposed rule amendments were sent to external stakeholders for review. Comments received from stakeholders were reviewed by HHSC staff and taken into consideration.

FISCAL IMPACT:
选 None 选 Yes

RULE DEVELOPMENT SCHEDULE:
February 2017 Present to the Medical Care Advisory Committee
February 2017 Present to HHSC Council
April 2017 Publish proposed rules in Texas Register
July 2017 Publish adopted rules in Texas Register
July 2017 Effective date

REQUESTED ACTION: (Check appropriate box)
选 The MCAC recommends approval of the proposed rules for publication.

选 Information Only
The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1121, Definitions; and §354.1221, Authorized Dentists' Services.

BACKGROUND AND JUSTIFICATION

Current federal Medicaid rules allow Medicaid-enrolled dentists to arrange for a substitute Medicaid-enrolled dentist to serve in the billing physician's practice on a short or long-term basis. However, current Texas Medicaid rules do not include this option for dentists. The proposed rule amendments would extend this billing arrangement option to Medicaid dentists. The substitute dentists would be required to be enrolled in Medicaid, and time limits apply unless the reason for the billing agent dentist's absence is active duty as a member of a reserve component in the U.S. Armed Forces.

Since the proposed rule amendments offer dentists the option of using a substitute provider during a temporary absence, the proposed changes benefit both Medicaid dentists and Medicaid recipients.

SECTION-BY-SECTION SUMMARY

Proposed §354.1121 adds a definition for "HHSC" and "substitute dentist."

Proposed §354.1221 adds the option and accompanying requirements for a dentist to bill for services performed by a substitute dentist under a temporary billing arrangement. Other nonsubstantive updates are also proposed in this rule.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be no impact to costs or revenues of state or local government. There are no anticipated economic costs to persons who are required to comply with the amended rules. There is no anticipated negative impact on local employment.
SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse impact on small businesses or micro-businesses to comply with the amended rules, as they will not be required to alter their business practices as a result of the proposed amendments.

PUBLIC BENEFIT AND COST

Jami Snyder, State Medicaid Director has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be that Medicaid-enrolled dentists will have the option of using a substitute dentist during a temporary absence from their practice, thereby having the ability to continue to serve Medicaid recipients during a temporary absence.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a “major environmental rule” as defined by §2001.0225 of the Texas Government Code. A “major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Kristie Kloss, Medical Benefits Manager, 4900 North Lamar Blvd., Mail Code H370, Austin, Texas 78751-2316; or by e-mail to kristie.kloss@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

STATUTORY AUTHORITY

These amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.
The proposed amendments affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

This agency hereby certifies that this proposal has been reviewed and approved by legal counsel and found to be within the agency’s legal authority to adopt.
SECTION §354.1121   Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advanced practice registered nurse--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and clinical nurse specialist.

(2) Ambulance service supplier--A person, firm, or institution approved for and participating in Medicare as an air, ground, or specialized ambulance service supplier or provider.

(3) Ambulatory surgical center--A distinct health care entity that operates exclusively for the purpose of providing certain surgical services to patients not requiring overnight inpatient hospital services. The center must meet the conditions for participation described in §354.1211 of this subchapter (relating to Conditions for Participation) and other applicable state and federal requirements.

(4) Approved laboratory--A laboratory that is independent of a hospital or physician's office and that has been approved for and is participating in Medicare and only for the procedures certified to that laboratory under Medicare.

(5) Claim--A request for payment for authorized benefits on the applicable approved form meeting the established itemization requirements.

(6) Day--With respect to inpatient hospital services, the time period of a day is counted for:

(A) hospital bed occupancy each midnight while under registration in a hospital as an inpatient;

(B) each hospital bed occupancy where admission and discharge occur on the same calendar day while under registration in a hospital as an inpatient.
(7) Doctor--Doctor of chiropractic (chiropractor), doctor of optometry (optometrist), doctor of podiatry (podiatrist), or doctor of dentistry (doctor of dental surgery (DDS), doctor of medical dentistry (DMD), and doctor of dental medicine (DDM)).

(8) Doctor of chiropractic, doctor of optometry, doctor of podiatry, and doctor of dentistry (DDS, DMD, or DDM)--A licensed doctor legally authorized to practice his specialty at the time and place the service is provided.

(9) Eligible provider--An institution, facility, agency, person, partnership, corporation, or association approved for participation in the Texas Medicaid program in accordance with terms of this chapter. "Eligible provider" also includes any person, firm, or institution approved for and participating in Part B Medicare as a supplier or provider of medical services or supplies, who is not otherwise designated as an eligible Title XIX provider, and who meets the requirements stipulated in this definition, except that such eligible provider shall be an eligible Title XIX provider only for Part B Medicare services or supplies and for the Title XIX payment of the deductible and coinsurance liabilities.

(10) Eyeglasses--Eyewear dispensed and delivered that is medically necessary and prescribed by a doctor of optometry or physician, is professionally adjudged to be necessary and appropriate for the lens, age, and sex of the eligible recipient, and significantly improves visual acuity or impedes progression of visual problems. The term "eyeglasses" does not include artificial eyes or any item of eyewear for which benefits are not provided in the rules of the Texas Health and Human Services Commission (HHSC) regarding the Medicaid eyeglass program.

(11) Eyeglass supplier--A person, firm, or institution that has entered into a written agreement with HHSC or its designee as an eyeglass supplier on a form approved by HHSC; provided that the benefits shall be available for eyeglass services and supplies dispensed by an eyeglass supplier only if the fitting, adjustment, and repair of the eyewear involved is performed by a physician, doctor of optometry, or an optician; and provided that an eyeglass supplier is an eligible provider under this program. Such suppliers must accept the benefits paid as stipulated by HHSC as payment in full for the service and supplies involved, except as otherwise provided.

(12) Family planning agency--A facility or institution that has been determined by HHSC or its designee to qualify as a family planning agency under standards of participation established by HHSC, including any amendment of such standards of participation authorized by HHSC. Family planning agencies shall accept as payment in full the amount paid in accordance with the benefits as stipulated by HHSC.

(13) Health insuring agency--An organization legally operating within the state that pays for the cost of certain medical services available under the Title XIX state plan to eligible recipients in exchange for premiums paid by HHSC and which assumes an underwriting risk.

(14) HHSC--The Texas Health and Human Services Commission or its designee.

(15) Hospital--Any institution licensed as a hospital by the appropriate licensing authority but which is not a mental institution, a health resort, nursing home, rest home, or any
other institution primarily providing convalescent or custodial care or which is otherwise excluded under this chapter.

(16) [\textit{\textbf{16}}] Illness--A bodily disorder, bodily injury, disease, or mental disease.

(17) [\textit{\textbf{17}}] Inpatient--A person registered and assigned a medical record number by a hospital for bed occupancy in that hospital.

(18) [\textit{\textbf{18}}] Institution for mental diseases (IMD)--As defined in 25 TAC §419.453(17) (relating to Definitions).

(19) [\textit{\textbf{19}}] Medicaid program--The Texas Medical Assistance Program, a joint federal and state program provided for in Chapter 32, Texas Human Resources Code, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(20) [\textit{\textbf{20}}] Mental disease or disorder--Any condition classified as a neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder.

(21) [\textit{\textbf{21}}] National provider identifier--The identification number required under §1128J(e) of the Social Security Act (42 U.S.C. §1320a-7k(e)).

(22) [\textit{\textbf{22}}] Nonmedical public institution--An institution or facility that is either a unit of, or under the administrative control of a state, federal, or local government and that is not approved for participation in the Medicaid program.

(23) [\textit{\textbf{23}}] Out-of-state hospital--A hospital located outside of the State of Texas that participates as a general or acute care hospital or both under Medicare or Title XIX, or both. Examples of institutions that are excluded are institutions primarily for mental disease or pulmonary care, a health resort, a nursing home, a rest home, or any other institution primarily providing convalescent or custodial care or that is otherwise excluded under this chapter.

(24) [\textit{\textbf{24}}] Outpatient--A person registered by a hospital for outpatient services but not as an inpatient.

(25) [\textit{\textbf{25}}] Physician--A doctor of medicine or doctor of osteopathy (MD or DO) legally authorized to practice medicine or osteopathy at the time and place the service is provided.

(26) [\textit{\textbf{26}}] Physical therapist--A graduate of a program of physical therapy approved by the Commission on Accreditation in Physical Therapy Education or one of the previously recognized accreditation bodies, and licensed by the state in which the services are performed.

(27) [\textit{\textbf{27}}] Physical therapist assistant--A person licensed by the appropriate state licensure board as a physical therapist assistant and who provides physical therapy under the direction of a licensed physical therapist.
(28) [27] Physical therapy--Restorative services prescribed by a physician and provided to a recipient by a qualified physical therapist. It includes any necessary supplies and equipment.

(29) [28] Prescription--A signed written or electronic order by a physician or other healthcare practitioner acting within the scope of his or her licensure. This includes a verbal order subsequently countersigned by the practitioner or verified by the pharmacist.

(30) [29] Psychologist--A person who is licensed to practice as a psychologist in the state in which the service is performed.

(31) [30] Recipient month--A calendar month of continuous eligibility for one individual under the Medicaid program. Each month covers eligibility for only one eligible recipient. Multiple recipient months may cover eligibility for one or more eligible recipients or eligibility for the same individual if prior months are involved. Additional months of recipient eligibility may occur due to:

(A) certification of eligibility for up to three months prior to date of application;

(B) eligibility for those individuals who are certified to be eligible recipients after a first of the month;

(C) eligibility certified retroactively;

(D) certification of four months post eligibility for certain individuals in the non-Medicare related aid to families with dependent children coverage group; or

(E) appropriately identified error adjustments.

(32) [31] Respiratory care practitioner--A person certified to practice respiratory care as defined in the Occupations Code, Chapter 604, relating to Respiratory Care Practitioners.

(33) [32] Semiprivate room--A two-bed, three-bed, or four-bed accommodation.

(34) [33] State fiscal year--The 12-month period beginning September 1 and ending August 31.

(35) [34] State plan--The plan for administration of the Medicaid program which is approved by the secretary of health and human services in accordance with the provisions of Title XIX of the Social Security Act, as amended.

(36) Substitute dentist--A doctor of dentistry (DDS, DMD, or DDM) who provides services in place of another dentist of the same license type under a billing arrangement. These arrangements must comply with Medicaid policy, billing, reporting, and documentation requirements.
(37) Therapeutic optometrist--A person certified by the Texas Optometry Board to practice therapeutic optometry in accordance with the Texas Optometry Act. References in this chapter to optometrists include therapeutic optometrists.

(38) Third-party billing vendor--A vendor that submits claims to HHSC, or its designee, for reimbursement on behalf of a provider of medical services under the Medicaid program.

(39) Third-party liability--The resources that an eligible recipient may have which serve as a source of payment for services provided under the Medicaid program.

(40) Title XIX hospital--A hospital that is participating as a hospital under Medicare, that has in effect a utilization review plan approved by HHSC applicable to all eligible recipients to whom it provides services or supplies, and has been designated by HHSC as a Title XIX hospital or a hospital not meeting all of the requirements listed in this definition but which provides services or supplies for which benefits are provided under Medicare, the Social Security Act, §1814(d), or would have been provided under such section had the recipients to whom the services or supplies are provided been eligible for and enrolled under Part A of Medicare, to the extent of such services and supplies only, and then only if such hospital has been designated by HHSC as a Title XIX emergency care only hospital, or has been approved by HHSC to provide emergency hospital services and agrees that the reasonable cost of such services or supplies, as defined in the Social Security Act, §1902(a)(13), will be such hospital's total charge for such services and supplies.

(41) Title XIX spell of illness--With respect to inpatient hospital services, spell of illness is a continuous period of hospital confinement. Successive periods of hospital confinement are considered to be continuous unless the last date of discharge and the date of readmission are separated by at least 60 consecutive days.

(42) Utilization review--The methods and procedures related to the review of utilization of covered care and services with respect to medical necessity and to safeguard against inappropriate utilization of care and services.
SECTION §354.1221 Authorized Dentists' Services

(a) Dentists' services provided by a doctor of dentistry (DDS, DMD, or DDM), as defined in §354.1121 (§29.1001) of this subchapter (chapter) (relating to Definitions [General Definitions for Purchased Health Services]), are covered by the Texas Medicaid Program [Medical Assistance Program] if the services:

(1) are within the dentist's scope of practice, as defined by state law; and

(2) would be covered by the Texas Medicaid [Medical Assistance] Program when they are provided by a licensed physician (MD or DO).

(b) Substitute dentist. A dentist may act as a billing agent, pursuant to 42 CFR 447.10, to submit claims. To qualify for reimbursement, the billing agent dentist and substitute dentist must comply with the following requirements:

(1) The substitute dentist must be licensed to practice in the state of Texas.

(2) Consistent with the requirements of §371.1605 and §371.1705 of this title (relating to Provider Responsibility and Mandatory Exclusion, respectively), the substitute dentist must be enrolled in Medicaid and not be on the Medicaid or Title XX provider exclusion list.

(3) The substitute dentist must complete and sign the claim form.

(4) The billing agent dentist may recover no more than the actual administrative cost of submitting the claim on behalf of the substitute dentist. This cost is not reimbursable by Medicaid.

(5) The billing agent dentist may only bill for services furnished by a substitute dentist on a temporary basis, for no longer than a 14-day consecutive period. Except as provided in paragraph (6) of this subsection, the billing agent dentist may not submit a claim for services furnished by a substitute dentist to address long-term vacancies in a dental practice.

(6) A billing agent dentist may submit claims for the services of a substitute dentist for a longer than 14 consecutive days, if the billing agent dentist has been called or ordered to active duty as a member of a reserve component of the Armed Forces. Medicaid accepts claims from the billing agent dentist for services provided by the substitute dentist for the duration of the billing agent dentist's active duty as a member of a reserve component of the Armed Forces.
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