TEXAS Health and Human Services

TO: Health and Human Services Commission Executive Council

DATE: November 30, 2017

FROM: Victor Perez, Director, HHSC Rate Analysis for Long-Term Services and Support

AGENDA ITEM: 2.g

SUBJECT: Reform of Cost Reporting Process for Home and Community-based Services (HCS), Texas Home Living (TxHmL), and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (IDF/IID) Providers

BACKGROUND: ☐ Federal ☐ Legislative ☒ Other: Program Initiative

The Texas Health and Human Services Commission (HHSC) proposes amendments to Texas Administrative Code Title 1, Part 15, Chapter 355, Subchapter A, §355.102, General Principles of Allowable and Unallowable Costs; Subchapter A, §355.105, General Reporting and Documentation Requirements, Methods, and Procedures; Subchapter A, §355.112, Attendant Compensation Rate Enhancement; Subchapter D, §355.456, Reimbursement Methodology (for Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID)); Subchapter F, §355.722, Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers; and Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

Effective January 1, 2018, HHSC plans to implement a cost report reform initiative for HCS/TxHmL and ICF/IID providers by requiring only even-year cost reports beginning with providers' 2018 fiscal year cost reports. These proposed amendments are at §355.105(c) for ICF/IID providers and at §355.722(a) for HCS/TxHmL providers. This change requires HHSC to propose amendments to §355.102(d) so that all providers attend state-sponsored cost report training every other year for the even-year cost report. Current language requires providers to attend cost report training for odd-year cost reports.

A proposed amendment to §355.112(h)(2)(B) requires ICF/IID and HCS/TxHmL providers submit an Attendant Compensation Report for odd years beginning with the rate year that starts September 1, 2017. In

§355.112(j), an internal citation related to completion of cost reports functioning as Attendant Compensation Reports in the ICF/IID program is updated. Additionally, an amendment to §355.112(t)(2) updates language regarding provider requests for recalculation of recoupment.

Finally, HHSC proposes to repeal the Total Medicaid Spending Requirement in the ICF/IID reimbursement methodology at §355.456(j)(8) and in the HCS/TxHmL reimbursement methodology at §355.723(f)(10) beginning September 1, 2017. Providers who chose to receive the Medicaid rates in effect on August 31, 2015, (i.e., providers who chose to "opt out" of the September 1, 2015, rate increases in order to be exempt from the Total Medicaid Spending Requirement) will receive the rates that were adopted effective September 1, 2015, effectively eliminating the rate differential between providers who "opted in" and providers who "opted out."

ISSUES AND ALTERNATIVES:

None.

STAKEHOLDER INVOLVEMENT:

The proposed rule amendments will be shared with external stakeholders for review prior to the Executive Council meeting.

FISCAL IMPACT:

☒ Yes

	SFY18	SFY18	SFY20	SFY21	SFY22
State	$359,339	$431,653	$432,057	$432,057	$432,057
Federal	$472,850	$579,717	$579,313	$579,313	$579,313
Total	$832,189	$1,011,370	$1,011,370	$1,011,370	$1,011,370

SERVICES IMPACT STATEMENT:

The rule amendments are not expected to directly affect the provision of services to HHSC's client population.

RULE DEVELOPMENT SCHEDULE:

November 2017	Publish proposed rules in *Texas Register*
November 16, 2017	Present to Medical Care Advisory Committee
November 30, 2017	Present to HHSC Executive Council
February 2018	Publish adopted rules in *Texas Register*
March 1, 2018	Effective date

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.102, concerning General Principles of Allowable and Unallowable Costs; §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures; §355.112, concerning Attendant Compensation Rate Enhancement; §355.456, concerning Reimbursement Methodology; §355.722, concerning Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers; and §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

BACKGROUND AND PURPOSE

Effective January 1, 2018, HHSC will implement a cost report reform initiative for HCS/TxHmL and intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID) providers by requiring only even-year cost reports beginning with providers' 2018 fiscal year cost reports. These proposed amendments are at §355.105(c) for ICF/IID providers and at §355.722(a) for HCS/TxHmL providers.

As part of this initiative, HHSC is proposing amendments to §355.102(d) so that all providers attend state-sponsored cost report training every other year for the even-year cost report. Currently, providers attend cost report training for odd-year cost reports.

Section 355.112(h)(2)(B) is also being amended to require Attendant Compensation Reports for odd years beginning with the rate year that starts September 1, 2017. The report must reflect the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year, and it is due no later than 90 days following the end of the provider entity's fiscal year or 90 days from the transmittal date of the Attendant Compensation Report forms, whichever due date is later.

Finally, HHSC proposes to repeal the Total Medicaid Spending Requirement in the ICF/IID reimbursement methodology at §355.456(j)(8) and in the HCS/TxHmL reimbursement methodology at §355.723(f)(10) beginning September 1, 2017. Providers who chose to receive the Medicaid rates in effect on August 31, 2015, (i.e., providers who chose to "opt out" of the September 1, 2015, rate increases in order to be exempt from the Total Medicaid Spending Requirement) will receive the rates that were adopted effective September 1, 2015, effectively eliminating the rate differential between providers who "opted in" and providers who "opted out."

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.102(d) changes the cost report training requirement from every other year for the odd-year cost report to every other year for the even-year cost report beginning with providers' 2018 cost reports. If a new preparer wishes to complete an odd-year cost report and has not completed the previous even-year training, he/she must complete an odd-year training.

The proposed amendment to §355.102(g)(2) and (h)(2) update references to program names.

The proposed amendment to §355.105(c)(1) indicates that ICF/IID providers will submit even-year cost reports only, beginning with provider's 2018 cost report.

The proposed amendment to §355.112(h)(2) adds new subparagraph (B) to require submission of attendant compensation reports for odd years, beginning with the rate year that starts September 1, 2017. As amended, the remaining subparagraphs are (C) through (H).

The proposed amendment to §355.112(j) updates an internal citation related to completion of cost reports functioning as Attendant Compensation Reports in the ICF/IID program.

The proposed amendment to §355.112(t)(2) updates language regarding provider requests for recalculation of recoupment.

The proposed amendment to §355.456(j) adds an end date of August 31, 2017, for the Total Medicaid Spending Requirement and to the providers' option of choosing the Medicaid rates in effect on August 31, 2015, in paragraph (7). Proposed new paragraph (8) indicates that, for rate periods beginning on or after September 1, 2017, the Total Medicaid Spending Requirement will no longer apply, and providers who "opted out" of the September 1, 2015, rate increases will begin to receive those increases.

The proposed amendment to §355.722(a) indicates that HCS/TxHmL providers will submit even-year cost reports only, beginning with provider's 2018 cost reports.

The proposed amendment to §355.723(f) adds an end date of August 31, 2017, for the Total Medicaid Spending Requirement and to the providers' option of choosing the Medicaid rates in effect on August 31, 2015, in paragraph (9). Proposed new paragraph (10) indicates that, for rate periods beginning on or after September 1, 2017, the Total Medicaid Spending Requirement will no longer apply, and providers who “opted out” of the September 1, 2015, rate increases will begin to receive those increases.

FISCAL NOTE

David Cook, Deputy Chief Financial Officer for HHSC, has determined that for each year of the first five years the amendments to §§355.102, 355.105, 355.112, and 355.722 will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the amendments as proposed.

For each year of the first five years the amendments to §355.456 and §355.723 will be in effect, there will be fiscal implications to state government as a result of enforcing and administering the amendments as follows: $832,189 ($359,339 General Revenue (GR) and $472,850 Federal Funds (FF)) for fiscal year (FY) 2018; $1,011,370 ($431,653 GR and $579,717 FF) for FY 2019; $1,011,370 ($432,057 GR and $579,313 FF) for FY 2020; $1,011,370 ($432,057 GR and $579,313 FF) for FY 2021; and $1,011,370 ($432,057 GR and $579,313 FF) for FY 2022. There will be no effect on local governments as a result of enforcing or administering these amendments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years the amended rules will be in effect:

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will limit an existing rule; and

(7) the rules will not change the number of individuals subject to the rule.

HHSC has insufficient information to determine the rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

David Cook, Deputy Chief Financial Officer for HHSC, has also determined that there will be no adverse impact on small businesses, micro-businesses, or rural communities required to comply with the amendments as proposed. The amended rules do not require any additional cost to a contracted provider. Attendant Compensation Reports collect significantly less provider information than cost reports. Replacing cost reports in the odd years with Attendant Compensation Reports should result in lower costs for providers.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons required to comply with the amendments as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule does not impose a cost on persons required to comply and is amended to reduce the burden imposed on persons required to comply with the rule.

PUBLIC BENEFIT

Selvadas Govind, Director of Rate Analysis, has determined that, for each year of the first five years the amended rules are in effect, the public will benefit from adoption of the proposed amendments in three ways. First, HHSC's costs will be reduced because staff will have 69% fewer reports to process from HCS/TxHmL and ICF/IID providers during alternate years. Second, the administrative burden on providers will be reduced because they will no longer submit odd-year cost reports; rather, providers will submit Attendant Compensation Reports, which collect significantly less provider information. Third, the administrative burden on HHSC and providers associated with Medicaid Spending Requirements will be eliminated.

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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Victor Perez in the HHSC Rate Analysis Department by telephone at (512) 462-6223. Written comments on this proposal may be submitted to Mr. Perez by mail to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, TX 78705-5200; by fax to (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 1R059" in the subject line.

STATUTORY AUTHORITY

The amended rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The amended rules implement Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355 REIMBURSEMENT RATES
SUBCHAPTER A COST DETERMINATION PROCESS

§355.102. General Principles of Allowable and Unallowable Costs.

(a) - (c) No change.

(d) Cost report training. It is the responsibility of the provider to ensure that each cost report preparer has completed the required state-sponsored cost report training. Preparers may be employees of the provider or persons who have been contracted by the provider for the purpose of cost report preparation. Preparers must complete cost report training for each program for which a cost report is submitted. Beginning with providers' 2018 cost reports, preparers [~~Preparers~~] must complete cost report training every other year for the even-year [~~odd-year~~] cost report in order to receive a certificate to complete both that even-year [~~odd-year~~] cost report and the following odd-year [~~even-year~~] cost report, if applicable. If a new preparer wishes to complete an odd-year [~~even-year~~] cost report and has not completed the previous even-year [~~odd-year~~] cost report training, to receive a certificate to complete the odd-year [~~even-year~~] cost report, he/she must complete an odd-year [~~even-year~~] cost report training. A copy of the most recent cost report training certificate for each preparer of the cost report must be submitted with each cost report, except for cost reports submitted through the State of Texas Automated Information and Reporting System (STAIRS). Contracted preparer's fees to complete state-sponsored cost report training are allowable.

(1) New preparers. Preparers, who have not previously completed the required state-sponsored cost report training and received a completion certificate, must complete the state-sponsored cost report training as follows:

(A) For School Health and Related Services (SHARS) providers, new preparers must complete state-sponsored online cost report training and receive a certificate of completion. Failure to complete the required training may result in an administrative contract violation as specified in §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)). Applicable federal and state accessibility standards apply to online training.

(B) For all other programs, new preparers must complete the state-sponsored online cost report training designed for new preparers and receive a certificate of completion for each program for which a cost report is submitted. Applicable federal and state accessibility standards apply to online training.

(2) All other preparers. Preparers who are not new preparers as defined in paragraph (1) of this subsection must complete state-sponsored online cost report training and receive a certificate of completion for each program for which a cost report is submitted. Preparers that participate in online training may be assessed a convenience fee, which will be determined by HHSC. Convenience fees assessed for state-sponsored online cost report training are allowable costs. Applicable federal and state accessibility standards apply to online training.

(3) For nursing facilities, failure to file a completed cost report signed by preparers who have completed the required cost report training may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(4) For SHARS providers, failure to complete the required cost report training may result in an administrative contract violation as specified in §355.8443 of this title.

(5) For all other programs, failure to file a completed cost report signed by preparers who have completed the required cost report training constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(e) - (f) No change.

(g) Unallowable costs. Unallowable costs are expenses that are not reasonable or necessary, according to the criteria specified in subsection (f)(1) - (2) of this section and which do not meet the requirements as specified in subsections (i), (j), and (k) of this section or which are specifically enumerated in §355.103 of this title or program-specific reimbursement methodology. Providers must not report as an allowable cost on a cost report a cost that has been determined to be unallowable. Such reporting may constitute fraud. (Refer to §355.106(a) of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports)).

(1) For nursing facilities, placement as an allowable cost on a cost report of a cost which has been determined to be unallowable may result in vendor hold as specified in §355.403 of this title.

(2) For ICF/IID [~~Intermediate Care Facilities for Individuals with Intellectual Disabilities (formerly known as Intermediate Care Facilities for Persons with Mental Retardation)~~], HCS [~~Home and Community-based Services~~], Service Coordination/Targeted Case Management, Rehabilitative Services, and TxHmL [~~Texas Home Living~~] programs, placement as an allowable cost on a cost report a cost, which has been determined to be unallowable, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(3) For SHARS providers, submission of a cost that has been determined to be unallowable may result in an administrative contract violation as specified in §355.8443 of this title.

(4) For all other programs, submission of a cost, which has been determined to be unallowable, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(h) Other financial and statistical data. The primary purpose of the cost report is to collect allowable costs to be used as a basis for reimbursement determination. In addition, providers may be required on cost reports to provide information in addition to allowable costs to support allowable costs, such as wage surveys, workers' compensation surveys, or other statistical and financial information. Additional data requested may include, when specified and in the appropriate section or line number specified, costs incurred by the provider which are unallowable costs. All information, including other financial and statistical data, shown on a cost report is subject to the documentation and verification procedures required for an audit desk review and/or field audit.

(1) For nursing facilities, inaccuracy in providing, or failure to provide, required financial and statistical data may result in vendor hold as specified in §355.403 of this title.

(2) For ICF/IID [~~Intermediate Care Facilities for Individuals with Intellectual Disabilities (formerly known as Intermediate Care Facilities for Persons with Mental Retardation)~~], HCS [~~Home and Community-based~~

~~Services~~], Service Coordination/Targeted Case Management, Rehabilitative Services, and TxHmL [~~Texas Home Living~~] programs, inaccuracy in providing, or failure to provide, required financial and statistical data constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(3) For SHARS, inaccuracy in providing, or failure to provide, required financial and statistical data may result in an administrative contract violation as specified in §355.8443 of this title.

(4) For all other programs, inaccuracy in providing, or failure to provide, required financial and statistical data constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(i) - (k) No change.

§355.105. General Reporting and Documentation Requirements, Methods, and Procedures.

(a) - (b) No change.

(c) Cost report due date.

(1) Providers must submit cost reports to HHSC Rate Analysis no later than 90 days following the end of the provider entity's fiscal year or 90 days from the transmittal date of the cost report forms, whichever due date is later. For ICF/IID, providers must submit cost reports to HHSC Rate Analysis only in even years, beginning with the provider’s 2018 cost report.

(2) For SHARS, providers must submit cost reports to HHSC Rate Analysis as specified in §355.8443 of this title.

(3) HHSC may grant extensions of due dates for good cause. A good cause is defined as a circumstance which the provider could not reasonably be expected to control and for which adequate advance planning and organization would not have been of any assistance. Providers must submit requests for extensions in writing to HHSC Rate Analysis. Requests for extensions must be received by HHSC Rate Analysis prior to the cost report due date. HHSC staff will respond in writing to requests within 15 days of receipt.

(4) HHSC may require additional financial and other statistical information, in the form of special surveys or reports, to ensure the fiscal integrity of the program. Providers must submit such additional information and/or special surveys or reports to HHSC Rate Analysis upon request by the date specified by HHSC Rate Analysis in its transmittal or cover letter to the special survey, report, or request for additional information.

(d) - (i) No change.

§355.112. Attendant Compensation Rate Enhancement.

(a) - (g) No change.

(h) Attendant Compensation Report submittal requirements.

(1) Annual Attendant Compensation Report. For services delivered on or before August 31, 2009, providers must file Attendant Compensation Reports as follows. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers whose cost report year, as defined in §355.105(b)(5) of this title, coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title will replace the Attendant Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating providers may be required to submit Transition Attendant Compensation Reports in addition to required cost reports. The Transition Attendant Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Attendant Compensation report or the provider's 2010 cost report. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the transition reporting period within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with transition reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section for the transition reporting period. Participating providers failing to submit an acceptable Transition Attendant Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(B) For ICF/IID, HCS, and TxHmL programs, providers must submit an Attendant Compensation Report for odd years beginning with the rate year that starts September 1, 2017. The report must reflect the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. The report is due to HHSC Rate Analysis no later than 90 days following the end of the provider entity's fiscal year or 90 days from the transmittal date of the Attendant Compensation Report forms, whichever due date is later.

(C) [~~(B)~~] When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(D) [~~(C)~~] When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily, the provider must submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(E) [~~(D)~~] When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are voluntarily withdrawn from participation as per subsection (x) of this section, the provider must submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(F) [~~(E)~~] For new contracts as defined in subsection (g) of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(G) [~~(F)~~] Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (e) of this section on any day other than the first day of their fiscal year are required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(H) [~~(G)~~] A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable attendant services to DADS recipients during the reporting period.

(3) Other reports. HHSC may require other reports from all contracts as needed.

(4) Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating provider who does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable report.

(A) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity to a different legal entity and do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change or termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership-change or termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs; Specifications for Allowable and Unallowable Costs; Revenues; and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title. For the ICF/IID program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.456 [~~§355.457~~] of this title (relating to Reimbursement Methodology). For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this title.

(k) - (s) No change.

(t) Notification of recoupment and request for recalculation.

(1) Notification of recoupment. The estimated amount to be recouped is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and accountability reports. STAIRS will generate an e-mail to the entity contact, indicating that the provider's estimated recoupment is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified by e-mail to the entity contact that the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the initial or subsequent notification. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds in an automated fashion, the requirements detailed under subsection (dd) of this section apply.

(2) Request for recalculation. Providers notified of a recoupment based on an Attendant Compensation Report described in subsection (h)(2)(A) or (h)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Attendant Compensation Report with the provider's most recently available, audited [~~next~~] full-year cost report. The

request must be received by HHSC Rate Analysis no later than 30 days after the date on the e-mail notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the request will be accepted.

(A) The request must be made by e-mail to the e-mail address specified in STAIRS, hand delivery, United States (U.S.) mail, or special mail delivery. An e-mail request must be typed on the provider's letterhead, signed by a person indicated in subparagraph (B) of this paragraph, then scanned and sent by e-mail to HHSC.

(B) The request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(u) - (hh) No change.

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355 REIMBURSEMENT RATES
SUBCHAPTER D REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

§355.456. Reimbursement Methodology.

(a) - (i) No change.

(j) Total Medicaid Spending Requirement. Effective for costs and revenues accrued on or after September 1, 2015, <u>through August 31, 2017,</u> all non-state operated ICF/IID providers are required to spend at least 90 percent of revenues received through the ICF/IID daily Medicaid payment rates on Medicaid allowable costs under the ICF/IID program.

(1) Compliance with the total Medicaid spending requirement will be determined in the aggregate for all component codes controlled by the same entity across the ICF/IID, Home and Community-based Services (HCS), and Texas Home Living (TxHmL) programs within the same cost report year.

(2) Compliance with the spending requirement is determined on an annual basis using cost reports as described in Chapter 355, Subchapter A, of this title (relating to Cost Determination Process) and this subchapter.

(A) When a provider changes ownership through a contract assignment, the prior owner must submit a report covering the period from the beginning of the provider's fiscal year to the effective date of the contract assignment as determined by HHSC or its designee. This report is used as the basis for determining compliance with the spending requirement.

(B) Providers whose contracts are terminated voluntarily or involuntarily must submit a report covering the period from the beginning of the provider's fiscal year to the date recognized by HHSC or its designee as the contract termination date. This report is used as the basis for determining compliance with the spending requirement.

(C) When part of a cost reporting period is subject to spending accountability and part is not subject to spending accountability, a provider may choose to have HHSC divide their costs for the entire cost reporting period between the part of the period subject to spending accountability and the part of the period not subject to spending accountability on a pro-rata basis (i.e., pro-rata allocation). For example, if six months of a twelve month cost reporting period are subject to spending accountability, HHSC would divide the provider's costs for the entire cost reporting period by two to determine the costs subject to spending accountability. Providers who do not choose to have HHSC divide their costs on a pro-rata basis must report their costs for the period subject to spending accountability separately from their costs for the period not subject to spending accountability (i.e., direct reporting). Once a provider indicates to HHSC their choice between a pro-rata allocation and direct reporting for a specific cost reporting period, that choice is irrevocable for that cost reporting period.

(3) Allowable costs are those described in Chapter 355, Subchapter A, and this subchapter.

(4) The total Medicaid revenue for an ICF/IID provider participating in the attendant compensation rate enhancement is offset by any recoupment made under §355.112(s) of this title prior to determining compliance with the spending requirement.

(5) Providers who fail to meet the 90 percent spending requirement are subject to a recoupment of the difference between the 90 percent spending requirement and their actual Medicaid allowable ICF/IID costs. Recoupments for each rate period under this subsection are limited to the difference between the provider's Medicaid revenues for services provided at the rates subject to spending accountability and what the provider's Medicaid revenues would have been for services provided at the Medicaid rates in effect on August 31, 2015.

(6) The contracted provider, owner, or legal entity which received the Medicaid payment is responsible for the repayment of the recoupment amount. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification results in placement of a vendor hold on all HHSC and Texas Department of Aging and Disability Services contracts controlled by the responsible entity.

(7) Prior to each rate period <u>through August 31, 2017,</u> providers will be given the option of receiving the Medicaid rates adopted by HHSC for the rate period and the Medicaid rates that were in effect on August 31, 2015. Providers who chose to receive the Medicaid rates that were in effect on August 31, 2015, will not be subject to the spending accountability requirements described in this subsection.

(8) For rate periods beginning on or after September 1, 2017, the Total Medicaid Spending Requirement described in this subsection will no longer apply. Additionally, providers who chose to receive the Medicaid rates that were in effect on August 31, 2015, will receive the rates that were adopted effective September 1, 2015.

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355 REIMBURSEMENT RATES
SUBCHAPTER F REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

§355.722. Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers.

(a) Submittal of cost reports. On a biennial [~~an annual~~] basis, [~~all~~] providers must submit cost reports to [~~as directed by the~~] Texas Health and Human Services Commission (HHSC) Rate Analysis only in even years, beginning with providers' 2018 cost reports [~~in accordance with this subchapter~~]. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Attendant service costs. Attendant service costs are defined in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(2) Staff who provide both attendant and non-attendant services. For staff whose duties include work other than the provision of attendant services for the provider, time spent providing attendant services and associated expenses may be reported as attendant service costs if properly documented in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(3) Providers must report the following costs:

(A) Staff wages related to the delivery of attendant services.

(B) These costs may be either the provider's actual expense or contracted expenditures.

(b) - (j) No change.

§355.723. Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

(a) - (e) No change.

(f) Total Medicaid Spending Requirement. Effective for costs and revenues accrued on or after September 1, 2015, through August 31, 2017, all HCS and TxHmL providers are required to spend at least 90 percent of revenues received through the HCS and TxHmL waiver programs' Medicaid payment rates on Medicaid allowable costs under these programs.

(1) Compliance with the total Medicaid spending requirement will be determined in the aggregate for all component codes controlled by the same entity across the HCS, TxHmL and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) programs within the same cost report year.

(2) Compliance with the spending requirement is determined on an annual basis using cost reports as described in Chapter 355, Subchapter A, of this title (relating to Cost Determination Process) and this subchapter.

(A) When a provider changes ownership through a contract assignment, the prior owner must submit a report covering the period from the beginning of the provider's fiscal year to the effective date of the contract assignment as determined by HHSC or its designee. This report is used as the basis for determining compliance with the spending requirement.

(B) Providers whose contracts are terminated voluntarily or involuntarily must submit a report covering the period from the beginning of the provider's fiscal year to the date recognized by HHSC or its designee as the contract termination date. This report is used as the basis for determining compliance with the spending requirement.

(C) When part of a cost reporting period is subject to spending accountability and part is not subject to spending accountability, a provider may choose to have HHSC divide their costs for the entire cost reporting period between the part of the period subject to spending accountability and the part of the period not subject to spending accountability on a pro-rata basis (i.e., pro-rata allocation). For example, if six months of a twelve month cost reporting period are subject to spending accountability, HHSC would divide the provider's costs for the entire cost reporting period by two to determine the costs subject to spending accountability. Providers who do not choose to have HHSC divide their costs on a pro-rata basis must report their costs for the period subject to spending accountability separately from their costs for the period not subject to spending accountability (i.e., direct reporting). Once a provider indicates to HHSC their choice between a pro-rata allocation and direct reporting for a specific cost reporting period, that choice is irrevocable for that cost reporting period.

(3) Allowable costs are those described in Chapter 355, Subchapter A, and this subchapter.

(4) The total Medicaid revenue for an HCS or TxHmL provider participating in the attendant compensation rate enhancement is offset by any recoupment made under §355.112(s) of this title prior to determining compliance with the spending requirement.

(5) Revenue and costs for the HCS and TxHmL waiver programs are combined for a component code for determination of compliance with the spending requirement.

(6) Providers who fail to meet the 90 percent spending requirement are subject to a recoupment of the difference between the 90 percent spending requirement and their actual Medicaid allowable HCS and TxHmL costs. Recoupments for each rate period under this subsection are limited to the difference between the provider's Medicaid revenues for services provided at the rates subject to spending accountability and what the provider's Medicaid revenues would have been for services provided at the Medicaid rates in effect on August 31, 2015.

(7) The contracted provider, owner, or legal entity which received the Medicaid payment is responsible for the repayment of the recoupment amount. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification results in placement of a vendor hold on all HHSC and Texas Department of Aging and Disability Services contracts controlled by the responsible entity.

(8) If HHSC, or its designee, is unable to recoup owed funds using an automated system, providers are required to repay some or all of the funds to be recouped through a check, money order or other non-automated method. Providers are required to submit the required repayment amount within 60 days of notification.

(9) Prior to each rate period <u>through August 31, 2017</u>, providers will be given the option of receiving the Medicaid rates adopted by HHSC for the rate period and the Medicaid rates that were in effect on August 31, 2015. Providers who choose to receive the Medicaid rates that were in effect on August 31, 2015, will not be subject to the spending accountability requirements described in this subsection.

<u>(10) For rate periods beginning on or after September 1, 2017, the Total Medicaid Spending Requirement described in this subsection will no longer apply. Additionally, providers who chose to receive the Medicaid rates that were in effect on August 31, 2015, will receive the rates that were adopted effective September 1, 2015.</u>