TEXAS Health and Human Services

TO: Health and Human Services Commission Executive Council

DATE: December 6, 2018

FROM: Victoria Grady, Financial Services Division

AGENDA ITEM: 2.r

SUBJECT: Cost Report Training and Cost Allocation Methods for State Supported Living Centers

BACKGROUND: ☐ Federal ☐ Legislative ☒ Other: Program Initiative

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, and §355.306, concerning Cost Finding Methodology.

Cost Report Training Requirements

HHSC plans to extend its Long-term Services and Supports (LTSS) cost report reform initiative by requiring preparers of most LTSS cost reports and accountability reports to attend state-sponsored cost report training in the same year that a cost report is required to be submitted to HHSC. Currently, the rule requires preparers of LTSS cost reports to attend cost report training for the odd-year cost report. This rule amendment will require preparers of LTSS cost reports and accountability reports to attend training on a schedule that is related to their cost reporting deadlines. HHSC will begin collecting cost reports from most LTSS providers on a biennial rather than an annual basis. These changes will be accomplished by reorganizing the rule, including the subparagraphs that relate to School Health and Related Services (SHARS) providers. There are no substantive changes to the SHARS cost report, Department of Family Protective Services (DFPS) 24-hour Residential Child Care program, and the Deaf-Blind with Multiple Disabilities training requirements.

Cost Allocation Methods for State Supported Living Centers and Bond Homes

In response to Senate Bill 547 (85th Legislature, Regular Session, 2017), which requires the HHSC Executive Commissioner to establish rules in order to implement the delivery of nonresidential services by state-operated

Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), HHSC would allow the use of cost allocation methods beyond those currently identified in the rule for cost reporting purposes by State Supported Living Centers (SSLCs) and Bond Homes. This rule amendment will allow flexibility in the reporting of expenses by SSLCs and Bond Homes in order to ensure the most accurate representation of the SSLCs' and Bond Homes' costs to deliver the nonresidential services.

Technical Correction to Cost Determination Process

HHSC plans to remove all references to Integrated Care Management (ICM-HCSS) and Integrated Care Management Assisted Living/Residential Care (ICM AL/RC) programs by amending Cost Determination Process rules. The ICM program no longer exists.

Cost Report Submission Requirements

HHSC plans to extend its LTSS cost report reform initiative by requiring providers to submit cost reports on a biennial basis. Primary Home Care, Day Activity and Health Services, and Community Living Assistance and Support Services--Direct Service Agency providers will be required to submit cost reports to HHSC Rate Analysis Department in odd-numbered years. Nursing Facility (NF) and Residential Care providers will be required to submit cost reports in even years. NF providers who are members of the Pediatric Care Facility class and The DFPS 24-Hour Residential Child Care providers will be required to submit their cost reports every year. HHSC is also changing the NF cost finding methodology to comply with proposed changes to the cost report submission requirements.

ISSUES AND ALTERNATIVES:

None.

STAKEHOLDER INVOLVEMENT:

The proposed rule amendments regarding the revision of cost report training requirements were communicated via conference calls with the following provider associations:

- Texas Association for Home Care and Hospice;
- Adult Day Care Association of Texas;
- Texas Assisted Living Association;
- Private Provider Association of Texas;
- Texas Council of Community Centers;

- Leading Age;
- Texas Association of Residential Care; and
- Texas Health Care Association.

The proposed rule amendments regarding cost allocation methods were shared with HHSC staff who are responsible for the preparation of annual cost reports for SSLCs and Bond Homes.

FISCAL IMPACT:

☒ None

SERVICES IMPACT STATEMENT:

This rule amendment is not expected to directly affect the provision of services to the health and human services client population.

RULE DEVELOPMENT SCHEDULE:

October 19, 2018	Publish proposed rules in *Texas Register*
November 8, 2018	Present to the Medical Care Advisory Committee
December 6, 2018	Present to HHSC Executive Council
December 2018	Publish adopted rules in *Texas Register*
January 2019	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, and §355.306, concerning Cost Finding Methodology.

BACKGROUND AND PURPOSE

Cost Report Training Requirements

HHSC is extending its Long-term Services and Supports (LTSS) cost report reform initiative by requiring preparers of most LTSS cost reports and accountability reports to attend state-sponsored cost report training in the same year that a cost report is required to be submitted to HHSC. Currently, the rule requires preparers of LTSS cost reports to attend cost report training for the odd-year cost report. This rule amendment will require preparers of LTSS cost reports and accountability reports to attend training on a schedule that is related to their cost reporting deadlines. HHSC will begin collecting cost reports from most LTSS providers on a biennial rather than an annual basis. These changes will be accomplished by reorganizing the rule, including the subparagraphs that relate to School Health and Related Services (SHARS) providers. There are no substantive changes to the SHARS cost report, Department of Family Protective Services (DFPS) 24-hour Residential Child Care program, and the Deaf-Blind with Multiple Disabilities (DBMD) training requirements.

Cost Allocation Methods for State Supported Living Centers and Bond Homes

In response to Senate Bill 547 (85th Legislature, Regular Session, 2017), which requires the HHSC Executive Commissioner to establish rules in order to implement the delivery of nonresidential services by state-operated Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), HHSC would allow the use of cost allocation methods beyond those currently identified in the rule for cost reporting purposes by State Supported Living Centers (SSLCs) and Bond Homes. This rule amendment will allow flexibility in the reporting of expenses by SSLCs and Bond Homes in order to ensure the most accurate representation of the SSLCs’ and Bond Homes’ costs to deliver the nonresidential services.

Technical Correction to Cost Determination Process

HHSC plans to remove all references to Integrated Care Management (ICM-HCSS) and Integrated Care Management Assisted Living/Residential Care (ICM AL/RC) programs by amending the Cost Determination Process rules. The ICM program no longer exists.

Cost Report Submission Requirements

HHSC is extending its LTSS cost report reform initiative by requiring providers to submit cost reports on a biennial basis. Primary Home Care (PHC), Day Activity and Health Services (DAHS), and Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA) and CLASS Case Management Agency (CPA) providers will be required to submit cost reports to HHSC's Rate Analysis Department in odd-numbered years. Nursing Facility (NF) and Residential Care (RC) providers will be required to submit cost reports in even years. NF providers who are members of the Pediatric Care Facility class and DFPS 24-Hour Residential Child Care (24-HR RCC) providers will be required to submit their cost reports every year. HHSC is also changing the NF cost finding methodology to comply with proposed changes to the cost report submission requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §355.102(d) adds "and accountability" to the title of the subsection and deletes the specific training requirements for new preparers. The proposed amendment also states that preparers that participate in cost report training may be assessed a convenience fee and that convenience fees are allowable costs. A statement that "applicable federal and state accessibility standards apply to cost report training" has been moved to this subsection from subsequent subparagraphs.

The proposed amendment of §355.102(d)(1) revises the training requirements for new preparers of cost reports and/or accountability reports. These changes alter the training requirements for all programs except for SHARS.

The proposed amendment of §355.102(d)(2) replaces language about completion certificates with language previously in §355.102(d)(3)-(5) that outlines the consequences of failing to complete the required cost report or accountability report training.

The proposed amendment of §355.102(g)(2) defines acronyms used in the paragraph and referred to later in the section.

The proposed amendment of §355.102(j) adds a new subparagraph (E) to allow SSLCs and Bond Homes to use allocation methods other than the ones designated in the rule as long as the allocation method adheres to Generally Accepted Accounting Principles. The proposed amendment also uses acronyms previously defined in §355.102(g)(2).

The proposed amendment of §355.105(c) broadens language about cost report due dates and directs providers to the HHSC website to find cost report due dates per program.

The proposed amendment of §355.112 removes from subsections (a), (c), (f) - (h), (l), (p), (t), and (ee) references to Integrated Care Management (ICM-HCSS) and Integrated Care Management Assisted Living/Residential Care (ICM AL/RC) programs. The ICM program no longer exists.

The proposed amendment of §355.306 removes the word “year’s” from subsection (e).

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for the Financial Services Division for HHSC, has determined that for each year of the first five years the proposed rule amendments will be in effect, there will be no fiscal implications to costs and revenues of state and local governments as a result of enforcing and administering the rules as amended.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) The amendments will not create or eliminate a government program;
(2) Implementation of the amendments will not affect the number of employee positions;
(3) Implementation of the amendments will not require an increase or decrease in future legislative appropriations;
(4) The amendments will not affect fees paid to the agency;
(5) The amendments will not create a new rule;
(6) The amendments will expand an existing rule;
(7) The amendments will not change the number of individuals subject to the rule; and
(8) The amendments will not affect the state’s economy.

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

Greta Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The amendments do not impose any additional costs on service providers.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

There is no anticipated negative impact on local employment.

COST TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this proposal because the amendments do not impose a cost on regulated persons, the rules are amended to reduce the burden or responsibilities imposed on regulated persons, and the rules are amended to decrease a person's costs of compliance with the rule.

PUBLIC BENEFIT

Greta Rymal has also determined that, for the rule amendment regarding cost report training, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be increased efficacy of the cost report training by timing the training as close as possible to the due date of the cost or accountability report.

Regarding the cost allocation methods rule amendment, the public benefit anticipated as a result of enforcing or administering the section will be more efficient use of state and federal tax dollars due to more accurate interim reimbursement rates and annual settlement figures being developed for SSLCs and Bond Homes.

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 this proposal may be directed to the HHSC Rate Analysis Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted 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; or (2) 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 Cost Allocation Rule 18R072" in the subject line.

STATUTORY AUTHORITY

The amendments 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 Medicaid payments under Texas Human Resources Code, Chapter 32.

The proposed amendments implement Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32.

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 and accountability report training. It is the responsibility of the provider to ensure that each cost or accountability 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 or accountability report preparation. Preparers must complete [~~cost report~~] training for each program for which a cost or accountability report is submitted, as applicable. [~~Beginning with providers' 2018 cost reports, preparers must complete cost report training every other year for the even-year cost report in order to receive a certificate to complete both that even-year cost report and the following odd-year cost report, if applicable. If a new preparer wishes to complete an odd-year cost report and has not completed the previous even-year cost report training, to receive a certificate to complete the odd-year cost report, he/she must complete an odd-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 considered allowable expenses for cost reporting purposes. Preparers that participate in training may be assessed a convenience fee, which will be determined by HHSC. Convenience fees assessed for training are allowable costs. Applicable federal and state accessibility standards apply to training. Beginning with the 2018 cost reports and 2019 accountability reports, reporting schedules per program are determined by HHSC and are published on the HHSC website.

(1) Training schedules. [~~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 programs with odd-year and even-year cost reports. Preparers must complete state-sponsored cost report training every other year in order to be eligible to complete both that odd-year cost report and the following even-year cost report. If a new preparer wishes to complete an even-year cost report and has not completed the previous odd-year cost report training, the preparer must complete an even-year cost report training. [~~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 programs with odd-year and even-year accountability reports. Preparers must complete state-sponsored accountability report training every other year in order to be eligible to complete both that odd-year accountability report and the following even-year accountability report. If a new preparer wishes to complete an even-year accountability report and has not completed the previous odd-year accountability report training, the preparer must complete an even-year accountability report training.

(C) [~~(B)~~] For all other programs. Preparers must complete the state-sponsored training for each program for which a cost or accountability report is submitted. Beginning with the 2018 cost reports, new preparers must complete cost report training every other year for each program cost or accountability report being prepared in order to be eligible to complete both that year's cost report and the following year's accountability report, if applicable. If a new preparer wishes to complete an accountability report and has not completed the previous year's cost report training, the preparer must complete an accountability report training for that program for that year. [~~, 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) Failure to complete the required cost or accountability report training. [~~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.~~]

(A) [~~(3)~~] For nursing facilities, failure to file a completed cost or accountability 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).

(B) [~~(4)~~] For School Health and Related Services (SHARS) [~~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.

(C) [~~(5)~~] For all other programs, failure to file a completed cost or accountability 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) (No change.)

(2) For Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) [~~ICF/IID~~], Home and Community-based Services (HCS) [~~HSC~~], Service Coordination/Targeted Case Management, Rehabilitative Services, and Texas Home Living (TxHmL) [~~TxHmL~~] 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) - (4) (No change.)

(h) - (i) (No change.)

(j) Cost allocation. Direct costing must be used whenever reasonably possible. Direct costing means that allowable costs, direct or indirect, (as defined in subsection (f)(3) - (4) of this section) incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. For example, the payroll costs of a direct care employee who works across cost areas within one contracted program would be directly charged to each cost area of that program based upon that employee's continuous daily time sheets and the costs of a direct care employee who works across more than one service delivery area would also be directly charged to each service delivery area based upon that employee's continuous daily time sheets. Health insurance premiums, life insurance premiums, and other employee benefits must be direct costed.

(1) If cost allocation is necessary for cost-reporting purposes, contracted providers must use reasonable methods of allocation and must be consistent in their use of allocation methods for cost-reporting purposes across all program areas and business entities.

(A) - (C) (No change.)

(D) Providers must use an allocation method approved or required by HHSC. Any change in cost-reporting allocation methods from one year to the next must be fully disclosed by the contracted provider on its cost report and must be accompanied by a written explanation of the reasons and justification for such change. If the provider wishes to use an allocation method that is not in compliance with the cost-reporting allocation methods in paragraphs (3) - (4) of this subsection, the contracted provider must obtain written prior approval from HHSC's Rate Analysis Department.

(i) - (ii) (No change.)

(iii) Failure to use an allocation method approved or required by HHSC or to disclose a change in an allocation to HHSC will result in the following.

(I) (No change.)

(II) For ICF/IID [~~Intermediate Care Facilities for Persons 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, failure to use the allocation method approved or required by HHSC 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.

(III) - (IV) (No change.)

(E) For small and large state-operated ICF/IID, designated as Bond Homes and State Supported Living Centers for cost reporting purposes, these facility types may use an allocation method other than those identified in paragraphs (3) - (4) of this subsection in order to represent indirect costs that are a reasonable reflection of the actual business operations. If an allocation method other than those identified in paragraphs (3) - (4) of this subsection is used for indirect costs, the allocation method must adhere to Generally Accepted Accounting Principles.

(2) - (4) (No change.)

(k) (No change.)

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

(a) - (b) (No change.)

(c) Cost report due dates. [~~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. Beginning with the 2018 cost reports, due dates per program are determined by HHSC and are published on the HHSC website. [~~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) - (4) (No change.)

(d) - (i) (No change.)

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) ("Related Conditions" has the same meaning as in 40 TAC §9.203 (relating to Definitions)), Home and Community-based Services (HCS), Texas Home Living (TxHmL), Primary Home Care (PHC); Day Activity and

Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA); Community Based Alternatives (CBA)--Home and Community Support Services (HCSS);[~~ Integrated Care Management (ICM)-HCSS~~;] Deaf-Blind with Multiple Disabilities Waiver (DBMD); and CBA--Assisted Living/Residential Care (AL/RC) programs[~~; and ICM AL/RC~~] are eligible to participate in the attendant compensation rate enhancement. [~~References in this section to CBA program services also apply to the parallel services offered under the ICM program.~~]

(b) (No change.)

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) (No change.)

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules. [~~Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title.~~]

(3) (No change.)

(d) - (e) (No change.)

(f) Enrollment contract amendment.

(1) For CBA--HCSS and AL/RC, CLASS--DSA, DBMD, DAHS, [~~ICM--HCSS and AL/RC,~~] RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level.

(A) - (B) (No change.)

(2) - (5) (No change.)

(6) To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative

as per HHSC’s [~~the Texas Department of Aging and Disability Services' (DADS')~~] signature authority designation form applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract or component code whose effective date is on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment or change of ownership and new contracts that are part of an existing component code are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per HHSC’s [~~the DADS'~~] signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (l) of this section with no enhancements. For new contracts specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled.

(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) - (C) (No change.)

(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)-(c) of this title will replace the Attendant Compensation Report with the following exceptions:

(A) (No change.)

(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)~~] 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.

(C)[~~(D)~~] 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.

(D)[~~(E)~~] 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.

(E)[~~(F)~~] 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.

(F)[~~(G)~~] 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.

(G)[~~(H)~~] 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 HHSC [~~DADS~~] recipients during the reporting period.

(3) - (5) (No change.)

(i) - (k) (No change.)

(l) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; [~~ICM-HCSS;~~] DBMD; <u>and</u> CBA--AL/RC [~~; and ICM AL/RC~~] programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) - (B) (No change.)

(C) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC; DAHS; CLASS--DSA; CBA--HCSS;[~~ICM-HCSS~~;] DBMD and by 1.07 for RC; <u>and</u> CBA--AL/RC [~~; and ICM AL/RC~~]. The result is the attendant compensation rate component for nonparticipating contracts.

(D) (No change.)

(2) (No change.)

(m) - (o) (No change.)

(p) Granting attendant compensation rate enhancements. Eligible programs are divided into two populations for purposes of granting attendant compensation rate enhancements. The first population includes the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; [~~ICM-HCSS;~~] DBMD; CBA--AL/RC; and ICM AL/RC programs and the second population includes the ICF/IID; HCS; and TxHmL programs. Enhancements for the two populations are funded separately; funds intended for enhancements for the first population of programs will never be used for enhancements for the second population and funds intended for enhancements for the second population of programs will never be used for enhancements for the first population. For each population of programs, HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (u) of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein separately for each population of programs, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (s) of this section.

(1) - (2) (No change.)

(q) - (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 <u>Attendant Compensation</u> [~~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) (No change.)

(u) - (dd) (No change).

(ee) Determination of compliance with spending requirements in the aggregate.

(1) (No change.)

(2) Aggregation. For an entity, for two or more commonly owned corporations, or for a combined entity that controls more than one participating contract or component code in a program (with RC and CBA AL/RC considered a single program, and HCS and TxHmL considered a single program), compliance with the spending requirements detailed in subsection (s) of this section can be determined in the aggregate for all participating contracts or component codes in the program controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating contract or component code in the program, or the effective date of the termination of its last participating contract or component code in the program rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) - (B) (No change.)

(C) Ownership changes or terminations. For the ICF/IID, HCS, TxHmL, DAHS, RC, DBMD, CBA--AL/RC [~~and ICM AL/RC~~] programs, contracts or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (s) of this section, are excluded from all aggregate spending calculations. These contracts' or component codes' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(ff) - (hh) (No change).

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355 REIMBURSEMENT RATES
SUBCHAPTER C REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

§355.306. Cost Finding Methodology.

(a) - (d) (No change.)

(e) Final cost reports for change of ownership. When a facility changes ownership, for a provider who participates in the rate enhancement program, the prior owner must submit a final Staffing and Compensation Report as described in §355.308 of this title. When a facility changes ownership, for a provider not participating in the rate enhancement program, the prior owner is excused from submitting a final cost report and, if its prior [~~year's~~] cost report is pending audit completion, the audit will be suspended and the cost report excluded from the final cost report database.

(f) - (h) (No change.)