TO: Health and Human Services Commission Executive Council

DATE: December 6, 2018

FROM: Rene Cantu, Director, Hospital Rate Analysis

AGENDA ITEM: 2.u

SUBJECT: Inpatient Direct Graduate Medical Education (GME) Reimbursement

BACKGROUND: ☐ Federal ☐ Legislative ☒ Other: Program Initiative

The Texas Health and Human Services Commission (HHSC) proposes an amendment to Texas Administrative Code Title 1, Part 15, Chapter 355, Subchapter J, Division 4, Section 355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement.

HHSC currently makes Medicaid GME supplemental payments to only five state-owned teaching hospitals: University of Texas (UT) Medical Branch at Galveston, UT Health Science Center at Tyler, UT MD Anderson, UT Southwestern - Zale Lipshy, and UT Southwestern - Clements. The non-federal share for these GME payments comes from appropriations or patient revenues belonging to the state-owned teaching hospitals that are transferred to HHSC.

The proposed amendment will allow non-state government-owned and operated teaching hospitals to receive GME Medicaid supplemental payments, provided that the non-federal share is provided by the governmental entity that owns and operates the hospital.

ISSUES AND ALTERNATIVES:

None.

STAKEHOLDER INVOLVEMENT:

On October 4, 2017, HHSC received correspondence from the Teaching Hospitals of Texas (THOT) that included a proposed rule amendment and state plan amendment that would establish GME Medicaid supplemental payments to non-state government-owned and operated teaching hospitals. HHSC staff has subsequently participated in multiple meetings and

correspondence with THOT, in an effort to determine the feasibility and proper calculation methodology for such a program.

HHSC plans to share with THOT, via email, a draft of the proposed rule prior to publication. HHSC staff will also conduct a Public Rule Hearing during the public comment period for the proposed rule.

FISCAL IMPACT:

☒ Yes

	SFY 1	SFY 2	SFY 3	SFY 4	SFY 5
State					
Federal	$49,421,684	$50,780,589	$50,780,589	$50,780,589	$50,780,589
Other	$35,509,892	$34,150,987	$34,150,987	$34,150,987	$34,150,987
Total	$84,931,576	$84,931,576	$84,931,576	$84,931,576	$84,931,576

SERVICES IMPACT STATEMENT:

The proposed rule amendment will provide additional revenue to participating teaching hospitals for their contribution to graduate medical education, which will help them maintain existing residency positions and possibly increase residency positions.

RULE DEVELOPMENT SCHEDULE:

November 16, 2018	Publish proposed rules in *Texas Register*
December 6, 2018	Present to HHSC Executive Council
January 2019	Publish adopted rules in *Texas Register*
January 2019	Effective date

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement.

BACKGROUND AND PURPOSE

Currently, HHSC makes Medicaid GME supplemental payments to five state-owned teaching hospitals: University of Texas (UT) Medical Branch at Galveston, UT Health Science Center at Tyler, UT MD Anderson, UT Southwestern - Zale Lipshy, and UT Southwestern - Clements. The non-federal share for these GME payments comes from appropriations or patient revenues belonging to the state-owned teaching hospitals that are transferred to HHSC. HHSC draws down the federal match and makes quarterly interim Medicaid GME payments directly to the hospitals based on resident full-time equivalents (FTEs) and inpatient days reported by the hospital. The interim payments are reconciled and cost settled based on audited final cost report data.

The proposed amendment will allow eligible teaching hospitals owned and operated by non-state governmental entities to receive GME Medicaid supplemental payments, provided that the non-federal share is provided by the governmental entity that owns and operates the hospital. The payment will be based on the number of full-time equivalent medical residents and the Medicare per resident amount (PRA) reported on CMS Form 2552-10 and the Medicaid inpatient utilization percentage.

An annual Medicaid GME supplemental payment amount will be calculated for each eligible hospital using data from the hospital cost report most recently submitted to HHSC on October 1 of each year. HHSC proposes to split the annual amount into two payments. HHSC will not propose cost settlement of Medicaid GME supplemental payments for the new class of hospitals covered by this expansion.

HHSC is exploring the addition of hospitals operated by non-governmental entities. HHSC has not proposed adding such hospitals at this time given ongoing discussions with the Centers for Medicare and Medicaid Services (CMS) regarding the sources of the non-federal share of supplemental Medicaid payments. However, HHSC is interested in receiving comment on the concept.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §355.8058 clarifies that subsection (a) is limited to Medicaid GME supplemental payments made to state-owned teaching hospitals and makes conforming changes throughout the subsection. Additionally, the proposed amendment clarifies previously existing language.

Proposed new §355.8058(b) specifies that the language in that subsection is limited to Medicaid GME supplemental payments made to non-state government-owned and operated teaching hospitals.

Proposed new paragraph §355.8058(b)(1) establishes the effective date of October 1, 2018, for Medicaid GME supplemental payments made to non-state government-owned and operated teaching hospitals.

Proposed new paragraph §355.8058(b)(2) provides definitions for the Medicaid GME supplemental payments made to non-state government-owned and operated teaching hospitals.

Proposed new paragraph §355.8058(b)(3) provides the methodology for calculating the total annual GME payment for each eligible hospital.

Proposed new paragraph §355.8058(b)(4) specifies which hospital cost report will be used for the calculation of the annual GME payment to each eligible hospital.

Proposed new paragraph §355.8058(b)(5) specifies that non-state government-owned and teaching hospitals must provide the non-federal share of GME payments.

Proposed new paragraph §355.8058(b)(6) states that payments under this subsection will be made semiannually.

The proposed amendment include other technical corrections, numbering revisions, and non-substantive changes to make the rule more understandable.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be a fiscal impact on state government as a result of the amendment. The non-federal share of the Medicaid GME payments is provided by local governmental entities through intergovernmental transfers

(IGTs) to HHSC. HHSC will then draw down federal matching funds to issue the GME payments.

There is a possibility of fiscal implications to local governments, but participation in the Inpatient Direct GME supplemental payment program is voluntary. The non-federal share of GME supplemental payments to participating providers is provided by local governments through IGTs. A fiscal impact to local governments may occur only if the local governments choose to provide the IGT to participate in the Inpatient Direct GME program. However, such participation could yield a positive total fiscal impact to the local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed amendment will not create or eliminate a government program;
(2) implementation of the proposed amendment will not affect the number of employee positions;
(3) implementation of the proposed amendment will not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed amendment will not require an increase or decrease in fees paid to the agency;
(5) the proposed amendment will not create a new rule;
(6) the proposed amendment will expand an existing rule; and
(7) the proposed amendment will not change the number of individuals subject to the rule.
(8) HHSC has insufficient information to determine the proposed amendment's effects on the state's economy.

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

Greta Rymal, Deputy Executive Commissioner for Financial Services, has also determined that there is no adverse economic impact on small businesses, micro-businesses, and rural communities required to comply with the section as proposed. Participation in the Inpatient Direct GME program is voluntary and places no burden on small businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated costs to persons who are required to comply with the section 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 rule because the rule is necessary to receive a source of federal funds.

PUBLIC BENEFIT

Victoria Grady, Acting Director of Rate Analysis, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated is that the additional revenue to participating hospitals will help them maintain and expand existing residency programs.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the 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 Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kevin Niemeyer in HHSC Rate Analysis at (512) 730-7445.

Written comments on the proposal may be submitted to the HHSC Rate Analysis Department, 4900 North Lamar Blvd., Austin, TX 78714-9030 (Mail Code H-400); by fax to (512)-730-7475; or by e-mail to RateAnalysisDept@hhsc.state.tx.us within 30 days of 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 19R010" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; 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; 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 payments under the Texas Human Resources Code, Chapter 32.

The amendment affects 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 this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355 REIMBURSEMENT RATES
SUBCHAPTER J PURCHASED HEALTH SERVICES
DIVISION 4 MEDICAID HOSPITAL SERVICES

§355.8058. Inpatient Direct Graduate Medical Education (GME) Reimbursement.

(a) The Texas Health and Human Services Commission (HHSC) uses the methodology in this subsection to calculate Inpatient Direct Graduate Medical Education (GME) cost reimbursement for state-owned or state-operated teaching hospitals.

(1) Effective September 1, 2008, HHSC [~~the Texas Health and Human Services Commission (HHSC)~~] or its designee may reimburse a state-owned or state-operated teaching hospital with an approved medical residency program the hospital's inpatient direct GME cost for hospital cost reports beginning with state fiscal year 2009.

(2) Reimbursement of inpatient direct GME cost for state-owned or state-operated teaching hospitals:

(A) Inpatient direct GME cost, as specified under methods and procedures set out in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248 are calculated under similar methods for each hospital having inpatient direct GME costs on its tentative or final audited cost report.

(B) Definitions [~~GME definitions~~].

(i) Base year average per resident amount--the hospital's Medicaid allowable inpatient direct GME cost as reported on CMS Form 2552-96 [~~2552~~], Hospital Cost Report ending in state fiscal year 2007; Worksheet B; Part I; Column 26; Line 95, divided by the un-weighted FTE residents from Worksheet S-3; Part I; Line 25.

(ii) Current FTE residents--the hospital's number of full time equivalent (FTE) [~~FTE~~] interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on CMS Form 2552-96 [~~2552~~], Hospital Cost Report; Worksheet S-3; Part I; Line 25.

(iii) GME Medicaid inpatient utilization percentage--the hospital's proportion of paid Medicaid inpatient days, including managed care days, as reported on CMS Form 2552-96 [~~2552~~], Hospital Cost Report adjusted to Medicaid Claim Summary Report; Worksheet S-3; Part 1; Line 12; Column 5, divided by the hospital's total inpatient days, as reported on Worksheet S-3; Part 1; Column 6, Lines 12, 14 (subprovider days), and 26 (observation days). Medicaid inpatient days and total inpatient days will include inpatient nursery days.

(C) HHSC calculates the total GME payments for each hospital as follows:

(i) multiplies the base year average per resident amount by the applicable Centers for Medicare and Medicaid Services (CMS) Prospective Payment System Hospital Market Basket index;

(ii) multiplies the results in clause (i) of this subparagraph by the number of current full-time equivalent (FTE) residents; and

(iii) multiplies the results in clause (ii) of this subparagraph by the GME Medicaid inpatient utilization percentage, which results in the total GME payments.

(D) Inpatient direct GME costs are removed from the reimbursement methodology and not used in the calculation of the provider's inpatient cost settlement.

(E) The GME interim payments will be reimbursed on a quarterly basis only after hospital services have been rendered. The interim payments are payable within 90 days of the receipt of the hospital's quarterly resident FTE data. Each hospital's quarterly resident FTE data will be divided by 4 to determine the average resident FTEs for each quarter. The interim payments will be reconciled and settled based on audited final cost report data.

(F) To receive GME payments from HHSC, a state-owned or state-operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal [~~state~~] portion of reimbursement for GME costs.

(b) HHSC uses the methodology in this subsection to calculate reimbursement for GME cost reimbursement for non-state government-owned and operated teaching hospitals.

(1) Effective October 1, 2018, HHSC or its designee may reimburse a non-state government-owned and operated teaching hospital with an

approved medical residency program the hospital's estimated inpatient direct GME cost.

(2) Definitions.

(A) Non-state government-owned and operated teaching hospital--a hospital with a properly approved medical residency program that is owned and operated by a local government entity, including but not limited to, a city, county, or hospital district.

(B) FTE residents--the hospital's number of full time equivalent (FTE) interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; Line 27.

(C) Medicare per resident amount (PRA)--average direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18.

(D) GME Medicaid inpatient utilization percentage--the hospital's proportion of paid Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; columns 7 and 8.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare per resident amount;

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee, will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC, a non-state government-owned and operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(6) Payments under this subchapter will be made on a semi-annual basis.