



TO: Medical Care Advisory Committee
DATE: May 17, 2018
FROM: Mary Haifley, Director of Medical Benefits, HHSC Medicaid/CHIP

Agenda Item No.: 11

SUBJECT: Examinations for Medical Necessity for a Hearing Aid

Amendments to: Texas Administrative Code Title 1, Part 15, Chapter 354, Subchapter A, Division 15, §354.1231, Hearing Aid Services Benefits and Limitations; and §354.1233, Requirements for Hearing Aid Services

BACKGROUND: Federal Requirement Legislative Requirement
 Other: Legislative Request

The proposed rule amendments permit nurse practitioners and physician assistants under physician delegation to perform client examinations to determine medical necessity for a hearing aid. The proposed rule amendments also specify that nurse practitioners and physician assistants under physician delegation that perform client examinations may recommend a client for a hearing evaluation performed by a physician or an audiologist. A hearing examination is a preliminary step to investigating hearing loss and to determine the medical necessity for a hearing aid, in which a client's hearing is checked to see if further evaluation is required by a physician or audiologist. Currently, a hearing examination may only be conducted by a Medicaid-enrolled physician licensed to perform these services. The hearing evaluation is a subsequent, in-depth procedure by a physician or audiologist to determine the type, scope, and severity of hearing loss. The rule amendments reinforce a physician's ability to delegate tasks to nurse practitioners and physician assistants, as specified by Texas Medical Board and Texas Board of Nursing administrative rules.

ISSUES AND ALTERNATIVES:

Physicians are permitted to delegate tasks to other practitioners, provided that the tasks are within a physician's scope of practice to delegate, and that the tasks are within the other practitioner's scope of practice to perform. TMB requires that delegation be memorialized in a written agreement between the physician and the other practitioner, and that the agreement include specific practice protocols. HHSC's proposed amendments permit delegation of tasks from a physician to a nurse practitioner or physician

assistant, as appropriate for the nurse practitioner or physician assistant's professional training. The proposed rule amendments may also help increase client access to examinations to determine medical necessity for hearing aids.

STAKEHOLDER INVOLVEMENT:

The proposed amendments are being made in response to concerns received from a legislative office. HHSC staff have reviewed the concerns, and have determined that nurse practitioners and physician assistants under physician delegation may perform the hearing examination to determine medical necessity for a hearing aid.

FISCAL IMPACT:

None Yes

RULE DEVELOPMENT SCHEDULE:

May 2018	Present to Medical Care Advisory Committee
May 2018	Present to HHSC Executive Council
June 2018	Publish proposed rules in <i>Texas Register</i>
October 2018	Publish adopted rules in <i>Texas Register</i>
October 2018	Effective date

REQUESTED ACTION: (Check appropriate box)

The MCAC recommends approval of the proposed rules for publication.

Information Only

TITLE 1	ADMINISTRATION
PART 15	TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 354	MEDICAID HEALTH SERVICES
SUBCHAPTER A	PURCHASED HEALTH SERVICES
DIVISION 15	HEARING AID SERVICES
RULE §354.1231	Benefits and Limitations
RULE §354.1233	Requirements for Hearing Aid Services

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1231, concerning Benefits and Limitations; and §354.1233, concerning Requirements for Hearing Aid Services.

BACKGROUND AND JUSTIFICATION

The proposed rule amendments permit nurse practitioners and physician assistants under physician delegation to perform client examinations to determine medical necessity for a hearing aid. The proposed rule amendments also specify that nurse practitioners and physician assistants under physician delegation that perform client examinations may recommend a client for a hearing aid evaluation performed by a physician or an audiologist. A hearing examination is a preliminary step to investigating hearing loss and to determine the medical necessity for a hearing aid, in which a client's hearing is checked to see if further evaluation is required by a physician or audiologist. Currently, a hearing examination may only be conducted by a Medicaid-enrolled provider licensed to perform these services. The hearing aid evaluation is a subsequent, in-depth procedure by a physician or audiologist to determine the type, scope, and severity of hearing loss. The rule amendments reinforce a physician's ability to delegate tasks to nurse practitioners and physician assistants, as specified by Texas Medical Board and Texas Board of Nursing administrative rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §354.1231 allows nurse practitioners and physician assistants under physician delegation to perform client examinations to determine medical necessity for a hearing aid. Other nonsubstantive language changes are also proposed.

The proposed amendment of §354.1233 specifies that physicians may receive reimbursement when a nurse practitioner or a physician assistant under delegation performs the client examination to determine medical necessity for a hearing aid. The proposed amendments allow nurse

practitioners or physician assistants under physician delegation to recommend clients for a hearing aid evaluation based on the results of the examination. Hearing aid evaluations are performed by a physician or an audiologist. Other nonsubstantive language changes are also proposed.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will not expand, limit, or repeal an existing rule; and
- (7) the proposed rules will not change the number of individuals subject to the rule.

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

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

Ms. Rymal has also determined that there will be no adverse impact on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. Nurse practitioners and physician assistants are currently reimbursed at 92% of the rate paid to physicians and audiologists. Because the rule changes do not alter existing reimbursements, HHSC does not anticipate an adverse economic impact to small businesses, micro-businesses, or rural communities from adoption and implementation of the rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section(s) as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the amended rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit is alignment of Medicaid hearing aid services requirements with existing nurse practitioner and physician assistant scope of practice requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Lisa Steffek at (512) 428-1935 in the HHSC Office of Medicaid/CHIP Policy.

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. 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) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 1R030" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment implements Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 354 MEDICAID HEALTH SERVICES
SUBCHAPTER A PURCHASED HEALTH SERVICES
DIVISION 15 HEARING AID SERVICES

§354.1231. Benefits and Limitations.

(a) Benefits. Reimbursement for hearing aid services available through the Texas Medical Assistance (Medicaid) Program shall be provided in accordance with federal regulations found at 42 CFR Chapter IV, Subchapter C, Medical Assistance Programs, and the provisions and procedures found elsewhere in this chapter. The following hearing aid services shall be reimbursed through the Texas Medicaid Program:

(1) physician, or nurse practitioner or physician assistant under physician delegation, ~~[Physician]~~ examination to determine the medical necessity for a hearing aid;

(2) hearing ~~[Hearing]~~ aid evaluations;

(3) hearing ~~[Hearing]~~ aids (monaural or binaural) and hearing aid repairs;

(4) replacement ~~[Replacement]~~ batteries and related hearing aid supplies;

(5) initial ~~[Initial]~~ fitting, dispensing, and post-fitting check of the hearing aid(s); and

(6) first ~~[First]~~ and second revisits to assess the recipient's adaptation to the hearing aid(s) and the functioning of the instrument(s).

(b) Limitations and exclusions. All authorized hearing aid providers, as described in §354.1233 of this division ~~[Division]~~ (relating to Requirements for Hearing Aid Services), must comply with the following conditions and limitations established by the Texas Health and Human Services Commission (HHSC) ~~[(Commission)]~~ or its designee.

(1) Hearing aid services are available to persons who are eligible for Medicaid services.

(2) An individual using a hearing aid before becoming eligible for Medicaid benefits may have a hearing aid evaluation conducted by an approved

hearing aid services provider after becoming eligible for Medicaid. Medicaid reimbursement for a new hearing aid shall be denied if the provider concludes, based upon the evaluation findings, that the recipient's present hearing aid adequately compensates for the degree of hearing loss.

(3) Providers may not submit a hearing aid evaluation claim to HHSC [~~the Commission or its designee~~] unless the Medicaid recipient meets the eligibility criteria in §354.1233(c) [~~§354.1233, Requirements for Hearing Aid Services~~].

(4) Repairs are limited to one per year per hearing aid. Additional repairs require prior authorization.

(5) Replacement of a hearing [~~an~~] aid may be considered when loss or irreparable damage has occurred. Replacement of a hearing aid requires prior authorization. Replacement will not be authorized in situations where the equipment has been abused or neglected.

(6) Hearing aids may be replaced once every five years.

(7) Hearing aid services do not include auditory training, speechreading, or other types of rehabilitative services.

(8) Hearing aids are limited to eligible recipients who meet medical necessity criteria as defined by HHSC or its designee, which includes an air conduction puretone average (500 Hz, 1000 Hz, 2000 Hz) in the better ear of 35 dB hearing loss (HL) or greater.

(9) Recipients under the age of 21 meet the criteria for binaural aids if they meet the conditions for a monaural hearing aid and have at least a 35 dB hearing loss in both ears.

(10) Recipients under the age of 21 that do not meet the criteria listed in this section may submit a request for authorization through the Texas Health Steps Comprehensive Care Program (THSteps-CCP).

(11) Coverage for recipients age 21 and older who meet the medical criteria as defined by HHSC or its designee and have hearing loss in both ears is limited to one hearing aid.

(12) Coverage is not available for recipients age 21 and older who have hearing loss in only one ear.

§354.1233. Requirements for Hearing Aid Services.

(a) Hearing aid services. Providers of hearing aid services must comply with:

 (1) all applicable federal and state laws and regulations; [7]

 (2) recognized professional standards; [~~7~~and]

 (3) the provisions [cited] in Division 1 [7] of this subchapter (relating to [7] Medicaid Procedures for Providers); [~~7~~and]

 (4) the provisions in Division 11 of this subchapter (relating to [7] General Administration); [~~7~~in addition to]

 (5) the conditions, specifications, and limitations established by the Texas Health and Human Services Commission (HHSC); [~~(Commission) or its designee,~~] and

 (6) applicable requirements of their licensing authority.

(b) Reimbursement.

(1) Physicians. Physicians shall be reimbursed for all services covered by the Texas Medicaid Program, including examinations and hearing evaluations. Physicians may delegate examinations to nurse practitioners or physician assistants.

(2) Audiologists. Audiologists shall be reimbursed for hearing aid evaluations and for the fitting and dispensing of hearing aids.

(3) Fitters and dispensers. Hearing aid fitters and dispensers shall be reimbursed for the fitting and dispensing of hearing aids.

(c) [~~(b)~~] Hearing aid evaluations. Hearing aid evaluations must be recommended by a physician, or a nurse practitioner or physician assistant under physician delegation, based upon examination of the recipient. Reimbursement for hearing aid evaluations will be made only to physicians or licensed audiologists. The recipient must have a medical necessity for a hearing aid as stated in §354.1231 of this division (relating to [7] Benefits and Limitations). The recipient must not have any medical contraindications to the ability to use or wear a hearing aid.

(1) A physician, nurse practitioner, or physician assistant who recommends a hearing aid evaluation must be licensed in the state where and when the examination is conducted.

(2) The physician, nurse practitioner, or physician assistant must indicate on the Physician Examination Report form if the recipient needs a hearing aid evaluation based on the examination of the recipient. Medicaid reimbursement for a hearing aid evaluation shall be based on the physician's, nurse practitioner's, or physician assistant's recommendation that the hearing aid evaluation is [~~medically~~] necessary.

(3) Providers must administer hearing aid evaluations using appropriate procedures as specified within their scope of practice and recognized professional standards.

(4) Reimbursement for home visit hearing aid evaluations shall be made if the recipient's physician has documented that the recipient's medical condition prohibits traveling to the provider's place of business.

(5) Providers of hearing aid evaluations must have a report in the recipient's record. Providers must include in the report hearing aid evaluation test data.

(6) Hearing aid evaluations performed by fitters and dispensers are not reimbursable. If a fitter or dispenser performs a hearing evaluation on a recipient, the recipient shall not be billed for the hearing evaluation.

(d) [~~(e)~~] Hearing aids. Providers must offer each recipient eligible for a hearing aid a new instrument that meets the recipient's hearing need.

(1) Warranty. Providers must ensure that each hearing aid purchased through the Texas Medicaid Program is a new and current model that meets the performance specifications of the manufacturer and the hearing needs of the recipient. Providers must also ensure that each hearing aid is covered by at least a standard 12-month manufacturer's warranty, effective from the dispensing date.

(2) Required package. Providers must dispense each hearing aid purchased through the Texas Medicaid Program with all necessary tubing, cords, connectors, and a one-month supply of batteries. The instructions for care and use of the hearing aid must be included with the hearing aid package.

(3) Thirty-day trial period. Providers must allow each eligible recipient thirty days to determine if the recipient is satisfied with a hearing aid purchased through the Texas Medicaid Program. The trial period consists of thirty consecutive days from the dispensing date. Providers must inform recipients of the trial period and present the beginning and ending date of the trial period to the recipient in writing.

(A) During the trial period, providers may dispense additional hearing aids, as medically necessary, until the recipient is satisfied with the result of the hearing aid or the provider determines that the recipient cannot benefit from the dispensing of an additional hearing aid. A new trial period begins with the dispensing date of each hearing aid.

(B) Providers may charge a rental fee for hearing aids returned during the trial period.

(i) If a rental fee is charged, providers must assess the rental fee according to the rules and regulations established by the Texas Department of Licensing and Regulation [~~State Committee of Examiners in the Fitting~~

~~and Dispensing of Hearing Instruments and the State Board of Examiners for Speech-Language Pathology and Audiology].~~

(ii) The maximum rental fee for eligible Medicaid recipients shall be \$2 per day. This fee shall not be a covered benefit of the Texas Medicaid Program. Recipients shall be responsible for paying any rental fee assessed them for instruments returned during the 30-day period. Providers must keep in the recipient's file the signed certification acknowledging responsibility to pay hearing aid rental fees.

(iii) Providers must comply with all procedures and directions of the Texas Medicaid Program regarding forms and certifications required during the 30-day trial period. Providers must allow thirty days to elapse from the hearing aid dispensing date before completing a "30-day trial period certification statement." The certification statement must be maintained by the provider in the recipient's file.

(4) Post-fitting checks. The fitter and dispenser must perform a post-fitting check of the hearing aid within five weeks of the initial fitting. The post-fitting check is part of the dispensing procedure and is not reimbursed separately.

(5) First revisit. The first revisit shall include a hearing aid check. Providers must make counseling available as needed within six months of the post-fitting check.

(6) Second revisit. The purpose of the second revisit is to make any necessary adjustments to the hearing aid. Provider must conduct a second revisit as needed.