TEXAS Health and Human Services

TO: Medical Care Advisory Committee

DATE: May 17, 2018

FROM: Selvadas Govind
Director of Rate Analysis

Agenda Item No.: 5

SUBJECT: QIPP Good Cause Exception and Expansion of Eligibility

Amendments to: Texas Administrative Code Title 1, Part 15, Chapter 353, Subchapter O, §353.1303, concerning the Quality Incentive Payment Program for Nursing Facilities

BACKGROUND: ☐ Federal Requirement ☐ Legislative Requirement ☒ Other: Executive Directive

The amendment would delete the good cause exception to the geographic proximity criterion in the Quality Incentive Payment Program (QIPP) rule. The rule was drafted to avoid possible deferrals and disallowances by the Centers for Medicare and Medicaid Services (CMS), as it closely monitors state funding arrangements that involve intergovernmental transfers (IGTs), especially in instances when a nursing facility (NF) is outside the effective reach of the owner's location. Use of the good cause exception for the sole purpose of enhancing Federal funding potentially jeopardizes the integrity of the QIPP program. None of the exception requests received to date included sufficient documentation to indicate there would be no risk to Federal funds, therefore HHSC has not granted any such requests. Additionally, this good cause exception appears administratively unworkable.

The amendment would also modify the calculation of the eligibility cut-off point for participation by private NFs. As amended, the private NF QIPP eligibility cut-off point for state fiscal year (SFY) 2019 and beyond will be equal to the mean percentage plus one-quarter of one standard deviation of historical Medicaid NF days of service provided under fee-for service (FFS) and managed care (MC) by all private NFs. Additionally, a private NF that was eligible to participate in QIPP during Eligibility Period One is eligible to participate in the eligibility period for SFY 2019 regardless of its Medicaid NF days of service for the SFY 2019 eligibility period. These modifications will continue to ensure that QIPP funds are focused on the Medicaid population while increasing the number of eligible providers.

The amendment would also clarify the rule in regards to submission of the Quality Assurance Performance Improvement (QAPI) Validation Report. The QAPI Validation Report must be submitted by NFs to HHSC monthly.

Finally, the amendment would delete a reference to audited cost reports. Upon initial adoption, HHSC removed all references to audited cost reports in response to a comment. This specific reference mistakenly remained in the rule language upon adoption.

ISSUES AND ALTERNATIVES:

The rule may limit a provider's ability to increase its revenue by not allowing a good cause exemption to the 150-mile rule, thus disqualifying some providers from participation in QIPP. This potential limit would apply only to providers who are not currently participating in QIPP, including small and micro-businesses.

The potential increase in entrants to the program related to the change in the eligibility cut-off point could impact a small business or micro-business NF's potential share of the QIPP pool of funds; however, no small business or micro-business currently participates.

It is not possible to estimate the number of small businesses, micro-businesses, or rural communities this rule may adversely impact. This rule may only adversely impact private providers who do not currently participate in QIPP, who will not meet the amended eligibility cut-off point, and who do not meet the geographic proximity criterion. It is not possible to determine which small business or micro-business will request enrollment in QIPP and which of those may be impacted by the geographic proximity criterion.

HHSC considered four alternatives to removing the good cause exemption to the geographic proximity criterion.

Alternative 1: Alternative 1 would remove the good cause exemption to the geographic proximity criterion.

Alternative 2: Alternative 2 would retain the good cause exemption to the geographic proximity criterion.

Alternative 3: Alternative 3 would retain the good cause exemption to the geographic proximity criterion and provide informal guidance on what constitutes a good cause exemption to the geographic proximity criterion and how to ensure there is a legitimate, recognizable patient flow relationship between the hospital district and the NF.

Alternative 4: Alternative 4 would retain the good cause exemption to the geographic proximity criterion and establish in the rule specific criteria that must be met for a good cause exception to be granted.

HHSC selected Alternative 1. Elimination of the good cause exemption removes the potential risk of deferrals or disallowances by CMS due to the perception that the exception merely enhances Federal funds. Also, while Alternative 1 limits a provider’s ability to increase its revenue, it does not reduce existing rates or revenues.

Alternative 2 was not selected. Retaining the good cause exception does not alleviate the risk of deferrals or disallowances.

Alternatives 3 and 4 were also not selected. The definition of “good cause” is subjective and open to interpretation. Elimination of the good cause exemption ensures all providers are treated equally. Additionally, if an exception is granted and is later determined to be inappropriate, it could place Federal funds at risk and jeopardize the integrity of the QIPP program.

HHSC considered 4 alternatives to modifying the eligibility cut-off point for private NFs.

Alternative 1: Alternative 1 would modify the eligibility cut-off point to allow additional entrants to the pool at the cut-off point determined by the proposed methodology.

Alternative 2: Alternative 2 would allow all private NFs to participate regardless of historical Medicaid days.

Alternative 3: Alternative 3 would increase the eligibility cut-off point for private NFs.

Alternative 4: Alternative 4 would disallow the participation of private NFs.

HHSC selected Alternative 1. Modifying the eligibility cut-off point allows for increased participation in QIPP which increases the opportunity for small businesses or micro-businesses to potentially participate as private NFs. Because there are no existing micro-businesses or small businesses that participate, it does not reduce existing revenues to these provider types.

Alternative 2 was not selected due to the risk of deferrals or disallowances.

Alternative 3 and 4 were not selected because they would further restrict potential participation by small businesses or micro-businesses.

FISCAL IMPACT:

☒ None ☐ Yes

RULE DEVELOPMENT SCHEDULE:

May 2018	Present to the Medical Care Advisory Committee
May 2018	Present to HHSC Executive Council
May 2018	Publish proposed rules in *Texas Register*
June 2018	Publish adopted rules in *Texas Register*
September 1, 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 353 MEDICAID MANAGED CARE
SUBCHAPTER O DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES
RULE §353.1303 Quality Incentive Payment Program for Nursing Facilities

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes amendments to §353.1303, concerning the Quality Incentive Payment Program for Nursing Facilities.

BACKGROUND AND PURPOSE

The amendment would delete the good cause exception to the geographic proximity criterion in the Quality Incentive Payment Program (QIPP) rule. The rule was drafted to avoid possible deferrals and disallowances by the Centers for Medicare and Medicaid Services (CMS), as it closely monitors state funding arrangements that involve intergovernmental transfers (IGTs), especially in instances when a nursing facility (NF) is outside the effective reach of the owner's location. Use of the good cause exception for the sole purpose of enhancing Federal funding potentially jeopardizes the integrity of the QIPP program. None of the exception requests received to date included sufficient documentation to indicate there would be no risk to Federal funds, therefore HHSC has not granted any such requests. Additionally, this good cause exception appears administratively unworkable.

The amendment would also modify the calculation of the eligibility cut-off point for participation by private NFs. As amended, the private NF QIPP eligibility cut-off point for state fiscal year (SFY) 2019 and beyond will be equal to the mean percentage plus one-quarter of one standard deviation of historical Medicaid NF days of service provided under fee-for service (FFS) and managed care (MC) by all private NFs. Additionally, a private NF that was eligible to participate in QIPP during Eligibility Period One is eligible to participate in the eligibility period for SFY 2019 regardless of its Medicaid NF days of service for the SFY 2019 eligibility period. These modifications will continue to ensure that QIPP funds are focused on the Medicaid population while increasing the number of eligible providers.

The amendment would also clarify the rule in regards to submission of the Quality Assurance Performance Improvement (QAPI) Validation Report. The QAPI Validation Report must be submitted by NFs to HHSC monthly.

Finally, the amendment would delete a reference to audited cost reports. Upon initial adoption, HHSC removed all references to audited cost reports in response to a comment. This specific reference mistakenly remained in the rule language upon adoption.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §353.1303(b)(10) replaces “an MCO” as the point of submission of the QAPI Validation Report to “HHSC.”

The proposed amendment to §353.1303(c)(1)(A)(iii) removes the good cause exception to the geographic proximity criterion. Due to the risk of Federal funds, HHSC is no longer allowing exceptions to the 150 mile radius requirement.

The proposed amendment to §353.1303(c)(2) adds a subparagraph (A) to indicate the revised formula for calculating the eligibility cut-off point for participation by private NFs in future eligibility periods. It also adds a subparagraph (B) to make private NFs that were eligible to participate in QIPP during Eligibility Period One eligible to participate in state fiscal year 2019, regardless of their Medicaid NF days of service for that eligibility period.

The proposed amendment to §353.1303(d)(4)(A) deletes the reference to an “audited” cost report. This reference should have been removed upon adoption.

The proposed amendment to §353.1303(g)(1)(C) replaces “the MCOs” as the point of submission of the QAPI Validation Report to “HHSC.”

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amendments will be in effect, there may be fiscal implications to local governments as a result of enforcing and administering the amendments as proposed.
The rule may limit a local government NF's ability to increase their revenue by not allowing a good cause exemption to the existing 150 mile rule, thus disqualifying some local government NF's from participation in QIPP. This potential limit would apply only to local government NF's who are not currently participating in QIPP. The potential increase in entrants to the program related to the change in the eligibility cut-off point will impact a local governmental NF's potential share of the QIPP pool of funds.

Through a separate administrative action, HHSC intends to size the pool if this rule is adopted, such that local government NFs already participating in QIPP do not experience a negative impact in the absolute amount of funds received on a per-day/per-bed basis relative to the first QIPP program year (FY18) provided the quality metrics are achieved.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Ms. Rymal has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities. The rule may limit a provider's ability to increase their revenue by not allowing a good cause exemption to the 150 mile rule thus disqualifying some providers from participation in QIPP. This potential limit would apply only to providers who are not currently participating in QIPP, including small and micro-businesses.

The potential increase in entrants to the program related to the change in the eligibility cut-off point could impact a small business or micro-business NF's potential share of the QIPP pool of funds, however, no small business or micro-business currently participates.

Under §2006.002 of the Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small businesses must prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses. The purpose of the proposed rules is to remove the good cause exception to the geographic proximity criterion, modify the calculation of the eligibility cut-off point for participation by private NFs, update the submission requirements of the QAPI Validation Report to align with current policies, and delete a reference to audited cost reports. Only the removal of the good cause exemption may have an adverse economic impact on small businesses, micro-businesses, or rural communities.

It is not possible to estimate the number of small businesses, micro businesses, or rural communities this rule may adversely impact. This rule may only adversely impact private providers who do not currently participate in QIPP, who will not meet the amended eligibility cut-off point, and who do not meet the geographic proximity criterion. It is not possible to determine which small business or micro business will request enrollment in QIPP and which of those may be impacted by the geographic proximity criterion.

HHSC considered four alternatives to removing the good cause exemption to the geographic proximity criterion.

Alternative 1: Alternative 1 would remove the good cause exemption to the geographic proximity criterion.

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Alternative 4: Alternative 4 would retain the good cause exemption to the geographic proximity criterion and establish in the rule specific criteria that must be met for a good cause exception to be granted.

HHSC selected Alternative 1. Elimination of the good cause exemption removes the potential risk of deferrals or disallowances by CMS due to the perception that the exception merely enhances Federal funds. Also, while Alternative 1 limits a provider's ability to increase its revenue, it does not reduce existing rates or revenues.

Alternative 2 was not selected. Retaining the good cause exception does not alleviate the risk of deferrals or disallowances.

Alternatives 3 and 4 were also not selected. The definition of "good cause" is subjective and open to interpretation. Elimination of the good cause exemption ensures all providers are treated equally. Additionally, if an exception is granted and is later determined to be inappropriate, it could place Federal funds at risk and jeopardize the integrity of the QIPP program.

HHSC considered 4 alternatives to modifying the eligibility cut-off point for private NFs.

Alternative 1: Alternative 1 would modify the eligibility cut-off point to allow additional entrants to the pool at the cut-off point determined by the proposed methodology.

Alternative 2: Alternative 2 would allow all private NFs to participate regardless of historical Medicaid days.

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Alternative 2 was not selected due to the risk of deferrals or disallowances.

Alternative 3 and 4 were not selected because they would further restrict potential participation by small businesses or micro-businesses.

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. The implementation of the proposed amendment does not require any changes in practice or impose any cost on NFs.

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 regulated persons since it does not reduce existing rates or revenues. In addition, the rule is necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT

Selvadas Govind, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment. The public benefit anticipated as a result of enforcing or administering the amendment will be administrative simplification and mitigation of potential risk to Federal funds, and will increase the number providers eligible to participate in QIPP.

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 HEARING

HHSC will conduct a public hearing on May 14, 2018, at 1:00 p.m. to receive public comments on these proposed rules. The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building at 4900 N. Lamar Blvd, Austin, Texas. Entry is through security at the main entrance of the building facing Lamar Blvd. Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Long Term Services and Supports section of the Rate Analysis Department, Texas Health and Human Services Commission, 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*.

STATUTORY AUTHORITY

The amendment is 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; 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; and with Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The proposed amendment affects Texas Government Code Chapters 531 and 533 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.

ADDITIONAL INFORMATION

For further information, please call: (512) 707-6066.

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Legend:
<u>Single Underline</u> = 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 353 MEDICAID MANAGED CARE
SUBCHAPTER O DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

§353.1303. Quality Incentive Payment Program for Nursing Facilities.

(a) Introduction. This section establishes the Quality Incentive Payment Program (QIPP) for nursing facilities (NFs) providing services under Medicaid managed care (MC). QIPP is designed to incentivize NFs to improve quality and innovation in the provision of NF services to Medicaid recipients, using the Centers for Medicare & Medicaid Services (CMS) Five-Star Quality Rating System as its measure of success.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this and other sections of this subchapter may be defined in §353.1301 of this subchapter (related to General Provisions).

(1) - (9) (No change.)

(10) Quality Assurance Performance Improvement (QAPI) Validation Report--A monthly report submitted by a NF, that is eligible for and enrolled in QIPP, to <u>HHSC</u> [~~an MCO~~] that demonstrates that the NF has convened a meeting to review the NF's CMS-compliant plan for maintaining and improving safety and quality in the NF.

(11) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform as defined and established under Chapter 354, Subchapter D, of this title (relating to Texas Healthcare Transformation and Quality Improvement Program).

(c) Eligibility for participation in QIPP. A NF is eligible to participate in QIPP if it complies with the requirements described in this subsection for each eligibility period.

(1) Eligibility Period One. A NF is eligible to participate in QIPP for Eligibility Period One if it meets the following requirements:

(A) The NF is a non-state government-owned NF.

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

(iii) The NF must have been a participant in the Minimum Payment Amounts Program (MPAP) or must be located in the same RHP as, or within 150 miles of, the non-state governmental entity taking ownership of the facility. [~~This geographic proximity criterion does not apply to NFs that can establish good cause for an exception to this criterion.~~]

(B) Private NFs. The NF must have a percentage of Medicaid NF days of service that is greater than or equal to the private NF QIPP eligibility cut-off point. The private NF QIPP eligibility cut-off point will be equal to the mean percentage of historical Medicaid NF days of service provided under fee-for-service (FFS) and MC by all private NFs plus one standard deviation, as determined by HHSC. For each private NF, the percentage of Medicaid NF days is calculated by summing the NF's Medicaid NF FFS and MC days of service and dividing that sum by the facility's total days of service in all licensed beds. Medicaid hospice days of service are included in the denominator but excluded from the numerator.

(2) Future eligibility periods. Eligibility requirements for eligibility periods after Eligibility Period One are the same as the requirements under paragraph (1) of this subsection except that:

(A) the private NF QIPP eligibility cut-off point will be equal to the mean percentage of historical Medicaid NF days of service provided under FFS and MC by all private NFs plus one-quarter of one standard deviation, as determined by HHSC;

(B) a private NF that was eligible to participate in QIPP during Eligibility Period One is eligible to participate in the eligibility period for state fiscal year 2019 regardless of its Medicaid NF days of service for that eligibility period; and

(C) the deadlines specified in paragraph (1)(A)(i) will be updated by HHSC. Updated deadlines will be shared with all NFs by a date to be determined by HHSC.

(d) Data sources for historical units of service. Historical units of service are used to determine the private NF QIPP eligibility cut-off point, individual private NF QIPP eligibility status, and the distribution of QIPP funds across eligible and enrolled NFs.

(1) - (3) (No change.)

(4) Data sources for determination of distribution of QIPP funds across eligible and enrolled NFs. For each eligibility period, the data source must align with the NF's fiscal year that ends no more recently than in the calendar year four years prior to the calendar year within which the eligibility period ends. For example, for the eligibility period ending on August 31, 2018, the data source must align with the NF's 2014 fiscal year or an earlier fiscal year and for the eligibility period ending on August 31, 2019, the data source must align with the NF's 2015 fiscal year or an earlier fiscal year.

(A) The most recently available Medicaid NF cost report for the NF. If the cost report covers less than a full year, reported values are annualized to represent a full year. If no [~~audited~~] Medicaid NF cost report is available, the data source in subparagraph (B) of this paragraph must be used.

(B) - (D) (No change.)

(e) - (f) (No change.)

(g) QIPP capitation rate components. QIPP funds will be paid to MCOs through three new components of the STAR+PLUS NF MC per member per month (PMPM) capitation rates. The MCOs' distribution of QIPP funds to the enrolled NFs will be based on each NF's performance on a set of defined quality metrics.

(1) Component One.

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

(C) Monthly payments to non-state government-owned NFs will be triggered by the NF's submission to <u>HHSC</u> [~~the MCOs~~] of a monthly QAPI Validation Report.

(D) - (E) (No change.)

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

(h) - (k) (No change.)