



**TO:** Medical Care Advisory Committee  
**DATE:** May 17, 2018  
**FROM:** Scott Schalchlin  
HHSC Associate Commissioner for State Supported Living Centers

**Agenda Item No.: 8**

**SUBJECT:** State Supported Living Centers Services to the Community

**Proposed New:** Title 26, Part 1, Chapter 900, Subchapter B, §900.101  
Clinical Services to Individuals Residing in the Community

**BACKGROUND:**  Federal Requirement  Legislative Requirement   
Other: (e.g., Program Initiative)

The purpose of this rule is to establish a list of services a state supported living center (SSLC) may provide to support Medicaid recipients in the community who are not residents of SSLCs. Senate Bill 547, 85th Legislature, Regular Session, 2017, amended the Human Resources Code to remove certain conditions on an SSLC's authority to provide nonresidential services to support individuals in the community. The bill requires the Executive Commissioner to establish this rule. The list of possible services includes: physical therapy; occupational therapy; speech and language therapy; dental services; primary care provider services; psychiatry services; behavioral health services; adaptive aids; and durable medical equipment.

**ISSUES AND ALTERNATIVES:**

SSLCs will provide services to members of the community as funding allows.

**STAKEHOLDER INVOLVEMENT:**

The proposed rule will be shared with external stakeholders; however, HHSC anticipates some community advocates, who oppose the continued operations of SSLCs in Texas, will oppose the adoption of this rule and expansion of services into the community (many individuals testified against S.B. 547 and its companion, H.B. 3409, during the legislative committee hearings). The provision of services to non-SSLC residents has been debated in recent legislative sessions and, prior to the passage of S.B. 547, Associate Commissioner Schalchlin presented to the Intellectual and Developmental Disability (IDD) System Redesign Advisory Committee and the IDD Systems Improvement Workgroup, regarding options for SSLCs to provide certain services to individuals residing in the community. As anticipated, there was some philosophical opposition by some stakeholders, while others acknowledged the need for providers who will serve individuals with IDD.

Additionally, we anticipate support among family members and advocates for SSLCs as well as home and community-based service providers who have challenges finding quality clinical care to serve individuals with intellectual and developmental disabilities. Many of these individuals testified in support of the legislation.

**FISCAL IMPACT:**

Greta Rymal, Deputy Executive Commissioner of Financial Services, has determined that for each year of the first five years the section will be in effect, there will be fiscal implications to costs and revenues of state government as a result of enforcing and administering the section as proposed. The agency currently lacks sufficient data to provide an estimate of the anticipated costs and revenues.

There is no anticipated impact to costs or revenues of local governments.

**RULE DEVELOPMENT SCHEDULE:**

5/11/2018	Publish proposed rules in <i>Texas Register</i>
5/17/2018	Present to the Medical Care Advisory Committee
5/31/2018	Present to HHSC Executive Council
8/24/2018	Publish adopted rules in <i>Texas Register</i>
9/01/2018	Effective date

**REQUESTED ACTION: (Check appropriate box)**

The MCAC recommends approval of the proposed rules for publication.

Information Only

TITLE 26 HEALTH AND HUMAN SERVICES  
PART 1 HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 900 STATE OPERATED FACILITIES  
SUBCHAPTER B STATE SUPPORTED LIVING CENTER COMMUNITY  
SERVICES

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes new Chapter 900, State Operated Facilities, Subchapter B, State Supported Living Center Community Services, §900.101, concerning Clinical Services to Individuals Residing in the Community.

BACKGROUND AND PURPOSE

The new section is necessary to comply with Human Resources Code, Section §161.080(c)(1), which requires HHSC to establish a list of services state supported living centers (SSLCs) may provide to individuals who are not residents of SSLCs.

S.B. 547, 85th Legislature, Regular Session, 2017, amended the Human Resources Code to remove certain conditions on an SSLC's authority to provide non-residential services to support an individual with intellectual or developmental disabilities. This rule, required by S.B. 547, establishes a list of services an SSLC may provide to individuals who are not SSLC residents. The services are: physical therapy; occupational therapy; speech and language therapy; dental services; primary care provider services; psychiatry services; behavioral health services; adaptive aids; and durable medical equipment. SSLCs will not begin providing services until additional funding is received.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner of Financial Services, has determined that for each year of the first five years the section will be in effect, there will be fiscal implications to costs and revenues of state government as a result of enforcing and administering the section as proposed. The agency currently lacks sufficient data to provide an estimate of the anticipated costs and revenues.

There is no anticipated impact to costs or revenues of local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Ms. Rymal has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities from adoption and implementation of this rule. Stakeholders have expressed concern regarding service network inadequacy for individuals with intellectual and developmental disabilities who live in the community. As such, future implementation of these services is meant to aid in addressing any existing need.

#### 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 as proposed.

There is no anticipated negative impact on local employment.

#### COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045, does not apply to this rule because the rule does not impose a cost on regulated persons.

#### PUBLIC BENEFIT

Mike Maples, Deputy Executive Commissioner of State Operated Facilities, has determined 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 as a result of enforcing or administering the section will be the

increased availability of clinical services to individuals in the community. The option to receive services at an SSLC could help meet community demand for providers specializing in care for individuals with an intellectual or developmental disability who may have significant medical and behavioral health needs. It will also potentially enable more individuals to successfully transition from an SSLC to a less restrictive environment.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined 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

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 *HHRulesCoordinationOffice@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*. 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) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 18R013" in the subject line.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Human Resources Code §161.080.

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section implements Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

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.

#### ADDITIONAL INFORMATION

For further information, please call: (512) 438-3076.

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 26                    HEALTH AND HUMAN SERVICES  
PART 1                    HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 900        STATE OPERATED FACILITIES  
SUBCHAPTER B    STATE SUPPORTED LIVING CENTER COMMUNITY  
SERVICES

§900.101. Clinical Services to Individuals Residing in the Community.

(a) As funding allows, a state supported living center (SSLC) may provide the following services to a Medicaid recipient who is not a resident of an SSLC:

- \_\_\_ (1) physical therapy;
- \_\_\_ (2) occupational therapy;
- \_\_\_ (3) speech and language therapy;
- \_\_\_ (4) dental services;
- \_\_\_ (5) primary care provider services;
- \_\_\_ (6) psychiatry services;
- \_\_\_ (7) behavioral health services;
- \_\_\_ (8) adaptive aids; and
- \_\_\_ (9) durable medical equipment.

(b) Services are billed according to the appropriate Medicaid fee schedule or negotiated rate with a managed care organization.