TO: Medical Care Advisory Committee

DATE: November 16, 2017

FROM: Nadia Bobb, Rate Analyst, HHSC Rate Analysis for Acute Care Services

Agenda Item No.: 5

SUBJECT: School Health and Related Services (SHARS) 1% Admin Fee Implementation

Amendments to: Texas Administrative Code Title 1, Part 15, Chapter 355, Subchapter J, Division 23, §355.8443, Reimbursement Methodology for School Health and Related Services (SHARS)

BACKGROUND: ☐ Federal Requirement ☒ Legislative Requirement ☐ Other:

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 1 of the Texas Administrative Code, Part 15, Chapter 355, Subchapter J, §355.8443, Reimbursement Methodology for School Health and Related Services (SHARS).

SHARS is a joint program of HHSC and the Texas Education Agency that allows school districts to obtain federal Medicaid reimbursement for the provision of health-related services to students in special education. The proposed amendment will update the rule language to allow HHSC to retain 1% of the total certified Medicaid allowable costs for direct medical services and transportation services in the SHARS program to fund HHS administrative activities, such as increased oversight of the SHARS program by HHSC. This amendment is being proposed to comply with the 2018-19 General Appropriations Act, Senate Bill 1, 85th Legislature, Regular Session, 2017 [Article II, HHSC, Rider 34 a (11)] and is intended to improve the quality and consistency of SHARS program compliance monitoring and audits and to provide school districts with enhanced technical guidance and feedback on SHARS program issues.

This proposed amendment is intended to reduce financial liability to HHSC and will allow HHSC to establish and maintain a SHARS audit reserve fund.

ISSUES AND ALTERNATIVES:

None.

STAKEHOLDER INVOLVEMENT:

The proposed rule amendment was published in the *Texas Register*. Interested stakeholders had 30 days to submit comments regarding the proposed changes. No comments were received.

FISCAL IMPACT:

☐ None ☒ Yes

	Fiscal Year 1	**Fiscal Year 2**	**Fiscal Year 3**	**Fiscal Year 4**	**Fiscal Year 5**
Estimated Increase of Revenue					
STATE FUNDS					
FEDERAL FUNDS	$6,000,000	$6,100,000	$6,200,000	$6,300,000	$6,400,000
TOTAL:	$6,000,000	$6,100,000	$6,200,000	$6,300,000	$6,400,000

RULE DEVELOPMENT SCHEDULE:

August 25, 2017	Publish proposed rules in *Texas Register*
November 16, 2017	Present to the Medical Care Advisory Committee
November 24, 2017	Publish adopted rules in *Texas Register*
November 30, 2017	Present to HHSC Executive Council
December 1, 2017	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 355	REIMBURSEMENT RATES
SUBCHAPTER J	PURCHASED HEALTH SERVICES
DIVISION 23	EARLY PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)
RULE §355.8443	Reimbursement Methodology for School Health and Related Services (SHARS)

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8443, concerning Reimbursement Methodology for School Health and Related Services (SHARS).

BACKGROUND AND JUSTIFICATION

SHARS is a joint program of HHSC and the Texas Education Agency that allows school districts to obtain federal Medicaid reimbursement for the provision of health-related services to students in special education. The proposed amendment allows HHSC to retain one percent of the total Title XIX federal share of actual and reasonable costs for the SHARS program to fund Health and Human Service (HHS) administrative activities. Such activities include increased oversight of the SHARS program by HHSC to improve the quality and consistency of compliance monitoring and audits and to provide school districts with enhanced technical guidance and feedback on SHARS program issues. This amendment is being proposed to comply with the 2018-19 General Appropriations Act, Senate Bill 1, 85th Legislature, Regular Session, 2017 [Article II, HHSC, Rider 34 a (11)].

SECTION-BY-SECTION SUMMARY

Proposed §355.8443(f)(1) implements a one percent administrative fee that will be retained from the federal share of the total certified Medicaid allowable costs of each SHARS provider and states the purpose of implementing the fee.

Proposed §355.8443(f)(2) explains how HHSC will account for the administrative fee when recouping overpayments made to SHARS providers and the methodology for recouping overpayments.

Proposed §355.8443(f)(3) explains how HHSC will account for the administrative fee when issuing settlement payments to SHARS providers and the methodology for issuing settlement payments.

Proposed §355.8443(f)(4) establishes that the deadline for issuing notices of settlement to SHARS providers will continue to be within 24 months of the end of the reporting period.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the amendment will be in effect, there will be an increase to revenues of state government and there are no anticipated implications to costs of state government as a result of enforcing and administering the rule as proposed. It is anticipated that for the first five years the rule is in effect, there will be a decrease of revenue for local governments totaling $6,600,000 state-wide annually, as a result of enforcing and administering the rule as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse economic effect on small or micro-businesses to comply with the proposed rule amendment, as no participants in the program qualify as small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule amendment is in effect, the public benefit from the adoption of this rule will be the increased transparency that results from enhanced compliance monitoring of the SHARS program.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Ms. Rymal has also determined that there are no probable economic costs to persons required to comply with the proposed rule.

HHSC has determined that the proposed rule will not affect a local economy. There is no anticipated negative impact on local employment.

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

Written comments on the proposal may be submitted to Nadia Bobb, Rate Analyst of Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, MC-H400, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to RADAcuteCare@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 1R060" 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; 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 medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed rule amendment affects the Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

This agency hereby certifies that this proposal has been reviewed and approved by legal counsel and found to be within the agency's legal authority to adopt.

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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

TEXAS ADMINISTRATIVE CODE

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355 REIMBURSEMENT RATES
SUBCHAPTER J PURCHASED HEALTH SERVICES
DIVISION 23 EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)
RULE §355.8443 Reimbursement Methodology for School Health and Related Services (SHARS)

(a) Introduction. Direct medical services and transportation are available to children age 20 and under who are enrolled in Medicaid and eligible to receive services under the Individuals with Disabilities Education Act (IDEA). The services must be included in the child's individualized education program (IEP) established under IDEA.

(b) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Cost report--An annual report documenting the provider's Medicaid-allowable costs for all SHARS delivered during the previous federal fiscal year. The cost report is due on or before April 1 of the year following the reporting period and must be certified in a manner specified by the Texas Health and Human Services Commission (HHSC). The primary purposes of the cost report are to:

(A) Document the provider's total Medicaid-allowable costs for delivering SHARS, including direct costs and indirect costs, based on federally mandated cost allocation methodologies; and

(B) Reconcile interim payments to total Medicaid-allowable costs based on approved cost allocation methodology procedures.

(2) Time study--A statistically valid random sampling method used to identify the percentage of time spent performing actual direct medical services irrespective of payer and administrative cost.

(3) IEP ratio--A comparison of the total number of Medicaid students with IEPs requiring direct medical services to the total number of students with IEPs requiring direct medical services.

(4) One-way trip ratio--A comparison of the total one-way trips for Medicaid students with IEPs requiring specialized transportation services to the total one-way trips for all students with IEPs requiring specialized transportation services.

(c) Reimbursement methodology. Providers are reimbursed for medical and transportation services provided under the SHARS Program on a cost basis.

(1) Interim rates. The interim rate is developed based on a biennial review of actual cost data submitted by providers and is subject to change under §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). Interim rates are set by extracting the settled cost report data from each district and determining the average cost to provide each unit of service provided under the SHARS Program.

(A) Unit of service. The unit of service is a 15-minute interval for all covered services, except for:

(i) medication administration (a nursing service), for which the unit of service is a visit;

(ii) assessment services, for which the unit of service is a one-hour interval; and

(iii) personal care services on the bus and specialized transportation services, for which the unit of service is based on a one-way trip.

(B) Adjustment. The average cost for each unit of service is adjusted to 85% of cost to arrive at the interim rate.

(2) Interim payment. Providers are reimbursed for SHARS direct medical services per unit of service at the lesser of:

(A) the provider's billed charges; or

(B) the interim rate.

(3) Final reimbursement. The provider's final reimbursement amount is arrived at by a cost reconciliation and cost settlement process. The

provider's total costs for both direct medical and transportation services as reported in the cost report are adjusted using the federally mandated allocation methodologies.

(A) Medical services costs.

(i) Direct costs. From the annual cost report, HHSC aggregates allowable costs for direct medical services, resulting in total direct costs. Direct costs for direct medical services include payroll costs and other costs that can be directly charged to direct medical services provided by contractors and school district staff (i.e., salaries, benefits, and contract compensation). Direct medical services costs do not include transportation personnel costs.

(ii) Indirect costs. Indirect costs are determined by applying the school district's specific unrestricted indirect cost rate to its net direct costs. Texas public school districts use predetermined fixed rates for indirect costs. The Texas Education Agency (TEA) has, in cooperation with the United States Department of Education (USDE), developed an indirect cost plan to be used by school districts in Texas. As authorized in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for school districts for the USDE, which is the cognizant agency for school districts.

(iii) Net allowable cost. Direct and indirect costs are added together and adjusted by the direct medical time study percentage and the IEP ratio, resulting in a net Medicaid allowable cost for direct medical services.

(B) Transportation services.

(i) Direct costs. From the annual cost report, HHSC aggregates allowable direct costs for transportation, resulting in total direct costs. Direct costs for covered transportation services include payroll costs and other costs that can be directly charged to covered transportation services. Direct payroll costs include total compensation (i.e., salaries, benefits, and contract compensation) of bus drivers and mechanics. Other direct costs include costs directly related to the delivery of covered transportation services, such as professional and contracted services, contracted transportation costs, gasoline and other fuels, other maintenance and repair costs, vehicle insurance, interest, rentals, and vehicle depreciation

(ii) Indirect costs. Indirect costs are determined by applying the school district's specific unrestricted indirect cost rate to its net direct costs. Texas public school districts use predetermined fixed rates for indirect costs. TEA has, in cooperation with the USDE, developed an indirect cost plan to be

used by school districts in Texas. As authorized in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for school districts for the USDE, which is the cognizant agency for school districts.

(iii) Net allowable cost. Net direct costs and indirect costs are added together and adjusted by the one-way trip ratio, resulting in a net Medicaid allowable cost for transportation services.

(d) Cost reporting requirements. HHSC excludes from reimbursement determinations any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(1) Certification. Each provider certifies through the cost report process its total actual federal and non-federal costs and expenditures.

(2) Reimbursement determinations and allowable costs. Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. All costs relating to Shared Service Arrangements and Co-operatives must be allocated to each respective school district provider.

(e) Cost reconciliation. The Medicaid-allowable costs for direct medical and transportation services are added together and adjusted by the federal Medicaid assistance percentage (FMAP) to arrive at the federal share owed to the provider. This amount is then reconciled with interim payments already made to the provider.

(f) Cost settlement. HHSC uses a cost settlement process as follows:

(1) HHSC will retain one percent of the federal share of the total certified Medicaid allowable cost as an administrative fee to be used for Health and Human Services administrative activities, including compliance monitoring, technical assistance, and to establish and maintain an audit reserve fund.

(2) If a provider's interim payments exceed 99 percent of the provider's federal portion of the total certified Medicaid allowable costs, HHSC will recoup the overpayment using one of these two methods:

(A) HHSC offsets all future claims payments from the provider until the amount is recovered; or

(B) The provider returns an amount equal to the amount owed.

(3) If 99 percent of the provider's federal portion of the total certified Medicaid allowable costs exceeds the interim Medicaid payments, HHSC will pay the difference to the provider in accordance with the final actual certification agreement.

(4) HHSC will issue a notice of settlement within 24 months of the end of the reporting period.

[~~(1) If a provider's interim payments exceed the provider's federal portion of the total certified Medicaid allowable costs, HHSC will recoup the federal share of the overpayment using one of these two methods~~:

~~(A) HHSC offsets all future claims payments from the provider until the amount of the federal share of the overpayment is recovered; or~~

~~(B) The provider returns an amount equal to the overpayment.~~

~~(2) If the provider's federal portion of the total certified Medicaid allowable costs exceeds the interim Medicaid payments, HHSC will pay the federal share of the difference to the provider in accordance with the final actual certification agreement.~~

~~(3) HHSC will issue a notice of settlement within 24 months of the end of the reporting period.~~]

(g) General information. In addition to the requirements of this section, the cost reporting guidelines will be governed by the information in: §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals).

(h) Administrative contract violations. HHSC may take the following actions against a provider for administrative contract violations:

(1) Time study. For failure to participate in or meet all time study requirements, HHSC will recoup all interim payments made during the cost reporting period.

(2) Billing. For failure to bill for services covered by Medicaid or failure to bill in the manner and format prescribed by HHSC or its designee, the provider is ineligible to submit a cost report.

(3) Cost reports. For failure to submit a cost report by the due date, HHSC will recoup all interim payments made during the cost reporting period.

(4) Other administrative contract violations. For all other administrative contract violations, HHSC will recoup all interim payments made during the cost reporting period.

(5) Appeals. A provider may request a hearing to appeal HHSC's action concerning an administrative contract violation. Formal appeals are conducted in accordance with the provisions of Chapter 357, Subchapter I of this title (relating to Hearings under the Administrative Procedure Act). If there is a conflict between an applicable section of Chapter 357 of this title (relating to Hearings) and the provisions of this chapter, the provisions of this chapter will prevail.