



TO: Medical Care Advisory Committee
DATE: August 15, 2018
FROM: Victoria Grady, Deputy Director of Rate Analysis

Agenda Item No.: 7

SUBJECT: Establishment of Peer Support Specialists and State Supported Living Centers as eligible Medicaid Providers

Amendments to: Texas Administrative Code Title 1, Part 15, Chapter 355, Subchapter J, Division 5, §355.8085, Reimbursement Methodology for Physicians and Other Practitioners.

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

The proposed rule amendments are a result of House Bill (H.B.) 1486 and Senate Bill (S.B.) 547, 85th Legislature, Regular Session, 2017. H.B. 1486 adds services provided to Medicaid beneficiaries by peer specialists as a reimbursable Medicaid benefit. S.B. 547 amended the Texas Human Resources Code to remove certain conditions on state supported living centers (SSLCs) authority to provide non-residential services to support an individual with intellectual or developmental disabilities.

ISSUES AND ALTERNATIVES:

It is anticipated that external stakeholders will support the addition of peer specialists and SSLCs as Medicaid providers.

STAKEHOLDER INVOLVEMENT:

Comments received from stakeholders will be reviewed by HHSC staff and taken into consideration prior to adoption of the proposed rules.

FISCAL IMPACT:

For each year of the first five years peer specialists and SSLCs are established as eligible providers, there are anticipated fiscal implications to costs and revenues of state governments as a result of establishing these as eligible providers.

HHSC currently lacks sufficient data related to volume of services to provide an estimate of the anticipated costs and revenues due. For peer specialists, HHSC anticipates that after the establishment of a reimbursement rate through the public hearing process and refinement of policy regarding the appropriate service modality, HHSC will be able to develop a fiscal estimate. At this time, HHSC lacks sufficient information to determine the volume of services that will be provided and has yet to establish the reimbursement rate through the public hearing process; HHSC is therefore unable to estimate the cost.

For SSLCs, HHSC lacks sufficient information to determine the type and volume of services that are likely to be provided to support an individual with intellectual or developmental disabilities who does not reside in the SSLC. The agency lacks sufficient data regarding caseload and reimbursement rates to determine an estimate of the cost at this time.

RULE DEVELOPMENT SCHEDULE:

8/16/18	Present to the Medical Care Advisory Committee
8/23/18	Present to HHSC Executive Council
8/24/18	Publish proposed rules in <i>Texas Register</i>
11/30/18	Publish adopted rules in <i>Texas Register</i>
12/5/18	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 5 GENERAL ADMINISTRATION

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8085, concerning Reimbursement Methodology for Physicians and Other Practitioners.

BACKGROUND AND PURPOSE

The proposed amendments are a result of House Bill (H.B.) 1486 and Senate Bill (S.B.) 547, 85th Legislature, Regular Session, 2017. H.B. 1486 added services provided to Medicaid beneficiaries by peer specialists as a reimbursable Medicaid benefit. S.B. 547 amended the Texas Human Resources Code to remove certain conditions on state supported living centers' (SSLCs') authority to provide non-residential services to support an individual with intellectual or developmental disabilities.

SECTION-BY-SECTION SUMMARY

The proposed amendments of §355.8085(b) add peer specialists and SSLCs as eligible Medicaid providers.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years peer specialists and SSLCs are established as eligible providers, there will be costs and revenues to state government as a result of establishing these as eligible providers. HHSC currently lacks sufficient data to provide an estimate of the anticipated costs and revenues.

For peer specialists, HHSC anticipates that after the establishment of a reimbursement rate through the public hearing process and refinement of policy regarding the appropriate service modality, that HHSC will be able to develop a fiscal estimate. At this time, HHSC lacks sufficient information to determine the volume of services that will be provided and has yet to establish the reimbursement rate through the public hearing process; HHSC is therefore unable to estimate the cost.

For SSLCs, HHSC lacks sufficient information to determine the type and volume of services that are likely to be provided to support an individual with intellectual or developmental disabilities who does not reside in the SSLC. HHSC lacks sufficient data regarding caseload and reimbursement rates to estimate the cost at this time.

There is no anticipated impact to costs and revenues of local governments as a result of enforcing or administering the rule as amended.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

Ms. Rymal has also determined that the anticipated economic impact of the amendments will be the initial cost of compliance by provider entities who choose to provide the new service. For peer specialists, should an entity choose to provide the new service, the anticipated economic effect to small businesses or micro-businesses is the cost to comply with established rules, which is predicted to be offset by additional revenue gained from providing these services. For SSLCs, there may be an adverse economic effect to small businesses or micro-businesses who currently provide services to individuals in the community if those individuals choose to instead receive services in an SSLC. Preparation of an economic impact statement and a regulatory flexibility analysis for these particular SSLCs is not required as these amendments are necessary to implement legislation.

There will be no adverse economic effect on rural communities because the amendments do not apply to rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL ECONOMY

Providers billing for services provided by peer specialists may experience an increased cost due to contracting and administration. The agency lacks sufficient data to project this possible cost. For SSLCs, there is no assumed cost to persons to comply with the proposed amendments. No provider is required to alter current business practices as a result of adopting and implementing this proposal, as participation in the Medicaid program is optional. 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 amendments are necessary to implement legislation that did not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT

Selvadas Govind, Director of Rate Analysis, has determined that for each of the first five years the amendments are in effect, the public benefit will be expanding eligible providers who may receive Medicaid reimbursement, in addition to an increase in access for Medicaid clients to receive appropriate services.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule that is specifically intended to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public rate hearing to receive comments on the proposal will be scheduled after publication of the proposal in the *Texas Register* and will be held in the Brown-Heatly Public Hearing Room, 4900 North Lamar Boulevard, Austin, Texas. The meeting date and time will be posted on HHSC's website at <https://rad.hhs.texas.gov/rate-packets>.

Please contact Dan Huggins at (512) 730-7475 or Guy Mitchell at (512) 730-7456 if you have questions.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Dan Huggins, Director 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 Dan.Huggins@hpsc.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) 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 Peer Specialist and SSLC Rule" in the subject line.

STATUTORY AUTHORITY

The amendments are 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.

The proposed amendments implement Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 32.

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) 730-7475.

---THIS PAGE INTENTIONALLY LEFT BLANK---

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 355 REIMBURSEMENT RATES
SUBCHAPTER J PURCHASED HEALTH SERVICES
DIVISION 5 GENERAL ADMINISTRATION
RULE §355.8085. Reimbursement Methodology for Physicians and
Other Practitioners.

(a) Introduction. This section describes the Texas Medicaid reimbursement methodology that the Texas Health and Human Services Commission (HHSC) uses to calculate payment for covered services provided by physicians and other practitioners.

(1) There is no geographical or specialty reimbursement differential for individual services.

(2) HHSC reviews the fees for individual services at least every two years based upon:

(A) analysis of Medicare fees for the same or similar item or service;

(B) analysis of Medicaid fees for the same or similar item or service in other states; or

(C) analysis of commercial fees for the same or similar item or service.

(3) HHSC may use data sources other than those listed in paragraph (2) of this subsection to establish Medicaid fees for physicians and other practitioners when HHSC determines that those methodologies are unreasonable or insufficient.

(4) Fees for these services are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

(b) Eligible Providers. Eligible providers include:

(1) Providers of Laboratory and X-ray Services;

(2) Providers of Radiation Therapy;

- (3) Physical, Occupational, and Speech Therapists;
- (4) Physical, Occupational, and Speech Therapy Assistants;
- (5) Physicians;
- (6) Podiatrists;
- (7) Chiropractors;
- (8) Optometrists;
- (9) Dentists;
- (10) Psychologists;
- (11) Licensed Psychological Associates;
- (12) Provisionally Licensed Psychologists;
- (13) Licensed Psychological Interns and Fellows;
- (14) Maternity clinics; ~~[and]~~
- (15) State Support Living Centers;
- (16) [~~(15)~~] Tuberculosis clinics; and [-]
- (17) Peer Specialists.

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

(1) Access-based fees (ABF)--Fees for individual services, where HHSC deems necessary, to account for deficiencies relating to the adequacy of access to health care services.

(2) Biological--A substance that is made from a living organism or its products and is used in the prevention, diagnosis, or treatment of cancer and other diseases.

(3) Conversion factor--The dollar amount by which the sum of the three cost component relative value units is multiplied to obtain a reimbursement fee for each individual service.

(4) Drug--Any substance that is used to prevent, diagnose, treat or relieve symptoms of a disease or abnormal condition.

(5) HHSC--The Texas Health and Human Services Commission or its designee.

(6) Relative value units (RVUs)--The relative value assigned to each of the three individual components that comprise the cost of providing individual Medicaid services. The three cost components of each reimbursement fee are intended to reflect the work, overhead, and professional liability expense required to provide each individual service.

(7) Resource-based fees (RBF)--Fees for individual services based upon HHSC's determination of the resources that an economically efficient provider requires to provide individual services.

(8) Vaccine--An immunogen, the administration of which is intended to stimulate the immune system to result in the prevention, amelioration or therapy of any disease or infection.

(d) Calculating the payment amounts. Subject to qualifications, limitations, and exclusions as provided in this chapter, payment to eligible providers must not exceed the lesser of the provider's billed amount or the amount derived from the methodology described in this section. The fee schedule that results from the reimbursement methodology may be composed of both access-based fees (ABFs) and resource-based fees (RBFs).

(1) ABF methodology allows the state to:

(A) reimburse for procedure codes not covered by Medicare;

(B) account for inadequate reimbursement rates for particularly difficult procedures;

(C) encourage participation in the Medicaid program by physicians and other practitioners; and

(D) set reimbursement to allow eligible Medicaid population to receive adequate health care services in an appropriate setting.

(2) An RBF is calculated using the following formula: $RBF = (\text{total RVU} * CF)$, where RBF = Resource-Based Fee, total RVU = the sum of the three Relative Value Units that comprise the cost of providing individual Medicaid services, and CF = Conversion Factor.

(A) Except as otherwise specified, HHSC bases the RVUs that are employed in the Texas Medicaid reimbursement methodology upon the RVUs of the individual services as specified in the Medicare Fee Schedule. HHSC reviews any changes to, or revisions of, the various Medicare RVUs and, if applicable, adopts the changes as part of the reimbursement methodology within available funding.

(B) HHSC may develop and apply multiple conversion factors for various classes of service, such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(e) Reimbursement for physician-administered drugs, vaccines, and biologicals. In determining the reimbursement methodology for physician-administered drugs, vaccines, and biologicals, HHSC may consider information such as costs, utilization, data sufficiency, and public input. Reimbursement for physician-administered drugs, vaccines, and biologicals are based on the lesser of the billed amount, a percentage of the Medicare rate, or one of the following methodologies:

(1) If the drug or biological is considered a new drug or biological (that is, approved for marketing by the Food and Drug Administration within 12 months of implementation as a benefit of Texas Medicaid), it may be reimbursed at an amount equal to 89.5 percent of average wholesale price (AWP).

(2) If the drug or biological does not meet the definition of a new drug or biological, it may be reimbursed at an amount equal to 85 percent of AWP.

(3) Vaccines may be reimbursed at an amount equal to 89.5 percent of AWP.

(4) Infusion drugs furnished through an item of implanted Durable Medical Equipment may be reimbursed at an amount equal to 89.5 percent of AWP.

(5) Drugs, other than vaccines and infusion drugs, may be reimbursed at an amount equal to 106 percent of the average sales price (ASP).

(6) HHSC may use other data sources to establish Medicaid fees for physician-administered drugs, vaccines, and biologicals when HHSC determines that the above methodologies are unreasonable or insufficient.

(f) Reimbursement for services provided under the supervision of a licensed psychologist. Reimbursement for services provided under the supervision of a licensed psychologist by a licensed psychological associate (LPA) or a provisionally licensed psychologist (PLP) is reimbursed to the licensed psychologist at 70 percent of the fee paid to the licensed psychologist for the same service. Reimbursement for services provided under the supervision of a licensed psychologist by a licensed psychology intern or fellow are reimbursed at 50 percent of the fee paid to a licensed psychologist for the same service.

(g) Reimbursement for certain other providers. The descriptions for reimbursement of certain other providers are described in sections of this chapter.

(1) Reimbursement for physician assistants is described in §355.8093 of this title (relating to Reimbursement Methodology for Physician Assistants).

(2) Reimbursement for nurse practitioners and clinical nurse specialists is described in §355.8281 of this title (relating to Reimbursement Methodology for Nurse Practitioners and Clinical Nurse Specialists).

(3) Reimbursement for services provided under Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is described in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services).

(4) Reimbursement for Licensed Professional Counselors, Licensed Clinical Social Workers, and Licensed Marriage and Family Therapists is described in §355.8091 of this title (relating to Reimbursement to Licensed Professional Counselors, Licensed Clinical Social Workers, and Licensed Marriage and Family Therapists).

(5) Reimbursement for Physical, Occupational, and Speech Therapy Services is described in §355.8097 of this title (relating to Reimbursement for Physical, Occupational, and Speech Therapy Services).

(h) Fees for these services are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).