



TO: Medical Care Advisory Committee
DATE: August 16, 2018
FROM: Victoria Grady, Deputy Director, HHSC
Rate Analysis Department

Agenda Item No.: 8

SUBJECT: Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission

Amendments to: Title 1, Part 15, Chapter 355, Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission

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

The proposed amendment to §355.201 clarifies the grounds on which HHSC may establish and adjust fees, rates, and charges for Medicaid services, as authorized by Texas Government Code §531.021, subsections (d) and (e).

Government Code §531.021(b-1) directs HHSC to adopt reasonable rules and standards to govern the determination of fees, rates, and charges for medical assistance payments. In adopting the rules and standards required by subsection (b-1), §531.021(d) authorizes HHSC to provide for the payment of such fees, rates, and charges in accordance with the following: rules adopted by HHSC, state or federal law, economic conditions that affect provider participation in Medicaid, or available levels of appropriated funds. Section 531.021(e) provides that HHSC can adjust the fees, charges, and rates paid to Medicaid providers as necessary to achieve the objectives of Medicaid in a manner consistent with the considerations described in subsection (d).

The amendments simplify the rule so that it tracks the statute more closely. HHSC proposes to amend subsection (c) of the rule to make it clear that fees, rates, and charges are established in accordance with one, some, or all of the four considerations listed in §531.021(d). Subsection (d) of the rule would be amended so that the considerations are the same when HHSC adjusts fees as when it establishes fees, which is what the statute seems to require.

The proposed amendments would also eliminate confusion regarding notice. Subsection (e) of the rule would be amended and subsection (f) would be

deleted to remove unnecessary requirements that conflict with the public hearing requirement in §355.105(g). The proposed amendments would provide that HHSC hold a public hearing and provide notice thereof in accordance with §355.105(g).

ISSUES AND ALTERNATIVES:

None.

STAKEHOLDER INVOLVEMENT:

Proposed rule will be shared with stakeholders once approved by HHSC Legal Services.

FISCAL IMPACT:

None Yes

RULE DEVELOPMENT SCHEDULE:

August 2018	Present to the Medical Care Advisory Committee
August 2018	Present to HHSC Executive Council
August 2018	Publish proposed rules in <i>Texas Register</i>
November 2018	Publish adopted rules in <i>Texas Register</i>
December 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 355	REIMBURSEMENT RATES
SUBCHAPTER B	ESTABLISHMENT AND ADJUSTMENT OF REIMBURSEMENT RATES BY THE HEALTH AND HUMAN SERVICES COMMISSION

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes amendments to Subchapter B and §355.201, concerning Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

BACKGROUND AND PURPOSE

The proposed amendment to §355.201 clarifies the grounds on which HHSC may establish and adjust fees, rates, and charges for Medicaid services, as authorized by Texas Government Code §531.021, subsections (d) and (e).

Government Code §531.021(b-1) directs HHSC to adopt reasonable rules and standards to govern the determination of fees, rates, and charges for medical assistance payments. In adopting the rules and standards required by subsection (b-1), §531.021(d) authorizes HHSC to provide for the payment of such fees, rates, and charges in accordance with the following: rules adopted by HHSC, state or federal law, economic conditions that affect provider participation in Medicaid, or available levels of appropriated funds. Section 531.021(e) provides that HHSC can adjust the fees, charges, and rates paid to Medicaid providers as necessary to achieve the objectives of Medicaid in a manner consistent with the considerations described in subsection (d).

The amendments simplify the rule so that it tracks the statute more closely. HHSC proposes to amend subsection (c) of the rule to make it clear that fees, rates, and charges are established in accordance with one, some, or all of the four considerations listed in §531.021(d). Subsection (d) of the rule would be amended so that the considerations are the same when HHSC adjusts fees as when it establishes fees, which is what the statute seems to require.

The proposed amendments would also eliminate confusion regarding notice. Subsection (e) of the rule would be amended and subsection (f) would be deleted to remove unnecessary requirements that conflict with the public

hearing requirement in §355.105(g). The proposed amendment would provide that HHSC hold a public hearing and provide notice thereof in accordance with §355.105(g).

SECTION-BY-SECTION SUMMARY

The proposed amendment to the title of Subchapter B and the title of §355.201 adds “for Medicaid” and deletes “by the Health and Human Services Commission.”

The proposed amendment to §355.201(a) defines Centers for Medicare & Medicaid Services (CMS) and changes “Commission” to “HHSC or its designee.” Non-substantive formatting changes are also made within this subsection.

The proposed amendment to §355.201(b) deletes the unnecessary “the provisions of” language and adds “related to medical assistance” to specify the type of reimbursement methodologies at issue. A non-substantive formatting change is also made within this subsection.

The proposed amendment to §355.201(c) deletes language that is not in the statute and adds language from the statute not currently in the rule. It also replaces “and” with “or” in paragraphs (2) and (3) to be consistent with the statute.

The proposed amendment to §355.201(d) deletes language that is not in the statute and adds language from the statute not currently in the rule to harmonize the considerations involved in adjusting fees with the considerations involved in establishing fees.

The proposed amendment to §355.201(e) provides that notice consists of a public hearing and notice thereof in accordance with §355.105(g).

The proposed amendment to §355.201(f) deletes the subsection to remove unnecessary notice requirements.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amendments are in effect, there are no anticipated impacts to costs and revenues of state government or local governments because of enforcing or administering the amended rule.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years 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 create or eliminate 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 increase or decrease fees paid to the agency;
- (5) the proposed amendments do not create a new rule;
- (6) the proposed amendments do not expand an existing rule;
- (7) the proposed amendments will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed amendments do not affect the state's economy.

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

Ms. Rymal has also determined that there is no anticipated adverse economic impact on small businesses, micro-businesses, or rural communities required to comply with the amendments as proposed. The proposed amendments do not require any change to current business practices.

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.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Rymal has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amended rule will be clarity regarding HHSC's considerations for establishing and adjusting fees, rates, and charges, as well as clarity regarding the notice requirement for such actions.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposed amendments do 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 Stephanie Tourk, Staff Counsel, Brown Heatly Building, MC: 1100, 4900 North Lamar Blvd, Austin, TX 78714-9030; by fax to (512)-424-6586; or by e-mail to HHSRulesCoordinationOffice@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 355.201" 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; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, rates, and charges for medical assistance payments under the Texas Human Resources Code, Chapter 32.

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

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.

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 B ESTABLISHMENT AND ADJUSTMENT OF
REIMBURSEMENT RATES FOR MEDICAID ~~[BY THE
HEALTH AND HUMAN SERVICES COMMISSION]~~

§355.201. Establishment and Adjustment of Reimbursement Rates for Medicaid ~~[by the Health and Human Services Commission].~~

(a) Definitions. Unless the context clearly indicates otherwise, the following words and terms when used in this section are defined as follows:

(1) Centers for Medicare & Medicaid Services (CMS) ~~--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid.~~

(2) ~~[(1)]~~ HHSC ~~--The Texas ["Commission" means the] Health and Human Services Commission or its designee.~~

(3) ~~[(2)]~~ Medical assistance ~~--A ["Medical assistance" means a] medical or health care related service, item, or supply that is delivered to a Medicaid recipient and is approved and authorized for payment or reimbursement by HHSC [the Commission] or CMS [a health and human services agency] pursuant to state and federal law.~~

(4) ~~[(3)]~~ Program ~~--A ["Program" means a] specific component of the Medicaid program for which HHSC [the Commission] establishes either a methodology to reimburse a provider or a specific fee, payment rate, or charge that is paid to a provider for medical assistance in accordance with state and federal law.~~

(5) ~~[(4)]~~ Provider ~~--A ["Provider" means a] health care practitioner, institution, or other entity that is enrolled in the medical assistance program and is authorized to submit claims for payment or reimbursement of medical assistance.~~

(b) Purpose. This section implements Texas Government Code ~~[the provisions of]~~ §531.021(d) and (e), ~~[Government Code]~~ and applies to all programs that provide medical assistance and to all reimbursement methodologies related to medical assistance prescribed under this chapter.

(c) Establishment of fees, rates, and charges. HHSC ~~[The Commission]~~ establishes fees, rates, and charges to be paid for medical assistance in accordance with:

(1) the formulas, procedures, or methodologies prescribed in this chapter;

(2) ~~[the requirements of]~~ applicable state or ~~[and]~~ federal law, policies, rules, regulations, or guidelines; ~~[-, including:]~~

~~[(A) legislative or Congressional enactments that change state or federal laws in a manner that affects such fees, rates, and charges;]~~

~~[(B) changes in federal regulations, and policies that affect such fees, rates, and charges; and]~~

~~[(C) judicial orders, opinions, or interpretations regarding state or federal law that affect such fees, rates, and charges;]~~

(3) ~~[the consideration of]~~ economic conditions ~~[factors]~~ that, in HHSC's ~~[the Commission's]~~ determination, substantially and materially affect provider participation ~~[-]~~

~~[(A) have or may have a significant and measurable effect on provider participation; or]~~

~~[(B) have or may have a significant and measurable effect on providers' ability to deliver services in accordance with state and federal law]; or [and]~~

(4) available levels of appropriated state and federal funds ~~[or state or federal laws or enactments that limit, restrict, or condition the availability of appropriated funds for medical assistance].~~

(d) Adjustment of fees, rates, and charges. Notwithstanding any other provision of this chapter, HHSC ~~[the Commission]~~ may adjust fees, rates, and charges paid for medical assistance as necessary to achieve the objectives of Medicaid in a manner consistent with the considerations described in subsection (c) of this section. ~~[if:]~~

~~[(1) state or federal law is enacted, amended, judicially interpreted, or implemented to:]~~

~~[(A) require the Commission to increase or reduce a fee, rate, or charge paid to a provider for medical assistance;]~~

~~[(B) change the amount, scope, or type of allowable or unallowable costs for providers of medical assistance that are required to report costs to the Commission or a health and human services agency for purposes of establishing a reimbursement rate for medical assistance;]~~

~~[(C) require all providers within a program or category of providers to incur additional costs to provide medical assistance, other than unallowable costs, that are not currently recognized in the reimbursement methodology established by the Commission for the program; or]~~

~~[(D) restrict, limit, or condition the availability of appropriated funds to the Commission for payment or reimbursement of medical assistance;]~~

~~[(2) economic conditions that prevail among all providers within a specific program or category of providers and:]~~

~~[(A) result in a demonstrable increase in the cost of providing services beyond amounts recognized in the Commission's established reimbursement methodology; or]~~

~~[(B) require providers within a program or category of providers to incur costs, other than unallowable costs, that are not currently recognized in the reimbursement methodology established by the Commission for the program.]~~

~~(e) Notice [of adjustment of fees, rates, and charges]. If HHSC [the Commission] establishes or adjusts fees, rates, or charges under this section, HHSC [the Commission or its designee] will hold a public hearing and provide [publish] notice of the hearing in accordance with §355.105(g) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). [proposed adjustment at the earliest feasible date, but not later than 10 state working days before the effective date of the adjustment. If the adjustment is required by the enactment or amendment of state or federal law, such notice may be published before the effective date of such enactment or amendment, but the adjustment to fees, rates, or charges will not take effect before the effective date of the enactment or amendment. The notice must be published either by publication on the Commission's Internet web site or in the *Texas Register*. In addition, the Commission may issue written or electronic communication to providers, if economically feasible.]~~

~~[(f) Contents of notice. The notice required under subsection (e) of this section will include the following:]~~

~~[(1) a description of the specific increase or reduction of fees, rates, and charges;]~~

~~[(2) the date on which such adjustment will take effect;]~~

~~[(3) a description of the legal and factual bases for the adjustment;]~~

~~[(4) a description of the specific requirements of the rate setting methodology established under this chapter that cannot effectively be implemented as a result of the adjustment;]~~

~~[(5) instructions for interested parties to submit written comments to the Commission regarding the proposed adjustment; and]~~

~~[(6) the date, time, and location of a public hearing in accordance with §32.0282, Human Resources Code.]~~