



**TO:** Medical Care Advisory Committee

**DATE:** June 13, 2019

**FROM:** Kevin Niemeyer, Senior Rate Analyst

**SUBJECT:** Inpatient Direct Graduate Medical Education (GME) Reimbursement

**Agenda Item No.:**

**Amendment to:** Texas Administrative Code Title 1, Part 15, Chapter 355, Subchapter J, Division 4, Section 355.8058

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

The Texas Health and Human Services Commission (HHSC) proposes an amendment to Texas Administrative Code Title 1, Part 15, Chapter 355 (Reimbursement Rates), Subchapter J (Purchased Health Services), Division 4 (Medicaid Hospital Services), Section 355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement.

Currently, HHSC makes Medicaid GME supplemental payments to two classes of hospitals: state-owned hospitals, and non-state government-owned and operated hospitals. First, five state-owned teaching hospitals are eligible: University of Texas (UT) Medical Branch at Galveston, UT Health Science Center at Tyler, UT MD Anderson, UT Southwestern - Zale Lipshy, and UT Southwestern - Clements. The non-federal share for these GME payments comes from appropriations or patient revenues belonging to the state-owned teaching hospitals that are transferred to HHSC. HHSC draws down the federal match and makes quarterly interim Medicaid GME payments directly to the hospitals based on resident full-time equivalents (FTEs) and inpatient days reported by the hospital. Second, Effective October 1, 2018, HHSC also makes Medicaid GME supplemental payments to nine non-state government-owned and operated teaching hospitals. The source of the non-federal share of these GME payments are intergovernmental transfers (IGTs) from the local governmental entities that own and operate the hospitals.

The proposed amendment will allow teaching hospitals owned or operated by non-governmental entities to receive Medicaid GME supplemental payments, provided that the non-federal share is provided by a local governmental entity. As is the case for the non-state government-owned and operated teaching hospitals, the payment will be based on the number of full-time equivalent medical residents and the Medicare per resident amount (PRA) reported on CMS Form 2552-10 and the Medicaid inpatient utilization percentage.

**ISSUES AND ALTERNATIVES:**

As no general revenue will be used to support the payment of Medicaid GME

supplemental payments to non-government owned or operated teaching hospitals (i.e. privately-owned hospitals), eligible hospitals will have to rely on local governmental entities to fund the non-federal share of the payments or another CMS approved method. This creates a situation where it is possible that some private hospitals will have access to a source for the non-federal share of these payment while others will not. There is a possibility that CMS may be reluctant to approve a program in which eligibility to receive a payment is contingent on access to the non-federal share of that payment.

**STAKEHOLDER INVOLVEMENT:**

Since October 2017, HHSC has received multiple correspondence from the Teaching Hospitals of Texas (THOT), one of which included a proposed rule amendment and state plan amendment that would establish Medicaid GME supplemental payments to non-state government-owned and operated teaching hospitals and non-government owned or operated teaching hospitals. HHSC staff has subsequently participated in multiple meetings and correspondence with THOT, in an effort to determine the feasibility and proper calculation methodology for such a program.

**FISCAL IMPACT:**

Yes

	SFY 1	SFY 2	SFY 3	SFY 4	SFY 5
State					
Federal	20,093,953	50,376,040	50,558,712	50,558,712	50,558,712
Other	14,503,074	32,656,826	32,474,154	32,474,154	32,474,154
Total	34,597,027	83,032,866	83,032,866	83,032,866	83,032,866

**RULE DEVELOPMENT SCHEDULE:**

May 6, 2019 Present to Hospital Payment Advisory Committee (HPAC)  
 May 2019 Publish proposed rules in *Texas Register*  
 June 13, 2019 Present to Medical Care Advisory Committee (MCAC)  
 June 27, 2019 Present to HHSC Executive Council  
 July 2019 Publish adopted rules in Texas Register  
 August 1, 2019 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 4 MEDICAID HOSPITAL SERVICES  
RULE §355.8058 Inpatient Direct Graduate Medical Education (GME)  
Reimbursement

#### PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement.

#### BACKGROUND AND PURPOSE

Currently, HHSC makes Medicaid GME supplemental payments to two classes of hospitals: state-owned hospitals and non-state government-owned and operated hospitals. First, five state-owned teaching hospitals are eligible: University of Texas (UT) Medical Branch at Galveston, UT Health Science Center at Tyler, UT MD Anderson, UT Southwestern - Zale Lipshy, and UT Southwestern - Clements. The non-federal share for these GME payments comes from appropriations or patient revenues belonging to the state-owned teaching hospitals that are transferred to HHSC. HHSC draws down the federal match and makes quarterly interim Medicaid GME payments directly to the hospitals based on resident full-time equivalents (FTEs) and inpatient days reported by the hospital. Second, effective October 1, 2018, HHSC also makes Medicaid GME supplemental payments to nine non-state government-owned and operated teaching hospitals. The source of the non-federal share of these GME payments are intergovernmental transfers (IGTs) from the local governmental entities that own and operate the hospitals.

The proposed amendment will allow teaching hospitals owned or operated by non-governmental entities to receive Medicaid GME supplemental payments, provided that the non-federal share is provided by a local governmental entity. This amendment will allow for the remaining teaching hospitals in the state to participate in this program. As is the case for the non-state government-owned and operated teaching hospitals, the payment will be based on the number of full-time equivalent medical residents and the Medicare per resident amount (PRA) reported on CMS Form 2552-10 and the Medicaid inpatient utilization percentage.

An annual Medicaid GME supplemental payment amount will be calculated for each eligible hospital using data from the hospital cost report most recently submitted to HHSC on October 1 of each year. HHSC proposes to split the annual amount into two payments. HHSC does not propose cost settlement of Medicaid GME supplemental payments for the new class of hospitals covered by this expansion.

## SECTION-BY-SECTION SUMMARY

Proposed new subsection §355.8058(c) specifies that the language in this subsection is limited to Medicaid GME supplemental payments made to teaching hospitals not described in subsections (a) or (b).

Proposed new paragraph §355.8058(c)(1) establishes an effective date of April 1, 2019 for Medicaid GME supplemental payments made under this subsection.

Proposed new paragraph §355.8058(c)(2) provides definitions related to the Medicaid GME supplemental payments made under this subsection.

Proposed new paragraph §355.8058(c)(3) provides the methodology for calculating the total annual GME payment under this subsection.

Proposed new paragraph §355.8058(c)(4) specifies which hospital cost report will be used for the calculation of the annual GME payment under this subsection.

Proposed new paragraph §355.8058(c)(5) specifies that a hospital under this subsection must be enrolled as a Medicaid provider with HHSC. In addition, the hospital must designate a single local governmental entity from which HHSC will receive an intergovernmental transfer to fund the non-federal share of the GME payment.

Proposed new paragraph §355.8058(b)(6) states that payments under this subsection will be made semiannually.

## FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rule will be in effect, there will be a fiscal impact on state government as a result of enforcing and administering the amendments. The non-federal share of the Medicaid GME payments will be provided by local governmental entities using a method approved by HHSC and the Centers for Medicare and Medicaid Services (CMS). HHSC will then draw down federal matching funds to issue the Medicaid GME payments. No general revenue will be used for Medicaid GME supplemental payments made to non-government owned or operated teaching hospitals.

There is a possibility of fiscal implications to local governmental entities, but participation in the Medicaid GME supplemental payment program is voluntary. A fiscal impact to these local governmental entities may occur only if the local governmental entities choose to provide the IGT to support GME payments to eligible hospitals. However, such participation may yield a positive total fiscal impact to the local governments.

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Greta Rymal, Deputy Executive Commissioner for Financial Services, has also determined that there is no adverse economic impact on small businesses, micro-businesses, and rural communities required to comply with the rule as proposed. Participation in the Inpatient Direct GME program is voluntary and places no burden on small businesses, micro-businesses, or rural communities.

## LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

## COST TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to receive a source of federal funds.

## PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Rate Analysis, has determined that for each year of the first five years the rule is in effect, the public will benefit from adoption of the rule. The public benefit anticipated as a result of enforcing or administering the rule will be that the additional revenue to participating hospitals will help them maintain and expand residency programs.

For the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because participation in the Inpatient Direct GME program is voluntary.

## 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 COMMENT

Questions about the content of this proposal may be directed to Kevin Niemeyer in HHSC Rate Analysis at (512) 730-7445.

Written comments on the proposal may be submitted to the HHSC Rate Analysis Department, 4900 North Lamar Blvd., Austin, TX 78714-9030 (Mail Code H-400); by fax to (512)-730-7475; or by e-mail to RateAnalysisDept@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 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 355.8058" in the subject line.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; 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 amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

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) 730-7445.

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 4 MEDICAID HOSPITAL SERVICES

§355.8058. Inpatient Direct Graduate Medical Education (GME) Reimbursement.

(a) The Texas Health and Human Services Commission (HHSC) uses the methodology in this subsection to calculate Inpatient Direct Graduate Medical Education (GME) cost reimbursement for state-owned or state-operated teaching hospitals.

(1) Effective September 1, 2008, HHSC or its designee may reimburse a state-owned or state-operated teaching hospital with an approved medical residency program the hospital's inpatient direct GME cost for hospital cost reports beginning with state fiscal year 2009.

(2) Reimbursement of inpatient direct GME cost for state-owned or state-operated teaching hospitals:

(A) Inpatient direct GME cost<sub>1</sub> as specified under methods and procedures set out in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248 are calculated under similar methods for each hospital having inpatient direct GME costs on its tentative or final audited cost report.

(B) Definitions.

(i) Base year average per resident amount--the hospital's Medicaid allowable inpatient direct GME cost as reported on CMS Form 2552-96, Hospital Cost Report ending in state fiscal year 2007; Worksheet B; Part I; Column 26; Line 95<sub>1</sub> divided by the un-weighted FTE residents from Worksheet S-3; Part I; Line 25.

(ii) Current FTE residents--the hospital's number of full time equivalent (FTE) interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on CMS Form 2552-96, Hospital Cost Report; Worksheet S-3; Part I; Line 25.

(iii) GME Medicaid inpatient utilization percentage--the hospital's proportion of paid Medicaid inpatient days, including managed care days, as

reported on CMS Form 2552-96, Hospital Cost Report adjusted to Medicaid Claim Summary Report; Worksheet S-3; Part 1; Line 12; Column 5, divided by the hospital's total inpatient days, as reported on Worksheet S-3; Part 1; Column 6, Lines 12, 14 (subprovider days), and 26 (observation days). Medicaid inpatient days and total inpatient days will include inpatient nursery days.

(C) HHSC calculates the total GME payments for each hospital as follows:

(i) multiplies the base year average per resident amount by the applicable Centers for Medicare and Medicaid Services (CMS) Prospective Payment System Hospital Market Basket index;

(ii) multiplies the results in clause (i) of this subparagraph by the number of current full-time equivalent (FTE) residents; and

(iii) multiplies the results in clause (ii) of this subparagraph by the GME Medicaid inpatient utilization percentage, which results in the total GME payments.

(D) Inpatient direct GME costs are removed from the reimbursement methodology and not used in the calculation of the provider's inpatient cost settlement.

(E) The GME interim payments will be reimbursed on a quarterly basis only after hospital services have been rendered. The interim payments are payable within 90 days of the receipt of the hospital's quarterly resident FTE data. Each hospital's quarterly resident FTE data will be divided by 4 to determine the average resident FTEs for each quarter. The interim payments will be reconciled and settled based on audited final cost report data.

(F) To receive GME payments from HHSC, a state-owned or state-operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(b) HHSC uses the methodology in this subsection to calculate reimbursement for GME cost reimbursement for non-state government-owned and operated teaching hospitals.

(1) Effective October 1, 2018, HHSC or its designee may reimburse a non-state government-owned and operated teaching hospital with an approved medical residency program the hospital's estimated inpatient direct GME cost.

(2) Definitions.

(A) Non-state government-owned and operated teaching hospital--a hospital with a properly approved medical residency program that is owned and operated by

a local government entity, including but not limited to, a city, county, or hospital district.

(B) FTE residents--the hospital's number of unweighted full time equivalent (FTE) interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; Line 27.

(C) Medicare per resident amount (PRA)--average direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18.

(D) GME Medicaid inpatient utilization percentage--the hospital's proportion of paid Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; columns 7 and 8.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare per resident amount;

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee, will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC, a non-state government-owned and operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(6) Payments under this subchapter will be made on a semi-annual basis.

(c) HHSC uses the methodology in this subsection to calculate reimbursement for GME cost reimbursement for teaching hospitals not described in subsections (a) or (b) of this section.

(1) Effective April 1, 2019, HHSC or its designee may reimburse a non-government owned or operated teaching hospital with an approved medical residency program the hospital's estimated inpatient direct GME cost.

(2) Definitions.

(A) Teaching hospital--a hospital with a properly approved medical residency program.

(B) FTE residents--the hospital's number of unweighted full time equivalent (FTE) interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; Line 27.

(C) Medicare per resident amount (PRA)--average direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18.

(D) GME Medicaid inpatient utilization percentage--the hospital's proportion of paid Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; columns 7 and 8.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare per resident amount;

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee, will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC:

(A) a hospital under this subsection must be enrolled as a Medicaid provider with HHSC;

(B) HHSC must receive the non-federal portion of reimbursement for GME costs through a method approved by HHSC and CMS for reimbursement through this program; and

(C) a hospital under this subsection must designate a single local governmental entity to provide the non-federal share of the payment through a method determined by HHSC.

(6) Payments under this subchapter will be made on a semi-annual basis.