

**-FINAL-  
MINUTES  
Health and Human Services Commission Council Meeting  
February 28, 2014**

**Agenda Item 1.        Calling the Meeting to Order**

Dr. Ben Raimer, HHSC Council Chair, called the meeting the order and welcomed the council members and the public and recognized that a quorum was present and provided information about the public accessing the agenda and public comments after the meeting online. The Health and Human Services Commission Council convened at 10:12 a.m.at the Health and Human Services Commission (HHSC) headquarters, Brown-Heatly Public Hearing Room, 4900 North Lamar, and Austin Texas. Chair Raimer asked all members to introduce themselves. He recognized new appointees to the HHSC Council, Dr. Antonio Falcon and Ms. Sharon Butterworth.

Cindy Mendl called the roll.

Council members present:

Dr. Ben Raimer  
Pastor Manson Johnson  
Mr. Leon Leach (via polyconference)  
Ms. Sharon Butterworth  
Mr. Thomas Wheat  
Dr. Antonio Falcon  
Mr. Richard Barajas

There were seven members physically present, and a member via phone conference, a quorum was held. Also present was HHSC Executive Commissioner, Dr. Kyle Janek other HHSC executive staff.

**Agenda Item 2.        Approval of Council Minutes from February 28, 2014**

The February 28, 2014 minutes were reviewed. Pastor Manson Johnson made a motion to approve the minutes and Mr. Leon Leach seconded the motion. All were in favor and the November 22<sup>nd</sup> minutes were approved.

**Agenda Item 3.        Executive Commissioner's Report**

Dr. Kyle Janek, HHSC Executive Commissioner also welcomed new appointees to the HHSC Council. Dr. Janek began his update with update that the 83<sup>rd</sup> Legislative Interim charges were announced by Lt. Gov. Dewhurst and Speaker Straus. The HHSC interim charges include from the House: HB 3793 and the 1115 Waiver (House County Affairs); identifying cost-effective alternatives to the Affordable Care Act, to evaluate the TANF program, resources for individuals with co-occurring mental illness and intellectual/developmental disabilities, foster care redesign, SB 7 and statewide managed care rollout and the implementation of the Balancing Incentives

Program (Health and Human Services Committee); cost containment, behavioral and mental health, SB 7, Program of All-Inclusive Care for the Elderly, aka PACE (House Appropriations); mental health services for veterans (House Defense and Veterans Affairs); two Affordable Care Act related charges in coordination with the Texas Department of Insurance (House Insurance); HB 15 and electronic health information (House Public Health).

HHSC and DSHS were invited to present testimony before Senate HHS on February 20<sup>th</sup> regarding women's health services and HHSC was invited by House County Affairs Committee to provide testimony on March 10<sup>th</sup> to provide members with an update on the 1115 waiver and DFPS provided testimony on infant mortality.

Next, Dr. Janek shared an update with the council regarding the HHS System agencies strategic planning timeline. The strategic plans are a five-year plan that help determine trends and service needs based on population changes, economic changes and health trends, as legislatively required.

The executive commissioner continued his status report with an update on the Sunset Review process and stated that HHSC remained on track and the review by Sunset staff should therefore be completed in early October 2014 with a public hearing, most likely in November. The Sunset Commissioner held its Organizational Meeting. Dr. Janek recognize that Kelly Garcia, HHSC Sunset Coordinator, has been working on the coordination of the Sunset Review process. Dr. Janek also mentioned to the Council that the upcoming legislative session will include the Sunset Bill, as well as recodification requirements to clean up the on-going functions of the Enterprise to align with recommendations for functions with sister agencies.

Dr. Janek continued his update with an update on the veterans' health report study, as directed by leadership. HHSC started a pilot study with mental health funding from DSHS. At the governor's urging HHSC is contracting with Carrick Brain Centers and The Center for Brain Health at The University of Texas at Dallas to provide services during the pilot project for comparative health studies. There will be a total of 100 participants, 50 in each participating research facility. The Meadows Mental Health Policy Institute will oversee the pre and post assessments of the studies. The first veterans were enrolled in the study on December 1<sup>st</sup> and the study is scheduled to conclude May 30, 2014.

Dr. Janek also provided an update regarding the Medicaid and CHIP implementation of the Medicaid provider enrollment moratoriums on providers of emergency services and home health services imposed by Centers for Medicare and Medicaid Services (CMS).

Per CMS direction, HHSC implemented a moratorium on the enrollment of new home health agencies in Texas Medicaid, effective January 30, 2014 through July 30<sup>th</sup> of this year. The moratorium affects Dallas urban area counties and certain Houston area counties.

CMS issued a moratorium on the enrollment of ambulance providers effective July 30, 2013 to end January 30, 2014. CMS subsequently issued a continuation of the moratorium through July 30, 2014 and affects the following Houston area counties: Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller.

The executive commissioner's final status update to the council members was regarding the governor's remarks related to the Affordable Care Act (ACA) and the Medicaid Reform Waiver. He reminded the Council that on January 1, 2014, the Affordable Care Act became effective and Texas, along with other states, opted-out of the expansion of the state's Medicaid program to serve a larger population. 114,000 applications are backed up on healthcare.gov and the federal website has directed 12,000 to HHSC, but the applications have screening issues, as a small percentage meet the criteria for Medicaid and CHIP eligibility. Dr. Janek mentioned that HHSC continues to seek flexibility with our federal partners to implement a state-based Medicaid program to address the healthcare needs of Texas population. Updates on progress will continue to be shared with the council and the public.

Dr. Falcon appreciated Dr. Janek's efforts with CMS and commented that he recognizes the challenge for federal government to see why and how Texas' needs are unique, especially along the U.S./Mexico border.

There was no public comment.

**Agenda Item 4.a.** Stephanie Stephens, Director of Policy Development for the Office of Social Services presented a presentation on Federally-Required Eligibility Changes to the Affordable Care Act.

HHSC implemented changes to Medicaid and CHIP on January 1, 2014 that impacted eligibility and primarily impact program services for women, children and families rather than those individuals needing long term support services. She mentioned that there are new federal rules for determining eligibility which includes the elimination of an assets test and most income disregards and a streamlined application. Other changes include a continuous 12-month eligibility period and there is a new administrative renewal process for existing Medicaid clients.

Stephanie discussed the account transfer status between the Federal Facilitated Marketplace and provided an update on how many applications have accurately been referred by the Federal Facilitated Marketplace to HHSC.

Between January 17<sup>th</sup> and February 25, HHSC received 12,032 unduplicated transfers and HHSC has processed files for 5,525 individuals received from the federal Marketplace. Stephanie Stephens shared with the council that 1,700 were referrals for long-term care services. 2,814 were individuals the Marketplace said should qualify for Medicaid or CHIP and of those 1,068 either already had coverage or were pending a determination on their application with the state. 711 applications were approved for coverage while 793 did not qualify for either Medicaid or CHIP. 332 applications are still open while HHSC eligibility staff work with family to obtain additional or a policy question is answered. 183 did not return additional information the state needed to complete the case and 59 withdrew the applications.

1,011 files were cases that the Marketplace found weren't eligible for Medicaid but asked the state to also look at the case. Stephanie stated that 26 were approved for Medicaid or CHIP coverage and HHSC agreed with 931 of the denials.

CMS indicates that there are over 100,000 applications to the federal marketplace.

Pastor Manson Johnson asked Stephanie Stephens about the number of applicant files pending due to missing information. Stephanie clarified that it is a common occurrence for applications to remain open or close if families do not follow up with additional information requested to continue their eligibility determination.

Mr. Barajas asked Stephanie Stephens to elaborate on the staff handling the account transfer applications. Stephanie responded that staff tasked to handle applications from the account transfer is highly specialized expert eligibility workers to handle high volume applicants. Stephanie clarified that the administrative expense is already a built in to the operating costs with a federal/state match.

Dr. Janek mentioned that currently staff is prepared to handle a predicted volume load from 1-3 applications per minute or up to that volume per second.

There was no public comment on this presentation.

**Agenda Item 4.b.** Lisa Subia, Chief Financial Officer of Health and Human Services Commission, presented an update on the timeline and process for the legislative appropriations request to the council members and the public.

There was no public comment.

**Agenda Item 5.a.** Stephanie Stephens, Director of Policy for the Office of Social Services presented the first expedited rule regarding Medicaid eligibility changes to Medicaid for transitioning foster care youth.

**Agenda Item 5.b.** Stephanie Stephens, Director of Policy for the Office of Social Services, also presented an expedited rule regarding Medicaid and CHIP eligibility.

She explained that assets tests were eliminated but could be applied to the Medically Needy, aka, Spend Down program and Refugee Assistance Program. Also at renewal time, under federal requirements, rather than 30 days, applicants have 90 day waiting period. The rules are effective May 1<sup>st</sup> and the comment period ends May 16<sup>th</sup>.

Dr. Janek provided clarification on the exemptions in relation to the eligibility criteria in response to Pastor Johnson's question about the current asset test and limits.

**Agenda Item 5.c.** Pam McDonald, Director of Rate Analysis, presented a proposed rule regarding the hospital-specific limit (HSL), the maximum payment amount that a hospital may

receive in reimbursement for the uncompensated cost of providing Medicaid-allowable services to individuals who are Medicaid-enrolled or uninsured.

The rule is expedited because it is tied to a lawsuit with a trial date. Pam explained that in Medicaid reimbursements made to hospitals that there is a limit in Disproportionate Share Program (DSH) and Uncompensated Care. The rule amends the calculation for the limit to the Medicaid reimbursement allowable to these programs.

Children's hospitals treat categorically Medicaid eligible clients, such as newborns born under 15 grams, etc. Some hospitals were negatively impacted by the revised methodology to reverse CMS' position on the treatment of 3<sup>rd</sup> party payments in the in the hospital specific limit calculation or to minimize negative impacts to their DSH payments. SB 7 (2013) Legislature amended the Human Resources Code for purposes of calculating the hospital-specific limit used to determine a hospital's uncompensated care payment under a supplemental hospital payment program, the commission will ensure that to the extent that a 3<sup>rd</sup> party commercial payment exceeds the Medicaid allowable cost for a service provide to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment.

On January 13, 2014, HHSC submitted a State Plan amendment to CMS requesting to authorize the change in the calculation of hospital specific limits. In order to ensure that the change in state law in SB 7 can be implemented, HHSC must also amend it's administrative rules. HHSC proposes to amend that contingent upon the approval of a corresponding Medicaid SPA by CMS, to the extent that 3<sup>rd</sup> party commercial payment exceeds the Medicaid allowable cost of a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment for purposes of calculating the hospital specific limit.

**Agenda Item 6.a.** Selvadas Govind, Director of Hospital Services, presented a proposed rule regarding a correction to address a drafting error in the publication of the adopted rule and to avoid erroneous payments to children's and rural hospitals. Selvadas explained that the proposed changes conform to HHSC's calculation of inpatient hospital reimbursement rates and HHSC also proposes revising the methodology used to calculate the inpatient reimbursement rate assigned to new rural hospitals.

There was no public testimony.

*Pastor Johnson made a motion to recommend that the proposed rule currently published in the Texas Register be adopted.*

*Dr. Falcon seconded the motion.*

*All were in favor.*

**Agenda Item 6.b.** Emily Zalkovsky, Director of Program Operations, presented a proposed rule regarding proposed amendments to Chapter 353, Medicaid Managed Care following legislative requirements during the 83<sup>rd</sup> Regular Legislative Session (S.B. 7 and S.B. 406).

Emily explained that to implement SB7 , the rules are proposed to be amended to specify that adult resident of a nursing facility receive all of their Medicaid benefits through STAR+PLUS; adults residing in a community-based ICF-IID or receiving services under an ICD-IID 1915(c) waiver will receive acute care Medicaid benefits through STAR+PLUS; and children residing in a community-based ICF-IID or receiving services under and ICF-IID 1915(c) will receive acute care Medicaid benefits through STAR+PLUS; and children residing in a community-based ICF-IID or receiving services under and ICF-IID 1915 ( c ) waiver may choose to receive acute care Medicaid benefits through STAR+PLUS. These populations are no longer excluded from being enrolled in STAR+Plus.

Marina Hench, Director of Public Policy with Texas Association for Home Care and Hospice, provided written and public testimony.

Susan Murphee with Disability Rights Texas submitted written testimony for the Council's review and consideration regarding intellectual disability conditions and language in the proposed rules.

Dr. Raimer, HHSC Chair, read Ms. Murphee's written testimony.

Dr. Janek respectfully disagreed and cited (pg. 25) to address her concern regarding IDD.

*Mr. Thomas Wheat made a motion to recommend that the proposed rule currently published in the Texas Register be adopted.*

*Pastor Manson Johnson seconded the motion.*

*All were in favor.*

**Agenda Item 6.c.** Pam McDonald, Director of Hospital Services, presented a proposed rule relating to waiver payment for uncompensated care and waiver payments to other performers.

Pam explained that older cost reports will be used (two-year period) because the cost reports have already been completed cost report audit.

*John Berta with Texas Hospital Association provided both written and public testimony.*

*Dr. Antonio Falcon made a motion to recommend that the proposed rule currently published in the Texas Register be adopted.*

*Ms. Sharon Butterworth seconded the motion.*

*All were in favor.*

**Agenda Item 6.d.** Pam McDonald, Director for Rate Analysis Division, presented a proposed rule regarding reimbursement methodology for physicians and other practitioners.

*Ms. Sharon Butterworth made a motion to recommend that the proposed rule currently published in the Texas Register be adopted.*

*Mr. Richard Barajas seconded the motion.*

*All were in favor.*

**Agenda Item 6.e.** Laurie Van Hoose, Director of Policy Development, presented a proposed rule regarding reciprocal and locum tenens arrangements for substitute physicians. The proposed rule amends Chapter 354 to comply with the federal Medicaid statute by clarifying the timeframes related to when a physician may bill for services performed by a substitute physician.

There was no public testimony.

*Mr. Leon Leach made a motion to recommend that the proposed rule currently published in the Texas Register be adopted.*

*Mr. Thomas Wheat seconded the motion.*

*All were in favor.*

**There was no further business taken up or discussed.**

**Dr. Janek recognized addressed the Council and the public and introduced Jack Stick as the Interim Acting Chief Counsel.**

**Chairman Ben Raimer adjourned the meeting at 11:50 p.m., February 28, 2013.**