

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1301

The Texas Health and Human Services Commission (HHSC) adopts amendments to §353.1301, concerning General Provisions. The amendments are adopted without changes to the proposed text as published in the August 18, 2017, issue of the *Texas Register* (42 TexReg 4041), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

In March of 2017, HHSC adopted a series of rules governing delivery system and provider payment initiatives through Medicaid managed care organizations (MCOs) (42 TexReg 13). These initiatives are, generally, funded through intergovernmental transfers (IGT) from local governmental entities. Given that these programs are not funded with state general revenue, HHSC must ensure, to the greatest extent possible, that no state dollars are at risk through the operation of these programs. A disallowance by the Centers for Medicare & Medicaid Services (CMS) is one potential risk to general revenue, unless HHSC can ensure that funds from another source are available.

As originally adopted in March of 2017, §353.1301(j) described the procedure HHSC would use in the case of a disallowance. The rule delineated between a disallowance for impermissible provider-related donations and all other disallowances. If there was a disallowance for impermissible provider-related donations, the rule required HHSC to recoup the disallowed amount from transferring governmental entities that caused the disallowance. If there was a disallowance for reasons other than an impermissible provider-related donation, HHSC reserved the right to recoup the disallowed amount from MCOs, providers, or governmental entities.

HHSC adopts amendments to §353.1301(j) in an effort to provide HHSC more flexibility. HHSC reserves the right, through this amendment, to recoup from MCOs, providers, or governmental entities in any disallowance. In order to ensure that there is no risk to general revenue, to the greatest extent possible, HHSC will require that if a recoupment for a disallowance results in a subsequent disallowance, the entity that HHSC initially recouped against will face a recoupment for the subsequent disallowance.

In addition, HHSC clarified the heading for §353.1301(k) by changing the heading from "Recoupment" to "Overpayment."

COMMENTS

The 30-day comment period ended September 18, 2017. During this period, HHSC received comments regarding the proposed rule from two commenters, **Nueces County Hospital District** and Teaching Hospitals of Texas. A summary of comments relating to the rule and HHSC's responses follows.

Comment: One commenter proposed to revise the amendment such that HHSC would not have the authority to recoup funds from a governmental entity if that entity was acting solely in its capacity to IGT.

Response: HHSC appreciates the comment but declines to change the rule as suggested. When the amendment was initially proposed, HHSC sought to gain flexibility such that the most appropriate entity would be responsible for a disallowance for impermissible provider-related donations. To accept this proposed change would defeat the purpose of the amendment in the first place. **HHSC cannot, at this time, contemplate a reason why it would need to take an action against a governmental entity that only IGTs for Medicaid payments to others.** However, HHSC cannot foreclose the possibility that such a reason might exist. No changes were made in response to this comment.

Comment: One commenter supported the changes to the rule to allow for the continued success of IGT-based programs.

Response: HHSC appreciates the comment. No changes were made in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with board 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; and with Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2017.

TRD-201704095