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State/Territory Name: Texas

State Plan Amendment (SPA) #: TX 23-0023

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, MD 21244-1850



Financial Management Group

October 12, 2023
Emily Zalkovsky
State Medicaid/CHIP Director
Health and Human Services Commission
Mail Code: H100
Post Office Box 13247
Austin, Texas 78711

RE: Texas State Plan Amendment (SPA) 23-0023

Dear Director Zalkovsky:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid state plan submitted under transmittal number (TN) 23-0023 effective for services on or after September 1, 2023. The purpose of the amendment is to update the rate methodology and payment rates for Nursing Facilities (NF).

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30), and 1903(a) of the Social Security Act and the implementing Federal regulations at 42 CFR 447 Subpart C.

We hereby inform you that Medicaid State plan amendment 23-0023 is approved effective September 1, 2023. We are enclosing the CMS-179 and the amended plan pages.

If you have any questions, please call Tom Caughey at (517) 487-8598.

Sincerely,


Rory Howe
Director

Enclosure

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2 3 0 0 2 3

T X

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT

TO: **CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

4. PROPOSED EFFECTIVE DATE
September 1, 2023

5. FEDERAL STATUTE/REGULATION CITATION
**Social Security Act § 1919
42 CFR §440.155**

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 2023 \$ 4,015,055
b. FFY 2024 \$ 52,725,764

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
(see Attachment to Blocks 7 and 8)

8. PAGE NUMBER OF THE SUPERSEDED PLAN
SECTION OR ATTACHMENT (If Applicable)
(see Attachment to Blocks 7 and 8)

9. SUBJECT OF AMENDMENT

The purpose of the amendment is to update the rate methodology and payment rates for Nursing Facilities (NF). HHSC is making these changes in accordance with the 2024-25 General Appropriations Act, House Bill 1, 88th Texas Legislature, Regular Session, 2023 (Article II, HHSC, Rider 24), which requires HHSC to implement NF reimbursement rate changes to increase the wages and benefits of direct care staff and ensure that at least 90 percent of appropriated funds are expended for the benefit of direct care staff. The amendment adds a direct care spending requirement for all providers. The amendment also revises the initial cost report database to calculate the direct care cost component to be the most recent Texas Medicaid NF Cost Report database. Finally, the amendment lowers the direct care spending requirement for the direct care staff rate enhancement program.

10. GOVERNOR'S REVIEW (Check One)

- GOVERNOR'S OFFICE REPORTED NO COMMENT
- COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
- NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED: Sent to Governor's Office this date. Comments, if any, will be forwarded upon receipt.

11. SIGNATURE OF STATE AGENCY OFFICIAL



15. RETURN TO

**Emily Zalkovsky
State Medicaid Director
Post Office Box 13247, MC: H-100
Austin, Texas 78711**

12. TYPED NAME
Emily Zalkovsky

13. TITLE
State Medicaid Director

14. DATE SUBMITTED
September 26, 2023

FOR CMS USE ONLY

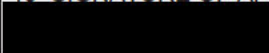
16. DATE RECEIVED
September 26, 2023

17. DATE APPROVED
October 12, 2023

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL
September 1, 2023

19. SIGNATURE OF APPROVING OFFICIAL



20. TYPED NAME OF APPROVING OFFICIAL
Rory Howe

21. TITLE OF APPROVING OFFICIAL
Director, FMG

22. REMARKS

Reimbursement Methodology for Nursing Facilities (continued)

- (G) Effective September 1, 2014, for each RUG-III and supplemental reimbursement group, each rate component will be equal to the rate component in effect on August 31, 2013, plus 6.00 percent. Rate components include the direct-care staff base-rate component, direct-care staff enhancement add-on rate component, other recipient care rate component, dietary rate component, general/administration rate component, fixed capital asset use fee component, and liability insurance rate component. These rates were posted on the agency's website at <https://pfd.hhs.texas.gov/long-term-services-supports/nursing-facility-nf> on September 1, 2014.
- (H) Effective June 10, 2023, through August 31, 2023, for each RUG-III group, each rate component will be equal to the rate component in effect on June 9, 2023, plus a temporary add-on of \$19.63 for miscellaneous costs will be included in addition to the rate components. The temporary add-on will be effective through August 31, 2023. These rates were posted on the agency's website at <https://pfd.hhs.texas.gov/long-term-services-supports/nursing-facility-nf> on June 10, 2023.
- (I) Effective September 1, 2023, for each RUG-III group, each rate component will be equal to the rate component in effect on August 31, 2023, plus an additional amount that is proportional to the level of the direct care staff base rate for each RUG-III case-mix group in effect on August 31, 2023. These rates were posted on the agency's website at <https://pfd.hhs.texas.gov/long-term-services-supports/nursing-facility-nf> on September 1, 2023. Spending requirements for all facilities are subject to a direct care expenses spending requirement with recoupment calculated as follows:
- (1) At the end of the rate year, HHSC will calculate a direct care staff base rate spending floor by multiplying accrued Medicaid direct care staff revenues proportional to the direct care base rates effective on August 31, 2023, by 0.70, for each provider.
 - (2) Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the base rate spending floor from (VI)(I)(1). If the base rate spending floor is less than the accrued allowable Medicaid direct care staff expenses, HHSC or its designee will notify the provider. There will be no recoupment associated with a provider's failure to meet the direct care base rate spending floor specified in this paragraph.

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Approval Date: October 12, 2023

Supersedes TN: 23-0014

Effective Date: 09/01/2023

- (3) At the end of the rate year, HHSC will calculate the direct care spending floor by multiplying accrued Medicaid direct care staff revenues proportional to the direct care staff rate increases effective September 1, 2023, by 0.90 and the direct care staff base rate spending floor as specified in (VI)(I)(1).
- (4) Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the total direct care staff spending floor from (VI)(I)(3). If the direct care spending floor is less than the accrued allowable Medicaid direct care staff expenses, HHSC or its designee will recoup the difference between the direct care spending floor and the accrued allowable Medicaid direct care staff expenses from providers whose Medicaid direct care staff spending is less than their direct care spending floor.
- (5) At no time will a provider's direct care rates after recoupment be less than the direct care base rates in effect prior to the direct care staff base rate increase established under (VI)(I).

- (E) Determination of direct care staff base rate.
- (1) Determine the total recipient care costs from the direct care staff cost center in all nursing facilities included in the most recent Texas Nursing Facility Cost Report database (hereinafter referred to as the initial database).
 - (2) Adjust the total from (VI)(E)(1) to inflate the costs to the prospective rate year as per (111)(0).
 - {3} Divide the result from (VI)(E){2} by the total recipient days of service in all facilities in the initial database and multiply the result by 1.07. The result is the average direct care staff rate component for all facilities.
 - (4) To calculate the direct care staff per diem rate component for all facilities for each of the RUG-III case mix groups and for the default_ groups, divide each RUG-III index from {IV}(B)(3)(c) by 0.9908 and then multiply each of the resulting quotients by the average direct care staff base rate component from (Vt)(EX3).
 - (5) The direct care staff per diem rates will be limited to available levels of appropriated state and federal funds.

- (H) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in (VI)(D). HHSC will determine the adjusted LVN equivalent minutes maintained by each facility during the reporting period by the method described in (VI)(G). Participating facilities that fail to maintain staffing at their required level will have their direct care staff rates and staffing requirements adjusted to a level consistent with the highest staffing level that they actually attained and all direct care staff revenues associated with unmet staffing goals will be recouped by HHSC or its designee.
- (1) Spending requirements for participants. Participating facilities are subject to a direct care staff spending requirement with recoupment calculated as follows:
- (1) At the end of the rate year, a spending floor will be calculated by multiplying accrued Medicaid fee-for-service direct care staff revenues by 0.70.
 - (2) Accrued allowable Medicaid direct care staff fee-for-service expenses for the rate year will be compared to the spending floor from (V1)(1)(1). HHSC or its designee will recoup the difference between the spending floor and accrued allowable Medicaid direct care staff fee-for-service expenses from facilities whose Medicaid direct care staff spending is less than their spending floor.
 - (3) Upon request from a parent company, sole member, or governmental body that controls more than one nursing facility contract, HHSC will evaluate the contract's compliance with the spending requirements in the aggregate for all contracts that the parent company, sole member, or governmental body it controlled at the end of the rate year or at the effective date of the change of ownership or termination of its last nursing facility contract.
 - (4) At no time will a participating facility's direct care rates after spending recoupment be less than the direct care base rates.