



**TO:** Medical Care Advisory Committee  
**DATE:** August 12, 2021  
**FROM:** Samuel West, Director of Provider Finance for Long-term Services and Supports

**SUBJECT:** Pediatric Long-term Care Facility Reimbursement

**Agenda Item No.:** 11

**Amendment to:** Texas Administrative Code Title 1, Part 15, Chapter 355, Subchapter C, Section 355.307, related to Reimbursement Setting Methodology; and new Section 355.316, related to Reimbursement Methodology for Pediatric Care Facilities.

**BACKGROUND:**  Federal Requirement  Legislative Requirement  Other

The Texas Health and Human Services Commission (HHSC) proposes an amendment to Section 355.307, concerning Reimbursement Setting Methodology; and new Section 355.316, concerning Reimbursement Methodology for Pediatric Care Facilities.

The proposal is necessary to comply with the 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 40), which requires HHSC to revise the reimbursement methodology for pediatric long-term care facilities to mirror that of Medicare reimbursement.

The proposal amends the payment rate methodology for pediatric nursing facilities, to base the methodology upon the unadjusted federal per diem rate for rural Medicare skilled nursing facilities for the most recent federal fiscal year. The proposal removes language related to the pediatric nursing facility rate methodology currently in Section 355.307, and moves this language to a new rule in the same subchapter. The amendment separates the pediatric care facility reimbursement methodology from the reimbursement methodology used for nursing facilities in general. The proposal also makes general edits to improve clarity.

The reimbursement methodology revision will lead to reimbursement rates that are calculated at higher levels than under the current methodology, leading to higher quality and greater access to care for medically fragile children in Texas.

**ISSUES AND ALTERNATIVES:**

None.

**STAKEHOLDER INVOLVEMENT:**

A draft of the proposed amendment was shared via email with stakeholders in June 2021.

**FISCAL IMPACT:**

Yes (if yes, please complete table below)

	<b>SFY 22</b>	<b>SFY 23</b>	<b>SFY 24</b>	<b>SFY 25</b>	<b>SFY 26</b>
<b>State</b>	\$ 686,497	\$ 766,328	\$ 794,934	\$ 827,281	\$ 862,921
<b>Federal</b>	\$ 1,166,397	\$ 1,188,591	\$ 1,232,959	\$ 1,283,129	\$ 1,338,409
<b>Total</b>	\$ 1,852,894	\$ 1,954,919	\$ 2,027,893	\$ 2,110,410	\$ 2,201,330

**RULE DEVELOPMENT SCHEDULE:**

August 2021	Publish proposed rules in <i>Texas Register</i>
August 12, 2021	Present to the Medical Care Advisory Committee
August 19, 2021	Present to HHSC Executive Council
October 2021	Publish adopted rules in <i>Texas Register</i>
October 2021	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 C         REIMBURSEMENT METHODOLOGIES FOR NURSING FACILITIES

PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.307, concerning Reimbursement Setting Methodology; and new §355.316, concerning Reimbursement Methodology for Pediatric Care Facilities.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with the 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 40), which requires HHSC to revise the reimbursement methodology for pediatric long-term care facilities to mirror that of Medicare reimbursement.

The proposal removes language related to the pediatric nursing facility rate methodology currently in §355.307(c)(1) – (c)(4) and moves it to new §355.316. The creation of new §355.316 improves clarity as it separates the pediatric care facility reimbursement methodology from the reimbursement methodology used for nursing facilities in general. The language in new §355.316 is updated to meet the requirements of the new reimbursement methodology.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.307 removes all language in subsection (c)(1) – (c)(4); this language is moved to new §355.316. The proposed amendment to §355.307 adds a sentence to subsection (c) in order to reference new §355.316.

Proposed new §355.316 contains the language removed from §355.307, which describes the reimbursement methodology for the pediatric care facility special reimbursement class of nursing facilities. Proposed new §355.316(a) provides the purpose of the section. New subsection (b) provides the definitions used in this section. New subsection (c) describes the payment rate determination process. New §355.316(c)(2) describes the payment rate methodology that is revised to comply with Rider 40 and is based upon the unadjusted federal per diem rate for rural Medicare skilled nursing facilities for the most recent federal fiscal year. Language removed from §355.307 that does not correspond with the revised payment rate methodology per Rider 40 is not included in proposed new §355.316. Language removed from §355.307 that reflects payment rate determination on an annual schedule is also not included in proposed new §355.316. Language removed from §355.307 and moved to proposed new §355.316 that contains the phrase “HHSC Rate Analysis” is replaced with “HHSC Provider Finance Department” to reflect the new name of the department. New subsection (d) describes the process of

disqualification from the pediatric care facility special reimbursement class. The proposal incorporates general clarifying edits into proposed new §355.316.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$686,497 in General Revenue (GR) (\$1,852,894 in All Funds (AF)) in state fiscal year (SFY) 2022; \$766,328 in GR (\$1,954,919 in AF) in SFY 2023; \$794,934 in GR (\$2,027,893 in AF) in SFY 2024; \$827,281 in GR (\$2,110,410 in AF) in SFY 2025; and \$862,921 in GR (\$2,201,330 in AF) in SFY 2026.

For each year of the first five years the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will not expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules

## LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

## PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be reimbursement rates that are calculated at higher levels than under the current reimbursement methodology, which will improve quality and access to care for medically fragile children in Texas. The public will benefit from higher reimbursement rates, contingent on legislative appropriations. Another anticipated public benefit is increased clarity of the pediatric care facility reimbursement methodology.

Victoria Grady has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because they implement changes to how HHSC calculates reimbursement for pediatric care facilities.

## 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 Texas Government Code §2007.043.

## PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to [PFD-LTSS@hhs.texas.gov](mailto:PFD-LTSS@hhs.texas.gov).

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. 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) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rules 21R136" in the subject line.

#### STATUTORY AUTHORITY

The amendment and new section are 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; and Texas Government Code §531.021(b-1), 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 and new section affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

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) 424-6637.

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 C        REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

§355.307. Reimbursement Setting Methodology.

(a) – (b) (No Change.)

(c) Special reimbursement class. HHSC may define special reimbursement classes, including experimental reimbursement classes of service to be used in research and demonstration projects on new reimbursement methods and reimbursement classes of service, to address the cost differences of a select group of recipients. Special classes may be implemented on a statewide basis, may be limited to a specific region of the state, or may be limited to a selected group of providers.

Reimbursement for the Pediatric Care Facility Class is calculated as specified in §355.316 of this subchapter (relating to Reimbursement Methodology for Pediatric Care Facilities).

~~[(1) Pediatric Care Facility Class. The purpose of this special class is to recognize, through the adoption of a facility-specific payment rate, the cost differences that exist in a nursing facility or distinct unit of a nursing facility that serves predominantly children.]~~

~~[(2) Definitions.]~~

~~[(A) Pediatric care facility—Except as provided for in subparagraph (C) of this paragraph, a pediatric care facility is an entire facility that has maintained an average daily census of 80% or more children for the six-month period prior to its entry into the pediatric care facility class based on the entire licensed facility. A pediatric care facility can also be a distinct unit of a facility that has maintained an average daily census of 85% or more children for the six-month period prior to its entry into the pediatric care facility class based on the distinct unit of the facility. To remain a pediatric care facility, the pediatric care facility must maintain an average daily census of 80% or more children if the pediatric care facility is an entire facility and 85% or more children if the pediatric care facility is a distinct unit of the facility. The contracted provider must request in writing by certified mail or by special mail delivery where the delivery can be verified to become a member of the pediatric care facility special reimbursement class. The request must be sent to the Texas Health and Human Services Commission.]~~

~~[(B) Distinct unit—A portion of a nursing facility that is physically separate from (beds are not commingled with) other units of the facility. The distinct unit can be an entire wing, a separate building, an entire floor, or an entire hallway. The distinct unit consists of all beds within the designated area. A distinct unit must~~

~~consist of 28 or more Medicaid contracted beds.]~~

~~[(C) Children—For the purposes of this pediatric care facility class, children are defined as being at or below 22 years of age.]~~

~~[(i) Only for a pediatric care facility that is designated in its entirety as a pediatric care facility, a limited number of adults who were admitted to the facility as children but who are no longer children (i.e., individuals who have "aged in place") may be counted as children for purposes of determining if the facility meets the requirements for remaining a pediatric care facility described in subparagraph (A) of this paragraph. The number of such individuals who may be counted as children for purposes of determining if the facility continues to meet the requirements for remaining a pediatric care facility is limited to 33% of the average daily census of the facility.]~~

~~[(ii) Individuals who have "aged in place" as described in clause (i) of this subparagraph may not be counted toward meeting the requirements for a facility to initially become a pediatric care facility nor can they be counted toward meeting the requirements for a distinct unit to remain a pediatric care facility.]~~

~~[(3) Payment rate determination. Payment rates will be determined in the following manner:]~~

~~[(A) Cost reports and payment rate determination for pediatric care facilities are governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process) except that payment rates are determined annually, coincident with the state's fiscal year, within available funds. A nursing facility that contains a pediatric care facility distinct unit must complete two cost reports: one report for the pediatric care facility distinct unit and one report for the remainder of the facility.]~~

~~[(B) Payment rates for this class of service will be determined on a facility-specific basis for the pediatric care facility. The total allowable costs from the most recent cost report deemed acceptable are adjusted for inflation from the cost report period to the rate period. The adjusted cost is divided by the greater of total patient days of service reported on the cost report or the days of service at 85% of contracted capacity of the pediatric care facility. The resulting cost per day is multiplied by a factor of 1.03 to determine the final facility specific rate. If no acceptable cost report is available, the provider will be required to submit a cost report covering the time period specified by HHSC.]~~

~~[(C) The facility specific payment rate from paragraph (3)(B) of this subsection will be paid for all Medicaid residents of a qualifying pediatric care facility regardless of the RUG level of the resident.]~~

~~[(D) Residents of the pediatric care facility will not be eligible to receive the ventilator dependent or the children with tracheostomies supplemental reimbursements.]~~

~~[(E) Pediatric care facilities are not eligible to participate in §355.308 of this~~

~~title (relating to Enhanced Direct Care Staff Rate).]~~

~~[(F) The facility's cost-based retrospective cost settlement will be determined annually. An annual settlement payment will only be made for fiscal years in which the average daily census for the facility in that year was less than the average daily census of the prior fiscal year, except that no settlement will be made for fiscal years in which the average daily census for the facility exceeded 85 percent or for fiscal years in which the facility's Medicaid revenues exceeded its Medicaid allowable costs.]~~

~~[(4) If HHSC determines that a pediatric care facility that is designated in its entirety as a pediatric care facility no longer qualifies as a member of such class according to paragraph (2) of this subsection, HHSC will notify the facility in writing.]~~

~~[(A) Within 30 calendar days of the date on the written notification, HHSC Rate Analysis must receive a written compliance plan from the facility as described in subparagraph (B) of this paragraph. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day receipt of the plan will be accepted.]~~

~~[(B) The compliance plan must indicate the facility's intent to, within 180 calendar days of the date of HHSC's initial written notification to the facility, come into compliance with paragraph (2) of this subsection by:]~~

~~[(i) Managing a sufficient number of admissions and discharges to come into compliance with the requirements of paragraphs (2)(A) and (2)(C) of this subsection to remain a member of the pediatric care facility special reimbursement class;]~~

~~[(ii) Creating a distinct unit of the facility as described under paragraph (2)(B) of this subsection; or]~~

~~[(iii) Withdrawing the entire facility from the pediatric care facility special class.]~~

~~[(C) HHSC will make a written determination regarding approval or disapproval of the compliance plan. A facility that submits a compliance plan that is subsequently disapproved will cease being reimbursed as a member of the pediatric facility special class on the first day of the month following HHSC's disapproval of the compliance plan.]~~

~~[(D) A compliance plan that is not received by the stated deadline will not be accepted, and the facility will be removed from the pediatric care facility special reimbursement class retroactive to the first day of the month following the date of HHSC's initial written notification to the facility.]~~

~~[(E) A facility that obtains approval of its compliance plan from HHSC Rate Analysis will continue to be reimbursed as a member of the pediatric care special class until 180 calendar days of the date of HHSC's initial written notification to the~~

facility. If by that time the facility has not achieved the stated goal of its compliance plan, the facility will be removed from the pediatric care special class effective the first day of the following month.]

~~[(F) If, at any time, HHSC determines that a facility that has come into compliance with paragraph (2) of this subsection by managing a sufficient number of admissions and discharges, as described in subparagraph (B)(i) of this paragraph, no longer qualifies as a member of such class, that facility will be excluded from the pediatric care special class for 365 days from the date HHSC makes its determination. The facility may apply to rejoin the class on the 366th day.]~~

~~[(G) A facility that is removed from or withdraws from the pediatric care special class will be considered a new facility, as described in §355.308(e) of this title for purposes of enrollment in the Nursing Facility Direct Care Staff Rate enhancement.]~~

~~[(H) A facility that is removed or withdraws from the pediatric care special class may not re-enter the class within one year of its removal or withdrawal.]~~

(d) - (f) (No Change.)

TITLE 1                   ADMINISTRATION  
PART 15                 TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 355         REIMBURSEMENT RATES  
SUBCHAPTER C        REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

§355.316. Reimbursement Methodology for Pediatric Care Facilities.

(a) Pediatric Care Facility Class. The purpose of this special class is to recognize, through the adoption of a special payment rate, the cost differences that exist in a pediatric nursing facility or distinct unit of a nursing facility that serves predominantly children.

(b) Definitions. The following terms, when used in this section, have the following meanings, unless otherwise stated.

(1) Children--For the purposes of this pediatric care facility class, children are defined as being at or below 22 years of age.

(A) Only a pediatric care facility that is designated in its entirety as a pediatric care facility may count as children a limited number of adults who were admitted to the facility as children, but who are no longer children (i.e., individuals who have "aged in place"), for purposes of determining if the facility meets the requirements for remaining a pediatric care facility described in paragraph (3) of this subsection. The number of such individuals who may be counted as children for purposes of determining if the facility continues to meet the requirements for remaining a pediatric care facility is limited to 33 percent of the average daily census of the facility.

(B) Individuals who have "aged in place" as described in subparagraph (A) of this paragraph may not be counted toward meeting the requirements for a facility to initially become a pediatric care facility, nor can they be counted toward meeting the requirements for a distinct unit to remain a pediatric care facility.

(2) Distinct unit--A portion of a nursing facility that is physically separate from, and beds are not commingled with, other units of the facility. The distinct unit can be an entire wing, a separate building, an entire floor, or an entire hallway. The distinct unit consists of all beds within the designated area. A distinct unit must consist of 28 or more Medicaid-contracted beds.

(3) Pediatric care facility--Except as provided in paragraph (1) of this subsection, a pediatric care facility is an entire facility that has maintained an average daily census of 80 percent or more children for the six-month period prior to its entry into the pediatric care facility class based on the entire licensed facility. A pediatric care facility can also be a distinct unit of a facility that has maintained an average daily census of 85 percent or more children for the six-month period prior to its entry into the pediatric care facility class based on the distinct unit of the facility. To remain a pediatric care facility, the pediatric care facility must maintain an average daily census of 80 percent or more children if the pediatric care facility is an entire facility, and 85 percent or more children if the pediatric care facility is a distinct unit of the facility. The contracted provider must request in writing by

certified mail or by special mail delivery where the delivery can be verified to become a member of the pediatric care facility special reimbursement class. The request must be sent to the Texas Health and Human Services Commission (HHSC) Provider Finance Department.

(c) Payment rate determination. Payment rates will be determined in the following manner.

(1) Cost reports for pediatric care facilities are governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process). A nursing facility that contains a pediatric care facility distinct unit must complete two cost reports: one report for the distinct pediatric care facility unit and one report for the remainder of the facility.

(2) The payment rate methodology for this class of service is based upon the unadjusted federal per diem rate for rural Medicare skilled nursing facilities for the most recent federal fiscal year as published in the Federal Register. Payment rates are based on available funds and are subject to legislative appropriations.

(3) The payment rate described in paragraph (2) of this subsection will be paid for all Medicaid residents of a qualifying pediatric care facility.

(4) A facility will not be eligible to receive the ventilator-dependent or the children-with-tracheostomies supplemental reimbursements.

(5) Pediatric care facilities are not eligible to participate in §355.308 of this subchapter (relating to Direct Care Staff Rate Component).

(d) Disqualification. If HHSC determines that a pediatric care facility that is designated in its entirety as a pediatric care facility no longer qualifies as a member of such class according to subsection (b) of this section, HHSC will notify the facility in writing.

(1) Within 30 calendar days of the date on the written notification, the HHSC Provider Finance Department must receive a written compliance plan from the facility as described in paragraph (2) of this subsection. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day receipt of the plan will be accepted.

(2) The compliance plan must indicate the facility's intent to, within 180 calendar days of the date of HHSC's initial written notification to the facility, come into compliance with subsection (b) of this section by:

(A) managing a sufficient number of admissions and discharges to come into compliance with the requirements of subsections (b)(1) and (b)(3) of this section to remain a member of the pediatric care facility special reimbursement class;

(B) creating a distinct unit of the facility as described under subsection (b)(2) of this section; or

(C) withdrawing the entire facility from the pediatric care facility special

class.

(3) HHSC will make a written determination regarding approval or disapproval of the compliance plan. A facility that submits a compliance plan that is subsequently disapproved will no longer be reimbursed as a member of the pediatric facility special class on the first day of the month following HHSC's disapproval of the compliance plan.

(4) A compliance plan that is received after the stated deadline will not be accepted, and the facility will be removed from the pediatric care facility special reimbursement class retroactive to the first day of the month following the date of HHSC's initial written notification to the facility.

(5) A facility that obtains approval of its compliance plan from the HHSC Provider Finance Department will continue to be reimbursed as a member of the pediatric care special class until 180 calendar days from the date of HHSC's initial written notification to the facility. If the facility has not achieved the stated goal of its compliance plan by that time, the facility will be removed from the pediatric care special class effective the first day of the following month.

(6) If, at any time, HHSC determines that a facility that has come into compliance with subsection (b) of this section by managing a sufficient number of admissions and discharges, as described in paragraph (2)(A) of this subsection, no longer qualifies as a member of the pediatric care facility special reimbursement class, that facility will be excluded from the class for 365 days from the date HHSC makes its determination. The facility may request to rejoin the class on the 366th day.

(7) A facility that is removed or withdraws from the pediatric care special reimbursement class will be considered a new facility, as described in §355.308(e) of this title, for purposes of enrollment in the Nursing Facility Direct Care Staff Rate Enhancement.

(8) A facility that is removed or withdraws from the pediatric care special class may not re-enter the class within one year of its removal or withdrawal.