



TO: Medical Care Advisory Committee
DATE: February 13, 2020
FROM: Jason Mendl, Deputy Director, Medicaid & CHIP Services, Financial Reporting & Audit Coordination

Frank Bryan, Senior Counsel,
HHSC-OIG Office of Chief Counsel

SUBJECT: Medicaid Managed Care Audit Coordination Rules

Agenda Item No.: 4

Amendments to: Texas Administrative Code Title 1, Part 15, Chapter 353, Subchapter A, §353.6, and Chapter 371, Subchapter B, §371.37

BACKGROUND: Other: External Request

Texas Government Code §533.015(b), as amended by Senate Bill (S.B.) 200 and S.B. 207, 84th Legislature, Regular Session, 2015 directed the HHSC Executive Commissioner to issue rules defining the coordination between HHSC and the HHSC-Office of Inspector General (HHSC-OIG) in conducting audits of managed care organizations (MCOs) participating in Medicaid.

To comply with Texas Government Code §533.015(b), HHSC adopted §353.6 and §371.37, effective July 14, 2016. These rules assign authority to the HHSC Executive Commissioner for establishing policy outlining the roles and responsibilities of divisions, departments, and offices of HHSC in performing audits of MCOs. The HHSC Medicaid and CHIP Services Department (MCSD), the HHS Internal Audit Division, and the HHSC-OIG are responsible for audits of MCOs and their subcontractors.

In 2017, the Sunset Advisory Commission reported to the 85th Legislature that HHSC and HHSC-OIG had defined their respective audit roles, jurisdiction, and frequency in the HHSC Circular C-054, but the details were not defined in rule, as required by S.B. 200 and 207. The Sunset Advisory Commission recommended that the policies be prescribed in rule.

The proposed amendment to §353.6 clarifies the roles and responsibilities of HHSC MCSD and HHS Internal Audit Division for coordinating between those two divisions of HHS, and for the coordination with HHSC-OIG, for the purpose of conducting audits of MCOs.

The proposed amendment to §371.37 describes in detail HHSC-OIG's roles and responsibilities in relation to HHSC MCSD, HHS Internal Audit Division, HHS System executive management and the HHSC Executive Commissioner, for the planning and performance of audits of MCOs.

ISSUES AND ALTERNATIVES:

Based on the opportunities provided for stakeholder feedback through the informal comment period, there are no major issues regarding these amendments. The rules provide greater transparency for stakeholders regarding the coordination of state agencies on audits of managed care organizations.

HHSC MCSD and HHSC-OIG will continue stakeholder outreach throughout the rulemaking process and will provide further clarifications to audit coordination processes and procedures as needed.

STAKEHOLDER INVOLVEMENT:

The proposed rule amendments were posted on the HHSC website August 21, 2019 through September 4, 2019 for informal stakeholder review. HHSC MCSD and HHSC-OIG received comments from one stakeholder, Texas Association of Health Plans, during the informal comment period. HHSC MCSD and HHSC-OIG staff reviewed and considered these comments.

In response to comments, one change was made to the rules and HHSC MCSD and HHSC-OIG are communicating directly with stakeholders to clarify any misunderstandings about the scope of these rules, which is limited to inter-agency coordination.

FISCAL IMPACT:

None

RULE DEVELOPMENT SCHEDULE:

January 2020	Publish proposed rules in <i>Texas Register</i>
February 13, 2020	Present to the Medical Care Advisory Committee
February 20, 2020	Present to HHSC Executive Council
May 2020	Publish adopted rules in <i>Texas Register</i>
May 2020	Effective date

REQUESTED ACTION:

The MCAC recommends approval of the proposed rules for publication.

TITLE 1	ADMINISTRATION
PART 15	TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 353	MEDICAID MANAGED CARE
SUBCHAPTER A	GENERAL PROVISIONS

PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §353.6, concerning Audit of Managed Care

Organizations.

BACKGROUND AND PURPOSE

Texas Government Code §533.015(b), as amended by Senate Bill (S.B.) 200 and S.B. 207, 84th Legislature, Regular Session, 2015 directed the HHSC Executive Commissioner to issue rules defining the coordination between HHSC and the HHSC-Office of Inspector General (HHSC-OIG) in conducting audits of managed care organizations (MCOs) participating in Medicaid.

To comply with Texas Government Code §533.015(b), HHSC adopted Texas Administrative Code Sections §353.6 and §371.37, effective July 14, 2016. These rules assign authority to the HHSC Executive Commissioner for establishing policy outlining the roles and responsibilities of divisions, departments, and offices of HHSC in performing audits of MCOs. The HHSC Medicaid and CHIP Services Division (MCSD), the Health and Human Services (HHS) Internal Audit Division, and the HHSC-OIG are responsible for audits of MCOs and their subcontractors.

In 2017, the Sunset Advisory Commission reported to the 85th Legislature that HHSC and HHSC-OIG had defined their respective audit roles, jurisdiction, and frequency in the HHSC Circular C-054, but the details were not defined in rule, as required by S.B. 200 and S.B. 207. The Sunset Advisory Commission recommended that the policies be prescribed in rule.

The proposed amendment to §353.6 is necessary to implement the Sunset Advisory Commission's recommendation by codifying in rule a more detailed description of the coordination that is required between various divisions of HHSC and HHSC-OIG in planning and conducting audits of MCOs. An amendment to §371.37 is also proposed elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §353.6(a) clarifies that HHSC, through MCSD, HHSC-OIG, and the HHS Internal Audit Division, is responsible for audits of MCOs and their subcontractors.

Proposed amendment to §353.6(b) defines MCO to include any entity with which an MCO contracts.

Proposed amendment to §353.6(c) adds audits of agreed upon procedures and clarifies that HHSC audits allow for effective oversight.

Proposed new §353.6(d) replaces existing language to list MCSD's roles and responsibilities for audits of MCOs, which include determining, through coordination with HHSC-OIG, which audits to assign to contracted audit firms to reduce or eliminate duplicative audits; coordinating with HHS Internal Audit to obtain

authority to procure audit services; facilitating and determining the scope of work for contracted audit firms; providing final reports of contracted audit firms to HHSC-OIG; providing deliverables for contracted audit engagements to the State Auditor's Office (SAO); and ensuring implementation of audit action plans.

Proposed new §353.6(e) adds a reference to the rule regarding HHSC-OIG's roles and responsibilities.

Proposed new §353.6(f) outlines HHS Internal Audit Division's roles and responsibilities for audits of MCOs, which include auditing the MCSD and HHSC-OIG as part of established authority; notifying and conferring with MCSD and HHSC-OIG before initiating an audit; coordinating with MCSD when audit services need to be procured to ensure HHSC obtains proper authority for procurement; and coordinating with MCSD to ensure appropriate documents for contracted audit services are shared with the SAO.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner-Financial Services Division, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Liz Prado has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities related to the rule as proposed. This rule does not apply to small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, Associate Commissioner for Medicaid and CHIP Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be greater transparency for stakeholders regarding the coordination of state agencies on audits of managed care organizations.

Liz Prado has also determined that for the first five years the rule is in effect, there is no anticipated economic costs to persons who are required to comply with the proposed rule. This rule relates to the coordination of state agencies and does not relate to the compliance of parties outside of HHSC and HHSC-OIG.

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 Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@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*. 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) e-mailed 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 e-mailing comments, please indicate "Comments on Proposed Rule 18R019" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which

provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; §533.015, which requires the executive commissioner, after consulting with the commission's office of inspector general, to adopt rules defining the coordination between HHSC and HHSC-OIG in the performance of audits of MCOs; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

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) 491-4096.

TITLE 1	ADMINISTRATION
PART 15	TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 371	MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY
SUBCHAPTER B	OFFICE OF INSPECTOR GENERAL

PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §371.37, concerning Audit of Managed Care Organizations.

BACKGROUND AND PURPOSE

Texas Government Code §533.015(b), as amended by Senate Bill (S.B.) 200 and S.B. 207, 84th Legislature, Regular Session, 2015, directed the HHSC Executive Commissioner to issue rules defining the coordination between HHSC and HHSC-Office of Inspector General (HHSC-OIG) in conducting audits of managed care organizations (MCOs) participating in Medicaid.

To comply with Texas Government Code §533.015(b), HHSC adopted §353.6 and §371.37, effective July 14, 2016. These rules assign authority to the HHSC Executive Commissioner for establishing policy outlining the roles and responsibilities of divisions, departments, and offices of HHSC in performing audits of MCOs. The HHSC Medicaid and CHIP Services Division (MCSD), the Health and Human Services (HHS) Internal Audit Division, and the HHSC-OIG are responsible for audits of MCOs and their subcontractors.

In 2017, the Sunset Advisory Commission reported to the 85th Legislature that HHSC and HHSC-OIG had defined their respective audit roles, jurisdiction, and frequency in the HHSC Circular C-054, but the details were not defined in rule, as

required by S.B. 200 and S.B. 207. The Sunset Advisory Commission recommended that the policies be prescribed in rule.

The proposed amendment to §371.37 is necessary to implement the Sunset Advisory Commission's recommendation by codifying in rule a more detailed description of the coordination between HHSC and HHSC-OIG in planning and conducting audits of MCOs. An amendment to §353.6 is also proposed elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §371.37(a) adopts language from Texas Government Code §§531.102(a-5) and (a-6) that require HHSC-OIG audits to be conducted independent of HHSC, but through coordination with HHSC.

Proposed amendment to §371.37(b) defines MCO to include any entity with which an MCO contracts.

Proposed new §371.37(c) replaces existing language to list HHSC-OIG's roles and responsibilities for audits of MCOs, which include coordinating with HHSC in the development of audit plans; considering input from HHSC on audit topics, knowledge about the managed care program, previous HHSC audit findings; considering HHSC comments regarding HHSC-OIG's draft annual audit plan and proposed audit report recommendations; and responding to comments from HHSC on the draft audit plan and preliminary audit results.

Proposed amendment to §371.37(d) clarifies that HHSC-OIG may conduct unplanned audits of MCOs based on allegations of fraud, waste or abuse. Such unplanned audits are outside of the usual audit planning process and HHSC-OIG may, after sharing findings with HHSC MCSD, issue audit reports directly to MCOs. Additionally, unplanned audits of persons or entities, other than MCOs, based on allegations of fraud, waste or abuse are also outside of the usual audit planning process.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner-Financial Services Division, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;

- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rules;
- (7) the proposed rule will not change the number of individuals subject to the rule;
- and
- (8) the proposed rule will not affect the state's economy.

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

Liz Prado has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities related to the rule as proposed. This rule does not apply to small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, Associate Commissioner for Medicaid and CHIP Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be greater transparency for stakeholders regarding the coordination of state agencies on audits of managed care organizations.

Liz Prado has also determined that for the first five years the rule is in effect, there is no anticipated economic costs to persons who are required to comply with the proposed rule. This rule relates to the coordination of state agencies and does not relate to the compliance of parties outside of HHSC and HHSC-OIG.

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 HHS Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 11501 Burnet Road, Building 902, Austin, Texas 78758; or by email to IG_Rules_Comments_Inbox@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*. 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) e-mailed 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 e-mailing comments, please indicate "Comments on Proposed Rule 18R019" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies;

§531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; §533.015, which requires the executive commissioner, after consulting with the commission's office of inspector general, to adopt rules defining the coordination between HHSC and HHSC-OIG in the performance of audits of MCOs; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

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) 491-4058.

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 353 MEDICAID MANAGED CARE
SUBCHAPTER A GENERAL PROVISIONS

§353.6. Audit of Managed Care Organizations.

(a) The Health and Human Services Commission (HHSC), through the Medicaid and CHIP Services Division, the Office of Inspector General (OIG), and Health and Human Services (HHS) Internal Audit Division, is responsible for audits of ~~[participating]~~ MCOs and their subcontractors.

(b) For purposes of this rule, "MCO" includes any entity with which an MCO contracts ~~[the term "participating MCO" includes MCO subcontractors]~~.

(c) HHSC conducts audits of ~~[participating]~~ MCOs, including financial audits, performance audits, ~~[and]~~ compliance audits, and agreed upon procedures:

(1) with the scope and frequency necessary to provide information to allow for ~~[ensure]~~ the effective oversight ~~[management]~~ and control of the MCOs; and

(2) as necessary to comply with all federal and state laws.

(d) Medicaid and CHIP Services Division's roles and responsibilities for audits of MCOs, include:

(1) determining, based on coordination with OIG about MCO audits, which audits to assign to contracted audit firms in order to eliminate duplication of audit effort and reduce the impact of potentially duplicative audits on the MCOs;

(2) coordinating with HHS Internal Audit Division to obtain delegated authority, from the State Auditor's Office (SAO), to procure audit services as required by Texas Government Code §321.020.

(3) facilitating and determining the extent of work to be performed in agreed upon procedures and audits of MCOs, through the use of contracted audit firms as part of the integrated business processes used to oversee and monitor MCOs;

(4) providing final reports of agreed upon procedures and audits to OIG, along with other information relevant to quantifying MCO performance under the contract with HHSC, including results of on-site monitoring visits, and other relevant MCO-related performance information;

(5) providing all deliverables, such as contracts, contract amendments, and audit reports, for contracted audit related engagements to HHS Internal Audit Division for delivery to the SAO; and

(6) ensuring actions planned to address audit recommendations are implemented, including actions planned by the Medicaid and CHIP Services Division or by an MCO.

[(d) The HHSC Executive Commissioner establishes policy outlining the roles and responsibilities of the divisions and offices of HHSC, including the Internal Audit Division, the Office of Inspector General, and the Medicaid/CHIP Division, in performing audits of participating MCOs.]

(e) The OIG's roles and responsibilities, related to performing audits of MCOs, are as outlined in §371.37 of this title (relating to Audit of Managed Care Organizations).

(f) HHS Internal Audit Division's roles and responsibilities, related to audits of MCOs, are:

(1) auditing the Medicaid and CHIP Services Division and OIG, as part of its established audit authority and risk-based audit coverage, including auditing the effectiveness of coordination between the Medicaid and CHIP Services Division and OIG on the performance of MCO audits;

(2) notifying and conferring with the Medicaid and CHIP Services Division and OIG before initiating an audit of an MCO contained in the audit plan approved by the HHS Executive Commissioner;

(3) coordinating with Medicaid and CHIP Services Division when audit services need to be procured to ensure HHSC obtains the appropriate authority to procure audit services from the SAO; and

(4) coordinating with Medicaid and CHIP Services Division to ensure that all appropriate documents related to contracted audit services are obtained and provided to the SAO. These documents include executed contracts, contract amendments, and audit reports.

(7) submitting to the HHS Executive Commissioner, at least annually, a draft audit plan identifying the OIG's planned audits of MCOs;

(8) considering and responding to any comments, or alternative or additional audit topics, submitted to the OIG by the HHS Executive Commissioner, or the HHS Executive Commissioner's designee, on the OIG's draft audit plan before finalizing the annual audit plan;

(9) consulting with MCSD management, consulting with subject matter experts, and, when necessary, obtaining specialized training, to ensure the OIG has sufficient knowledge and understanding of managed care-related policies and contract requirements to effectively conduct audits of MCOs;

(10) communicating preliminary results of MCO audits to MCSD for review and comment;

(11) considering MCSD comments before finalizing MCO audit report recommendations; and

(12) sharing proposed audit findings with MCSD before issuing a final report to an MCO or to MCSD.

~~[(c) To facilitate coordination between the OIG and HHSC, the OIG annually develops and submits to HHSC's Executive Commissioner a draft audit plan identifying the OIG's planned audits of MCOs. The OIG considers input from HHSC, and previous audits and review findings of MCOs by HHSC, before finalizing the annual audit plan.]~~

(d) Notwithstanding subsections (a), (b), and (c) of this section, the OIG may conduct unplanned [investigate, including by means of regular] audits of [7] allegations of suspected fraud, waste, or abuse by MCOs. Such unplanned audits need not be part of any OIG audit plan or part of the usual processes described in this section and the OIG may, after sharing proposed audit findings with MCSD, issue audit reports directly to MCOs.