



TO: Medical Care Advisory Committee
DATE: August 11, 2022
FROM: Leslie Smart
Director, Medical and Dental Benefits

SUBJECT: School Health and Related Services (SHARS) 504 Audiology Services and Parental Consent

Agenda Item No.:

Amendments to: 1 TAC Chapter 354, Subchapter A, Division 25, §354.1341, Benefits and Limitations; and §354.1342, Conditions for Participation

BACKGROUND: ☐ Federal Requirement ☒ Legislative Requirement ☐ Other:
(e.g., Program Initiative)

The School Health and Related Services (SHARS) program is jointly administered by HHSC and the Texas Education Agency (TEA). The SHARS program allows independent school districts and public charter schools to obtain Medicaid reimbursement for the provision of certain direct medical and transportation services to Medicaid enrolled students who receive benefits to meet federal and state laws guaranteeing the students a free and appropriate public education. Currently SHARS must be prescribed in a student's individualized education program (IEP) as required by the Texas Education Code, §29.001(7), and implemented through Commissioner of Education rule at Title 19 Texas Administrative Code (TAC) §89.1001.

The proposed rule amendment to §354.1341 adds text to align with the implementation of House Bill (H.B.) 706, 86th Legislature, Regular Session, 2019. H.B. 706 amended the Texas Education Code to permit SHARS providers to bill and receive reimbursement for allowable audiology services provided to Medicaid-eligible children as prescribed in a plan created under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). H.B. 706 requires HHSC to adopt rules necessary to implement Texas Education Code Section 38.033 (redesignated as Section 38.034 by H.B. 3607, 87th Legislature, Regular Session, 2021) in consultation with the Texas Education Association and as approved by the Centers for Medicare and Medicaid Services.

The proposed amendment to §354.1342 implements H.B. 2658, 87th Legislature, Regular Session, 2021, effective September 1, 2021. H.B. 2658 added Human Resources Code §32.0317. The proposed amendment will restate and clarify the federal requirement to obtain parental consent to access a student's Medicaid in order to receive Medicaid reimbursement for all SHARS services.

HHSC is also proposing language to align these rules with 1 TAC §355.8443, concerning Reimbursement Methodology for School Health and Related Services (SHARS), and other clarifying language.

ISSUES AND ALTERNATIVES:

MSB School Services, LLC and 28 Local Education Agencies in Texas expressed concern about HHSC's codification of parental consent requirements and requested a public hearing.

HHSC is unable to consider an alternative because the parental consent requirements included in these rules are outlined in federal regulations at 34 CFR §300.154.

STAKEHOLDER INVOLVEMENT:

To help expedite the effective date of the proposed rules, HHSC did not post the draft rules on its website for an informal stakeholder comment period and published the proposed rules in the *Texas Register* before presenting the rules to the Medical Care Advisory Committee and to the HHSC Executive Council.

HHSC will consider any comments received during the August 11, 2022, Medical Care Advisory Committee, and the August 18, 2022, HHSC Executive Council meetings.

HHSC will also consider any comments submitted during the public comment period after the proposed rules are published in the *Texas Register* and during the public hearing that will be held during the public comment period. In addition, HHSC consulted with TEA on the rule changes for H.B. 706 and H.B. 2658, and TEA provided feedback.

FISCAL IMPACT:

☒ None

There is no fiscal impact to state government for adopting or implementing these rules, as the non-federal portion of SHARS is provided by the Local Education Agencies.

RULE DEVELOPMENT SCHEDULE:

August 2022	Publish proposed rules in <i>Texas Register</i>
August 11, 2022	Present to the Medical Care Advisory Committee
August 18, 2022	Present to HHSC Executive Council
November 2022	Publish adopted rules in <i>Texas Register</i>
November 2022	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 354	MEDICAID HEALTH SERVICES
SUBCHAPTER A	PURCHASED HEALTH SERVICES
DIVISION 25	SCHOOL HEALTH AND RELATED SERVICES

PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1341, concerning Benefits and Limitations; and §354.1342, concerning Conditions for Participation.

BACKGROUND AND PURPOSE

The School Health and Related Services (SHARS) program is jointly administered by HHSC and the Texas Education Agency (TEA). The SHARS program allows independent school districts and public charter schools to obtain Medicaid reimbursement for the provision of certain direct medical and transportation services to Medicaid enrolled students who receive benefits to meet federal and state laws guaranteeing the students a free and appropriate public education. Currently SHARS must be prescribed in a student's individualized education program (IEP) as required by the Texas Education Code, §29.001(7), and implemented through Commissioner of Education rule at Title 19 Texas Administrative Code (TAC) §89.1001.

The proposed rule amendment to §354.1341 adds text to align with the implementation of House Bill (H.B.) 706, 86th Legislature, Regular Session, 2019. H.B. 706 amended the Texas Education Code to permit SHARS providers to bill and receive reimbursement for allowable audiology services provided to Medicaid-eligible children as prescribed in a plan created under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). H.B. 706 requires HHSC to adopt rules necessary to implement Texas Education Code Section 38.033 (redesignated as Section 38.034 by H.B. 3607, 87th Legislature, Regular Session, 2021) in consultation with the Texas Education Association and as approved by the Centers for Medicare and Medicaid Services.

The proposed amendment to §354.1342 implements H.B. 2658, 87th Legislature, Regular Session, 2021, effective September 1, 2021. H.B. 2658 added Human Resources Code §32.0317. The proposed amendment will restate and clarify the federal requirement to obtain parental consent to access a student's Medicaid in order to receive Medicaid reimbursement for all SHARS services.

HHSC is also proposing language to align these rules with 1 TAC §355.8443, concerning Reimbursement Methodology for School Health and Related Services (SHARS), and other clarifying language.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.1341 adds subsection (c) to require SHARS audiology services to be prescribed either in an IEP or in a written Section 504 Plan. The proposed amendment reformats the rule because of the addition of new subsection (c) and makes minor editorial changes.

The proposed amendment to §354.1342 adds a reference to §354.1341 and adds language in paragraphs (1)(B) and (C) to permit school districts to claim for SHARS audiology services prescribed in either an IEP or Section 504 Plan, as required by proposed §354.1341(c). The proposed amendment replaces "school district" with "Local Education Agency (LEA)" to align with 1 TAC §355.8443.

The proposed amendment to §354.1342 also combines current paragraphs (3) and (4) into paragraph (3) and clarifies that LEAs must abide by the rules and regulations of both HHSC and TEA. The proposed amendment adds new paragraph (4) outlining training requirements for LEAs. The proposed amendment moves the requirement to comply with all applicable federal, state, and local laws and regulations regarding the services provided from paragraph (5) to new paragraph (12) and replaces the language in paragraph (5) with the requirement to comply with federal parental consent and notification requirements for accessing a student's Medicaid to pay for SHARS.

The proposed amendment to §354.1342 also reformats the rule as necessary and makes minor editorial changes.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, 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 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 require an increase in fees paid to HHSC;
- (5) the proposed rules will not create a new rule;

- (6) the proposed rules will expand the existing rules;
- (7) the proposed rules will not increase the number of individuals subject to the rules; and
- (8) the proposed rules will not affect 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 to comply with the proposed rules because participation in the program is optional and is only offered within the school setting.

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 that LEAs will now be able to obtain reimbursement through the SHARS program for audiology services delivered to students under a Section 504 Plan. LEAs will receive some federal funds for those services which will save them money. Audiology services are already being provided to students under Section 504 Plans in the school setting, but the services are not reimbursable through the SHARS program.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because participation in the SHARS program is optional.

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 HEARING

A public hearing is scheduled for August 22, 2022 at 1:00 p.m. and will be held by HHSC via webinar. Persons who wish to attend may register by using this link: <https://attendee.gotowebinar.com/register/6571640685000375054>. American Sign Language (ASL) interpretation will be provided. Persons requiring further information, special assistance, or accommodations aside from ASL interpretation should contact the Medical and Dental Benefits Policy box at MedicaidBenefitRequest@hhsc.state.tx.us or Jennifer Daniels at (512) 438-2935.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to SHARS staff in HHSC's Medicaid and CHIP Services Department at (512) 438-2935.

Written comments on the proposal may be submitted to Office of Policy, Medicaid and CHIP Services at 701 West 51st Street, Mail Code H310, Austin, TX 78751 or via email at MedicaidBenefitRequest@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) emailed before midnight on the last day of the comment period. If the 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 Rule 22R093" in the subject line.

STATUTORY AUTHORITY

The amendments are 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; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendments are specifically authorized by Texas Education Code §38.034 and Human Resources Code §32.0317.

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) 438-2935.

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 354	MEDICAID HEALTH SERVICES
SUBCHAPTER A	PURCHASED HEALTH SERVICES
DIVISION 25	SCHOOL HEALTH AND RELATED SERVICES

§354.1341. Benefits and Limitations.

(a) Subject to the specifications, conditions, limitations, and requirements established by HHSC ~~[the Texas Health and Human Service Commission- (Commission)]~~, school health and related services (SHARS) are those Medicaid ~~[health and related]~~ services that are determined to be medically necessary and reasonable to ensure a Medicaid-enrolled student, 20 years of age or younger with a disability, ~~[20 years of age or younger]~~ receives the benefits accorded to the student ~~[him or her]~~ by federal and state legislation guaranteeing a free and appropriate public education.

(b) SHARS must be prescribed in the student's approved individualized ~~[individual]~~ education program (IEP) as required by the Texas Education Code, §29.001(7), and implemented through Commissioner of Education rule at 19 TAC §89.1001 (relating to the Scope and Availability).

(c) SHARS audiology services must be prescribed in an IEP as described in subsection (b) of this section or in a written Section 504 Plan as required by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).

(d) ~~[(c)]~~ SHARS must ~~[are to]~~ be delivered in the least restrictive environment consistent with the nature of the specific service(s) and the physical and mental condition of the student.

(e) ~~[(d)]~~ SHARS may ~~[may]~~ include~~[, but are not necessarily limited to]~~:

(1) audiology, individual and group delivered by licensed/certified therapist or licensed/certified assistant;

(2) counseling, individual and group delivered by licensed/certified therapist;

(3) physician services;

(4) occupational therapy, individual and group delivered by licensed/certified therapist or licensed/certified assistant;

(5) physical therapy, individual and group delivered by licensed/certified therapist or licensed/certified assistant;

(6) psychological services;

(7) speech therapy, individual and group delivered by licensed/certified therapist or licensed/certified assistant;

(8) nursing services, including medication administration and nursing services delegated by a registered nurse (RN) (in compliance with RN delegated nursing tasks criteria as determined by the Texas Board of Nursing) to an employee or health aide;

(9) special transportation services; and

(10) personal care services.

§354.1342. Conditions for Participation.

To claim for school health and related services (SHARS) as described in §354.1341 of this division (relating to Benefits and Limitations), Local Education Agencies (LEAs) ~~[provided to Medicaid-enrolled students eligible for services provided under the Individuals with Disabilities Education Act (IDEA), school districts]~~ must:

(1) ensure that services are provided in a manner and environment consistent with:

(A) the student's physical and mental condition;

(B) the overall goals and objectives of the student's individualized ~~[individual]~~ education program (IEP) or Section 504 Plan; and

(C) other services and schedules prescribed in the student's IEP or Section 504 Plan;

(2) ensure that services are provided by persons licensed, accredited, or certified by the appropriate federal or state agency or recognized professional organization to deliver the specific service(s);

~~[(3) meet Texas Education Agency (TEA) standards for the delivery of SHARS;]~~

(3) [(4)] abide by the rules and regulations of the Texas Education Agency and HHSC [TEA] related to service delivery, record-keeping, documentation, client confidentiality, and access to client records by other professionals involved in the implementation of the student's IEP or Section 504 Plan;

(4) ensure that applicable staff complete SHARS trainings as directed by HHSC;

(A) Time study and SHARS programmatic training are required for LEA administrative staff and recommended for direct service staff in their first year of participation;

(B) SHARS cost report training is required by each primary SHARS financial contact;

(C) Required training(s) must be completed each federal fiscal year and is not retroactive to previous federal fiscal years;

(5) comply with parental consent and notification requirements in 34 CFR §300.154 before accessing a student's Medicaid to pay for SHARS prescribed in the student's Section 504 Plan or IEP;

~~[(5) comply with all applicable federal, state, and local laws and regulations regarding the services provided;]~~

(6) be enrolled and approved for participation in the Texas Medical Assistance Program (Medicaid);

(7) sign a written ~~[provider]~~ agreement with HHSC ~~[the Texas Health and Human Services Commission (the Commission)]~~ or its designee agreeing to comply with the terms of the agreement and all requirements of Medicaid, including regulations, rules, handbooks, standards, and guidelines published by HHSC ~~[the Commission]~~ or its designee;

(8) comply with §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS));

~~[(8) bill for services reimbursable by Medicaid in the manner and format prescribed by the Commission or its designee, at the time services are delivered, including billing for each cost category for which the district will seek reimbursement through the annual cost report required by paragraph (11) of this section;]~~

(9) participate in the HHSC-administered ~~[Commission-administered]~~ time study;

(10) certify each quarter the Total Computable Expenditure (Total Computable Expenditure = amount paid (Federal share) + calculated State/Local share); ~~[and]~~

(11) submit an annual cost report, as described in §355.8443 of this title; and ~~[(relating to Reimbursement Methodology for School Health and Related Services (SHARS)).]~~

(12) comply with all applicable federal, state, and local laws and regulations regarding the services provided.