



Date: November 30, 2023

To: Nursing Facility Providers

Subject: Information Letter No. 2023-43
State Fiscal Year 2024 Nursing Facility Direct Care
Spending Requirements

The Texas Health and Human Services Commission (HHSC) announces the adoption of Title 1 of the Texas Administrative Code (1 TAC) Section 355.304, concerning the Direct Care Staff Spending Requirement on or after September 1, 2023, and an amendment to Section 355.308, concerning Direct Care Staff Rate Component.

1 TAC Section 355.304 implements the 2024-25 General Appropriations Act (GAA), House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, Health and Human Services Commission, Rider 24). Rider 24 provides appropriations for rate increases for nursing facilities. Nursing facilities must report information to HHSC "regarding the use of these funds, as specified by HHSC, including information related to efforts to improve or maintain client care and quality of services, and to demonstrate that at least 90 percent of the funds were expended for the purpose of direct care staff wages or benefits." 1 TAC Section 355.304 operationalizes the rider requirements to enable nursing facilities to receive increased reimbursement rates.

High-Level Summary

- HHSC adopted Direct Care Staff Base Rate Increase Effective September 1, 2023 (See "Direct Care Staff Base Rate Increase, Effective September 1, 2023" section below for more information).
- All Nursing Facility providers are required to demonstrate that at least 90 percent of the funds from the increased reimbursement rates effective September 1, 2023 were expended for the purpose of direct care staff wages and benefits. (See "Direct Care Staff Spending Requirement" section below for more information).

- All nursing facility providers' compliance with the direct care spending requirements that began on September 1, 2023 will be determined based on the 2023 Nursing Facility accountability report or the 2024 Nursing Facility cost report. The report that will be required from a nursing facility is dependent on the nursing facility provider's cost report time-period. (See "Direct Care Staff Spending Requirement" section below for more information)
- For nursing facility providers participating in the direct care staff enhancement program, the spending requirement in the direct care staff enhancement program changed from 85 percent to 70 percent of direct care revenues. HHSC adopted this amendment to align spending requirements related to the direct care rate increases effective September 1, 2023. (See "Direct Care Staff Enhancement Program" section below for more information).

Direct Care Staff Base Rate Increase, Effective September 1, 2023

HHSC adopted increases to the direct care staff base rate for nursing facility services for each Resource Utilization Group (RUG), Version III (RUG-III) case-mix group by an 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. Adopted rates are effective September 1, 2023. Adopted payment rate information is available on the [HHSC Provider Finance Department website](#).

Direct Care Staff Spending Requirement

1 TAC section 355.304(e) establishes spending requirements for all nursing facilities receiving increased reimbursement rates effective September 1, 2023. To assist providers in understanding these requirements, HHSC has published worksheets on the [HHSC Provider Finance Department website](#) which allow providers to enter revenue and expenses information during the rate year to ensure they are meeting spending requirements.

A description of the spending requirements under 1 TAC 355.304(e) is below:

Direct Care Staff Base Rate Floor Spending Requirements

In accordance with 1 TAC section 355.304(e)(1-2), "HHSC will calculate a direct care staff base rate spending floor by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues proportional to the direct care base rates effective on August 31, 2023 by 0.70, for each provider. Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the base rate spending floor." An example of the direct care staff base rate spending floor is provided below.

Figure 1. An example of the Direct Care Staff Base Rate Spending Floor.

	Period 1 (01/01 - 08/31)		Period 2 (09/01 - 12/31)		
Total Units of Service	10,781	+	1,345	=	12,126
Medicaid Units of Service Only	10,781	+	1,345	=	12,126
Total Direct Care Expenses					1,326,840

Direct Care Staff Base Rate Spending Floor	Period 1 (01/01 - 08/31)		Period 2 (09/01 - 12/31)		Spending Requirement
8/31/2023 Direct Care Rate Revenue	\$ 1,031,880	+	128,394	=	\$ 1,160,274
				x	70% =
					\$ 812,192
Did the Facility Meet the Direct Care Staff Base Rate Requirement?	Met				

The direct care base rate revenue spending requirement is calculated by multiplying the resident days provided during the cost reporting period by the payment rates effective 8/31/23.
 The spending requirement is 70% of the total base rate direct care revenue for the cost reporting period. This calculation applies to Medicaid resident days only.
 The facility meets the requirement if total direct care expenditures are greater than 70% of the direct care base rate revenue associated with the direct care rates effective 8/31/23.

In this example, the direct care base rate spending floor is calculated for the entire cost reporting period (in this case, January 1 through December 31). The nursing facility provider delivered a total of 12,126 Medicaid days during the reporting period for a total direct care base rate revenue of \$1,160,274. The provider met their base rate spending requirement because the facility's direct care staff expenses of \$1,326,840 are greater than seventy percent of their direct care staff revenue of \$812,192.

If the base rate spending floor is less than the accrued allowable Medicaid direct care staff expenses, HHSC will notify the provider that they failed to meet the direct care base rate spending floor through the State of Texas Automated Information and Reporting System (STAIRS). There will be no recoupment associated with a provider's failure to meet the direct care base rate spending floor.

Direct Care Spending Floor Spending Requirements

In accordance with 1 TAC Section 355.304(e)(3), "HHSC will calculate the direct care spending floor by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues proportional to the direct care staff rate increases" effective on September 1, 2023 by 0.90, plus the direct care staff base rate spending floor defined above as by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues proportional to the direct care base rates effective on August 31, 2023 by 0.70, for each provider. An example of the direct care spending floor is provided below.

Figure 2. An example of the Direct Care Spending Floor.

Direct Care Spending Floor	Period 1 (01/01 - 08/31)	Period 2 (09/01 - 12/31)		
9/1/2023 Direct Care Rate Revenue	\$ 1,256,566	156,471	=	\$ 1,413,037
Difference of 9/1/23 Direct Care Revenue and 8/31/23 Direct Care Revenue	\$ 224,687	\$ 28,076	=	\$ 252,763
			×	90% = \$ 227,487
	Direct Care Base Rate Spending Floor	9/1/23 Increase Spending Requirement	=	Direct Care Spending Floor
	\$ 812,192	\$ 227,487	=	\$ 1,039,678
Did the Facility Meet the Direct Care Staff Spending Floor Requirement?	Met			

The direct care rate increase revenue is calculated by the difference between direct care rates effective on 9/1/23 and the direct care rates effective on 8/31/23 multiplied by the total resident days during the reporting period.
The Direct Care Increase Spending Requirement is 70% of the direct care revenue associated with the direct care rates effective 8/31/23 (base rate spending floor) plus 90% of the direct care rate increase revenue effective 9/1/23.
The Direct Care Spending floor is the base rate spending floor plus the 9/1/23 rate increase spending requirement.
The facility meets the requirement if total direct care expenditures are greater than 70% of the direct care base rate revenue associated with the direct care rates effective 8/31/23 plus 90% of revenue associated with the rate increases effective on 9/1/23.
The 9/1/23 rate increase revenue is expressed as the difference between the 9/1/23 direct care rates and the 8/31/23 direct care rates. This calculation applies to Medicaid resident days only.

In this example, the nursing facility delivered a total revenue associated with the September 1, 2023 rate increase of \$1,413,037. The direct care spending floor is August 31, 2023 (or the base rate spending floor discussed above), plus 90 percent of the rate increases effective September 1, 2023. The calculation shows the revenue associated with the September 1, 2023 rate increases as the difference between the September 1, 2023 rates and the August 31, 2023 rates, multiplied by the facility's Medicaid resident days. The nursing facility provider would meet the direct care spending requirement because the expenses of \$1,326,840 (identified in Figure 1) are greater than the direct care staff spending floor of \$1,039,678.

Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the total direct care staff spending floor. If the direct care spending floor is less than the accrued allowable Medicaid direct care staff expenses, HHSC 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. At no time will a provider's direct care rates after recoupment be less than the direct care base rates in effect before the direct care staff base rate increase is established under this section.

Depending on the nursing facility provider's cost report time-period, HHSC will be relying on the 2023 accountability report or the 2024 cost report to collect data to support determining provider compliance with the direct care spending requirements that began on September 1, 2023. Units of service will be broken out by rate period on any report that includes a time period before September 1, 2023, so HHSC can calculate appropriate weighted average Medicaid revenue associated with the rates in effect at the time costs were incurred for the reporting period. Spending requirements associated with the direct care rate increases effective September 1, 2023, and the direct care staff enhancement program will be determined by comparing the applicable Medicaid revenue to average costs across the entire reporting period to ensure compliance.

Please also note, in accordance with 1 TAC Section 355.105, "(1) Accounting methods. All financial and statistical information submitted on cost reports must be based upon the accrual method of accounting, except where otherwise specified in §355.102 and §355.103 of this subchapter (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs) and in the case of governmental entities operating on a cash or modified accrual basis. For cost-reporting purposes, accrued expenses must be incurred during the cost-reporting period and must be paid within 180 days after the end of that cost-reporting period."

Aggregation

In accordance with 1 TAC Section 355.304(j), "compliance with the spending requirements...can be determined in the aggregate for all nursing facility contracts controlled by the entity, commonly owned corporations, or combined entity..." Aggregation is applied to facilities within cost report groups or common entities based on common ownership as designated on the [HHSC Form 2031](#).

Direct Care Staff Reporting Requirements

In accordance with 1 TAC Section 355.304(f), providers receiving the direct care rate increases effective September 1, 2023 "must report their direct care revenues and spending to HHSC..." HHSC will use cost reports or staffing and compensation reports (accountability reports) requested to comply with the direct care staff enhancement program if applicable.

For all nursing facility providers, HHSC collects a biennial cost report for expenses incurred during even-numbered years. Nursing facility providers participating in the direct care staff enhancement program are required to submit the 2023 accountability report, due on April 30, 2024. HHSC currently uses this report to hold providers accountable for spending requirements associated with the direct care staff enhancement program during non-cost reporting years. Participating providers will also be required to submit their regular biennial 2024 cost report, due on April 30, 2025. Attachment 1 details the reports HHSC will collect and use for determining the direct care spending requirements for providers participating in the direct care staff enhancement program in fiscal years 2023 and 2024.

Depending on the nursing facility provider's cost report time-period, HHSC will require nursing facility providers who do not participate in the direct care staff enhancement program to submit a special accountability report for expenses incurred between September 1, 2023, and the start of their 2024 cost reporting period to comply with direct care spending requirements. Attachment 2 details the reports HHSC will collect and use for determining compliance for providers who are not participating in the direct care staff enhancement program.

Direct Care Staff Enhancement Program

HHSC adopted an amendment to 1 TAC Section 355.308 concerning the Direct Care Staff Rate Component. The amendment lowers the spending requirement in the direct care staff enhancement program by changing the direct care spending floor to 70 percent of direct care revenues from the current 85 percent requirement. HHSC adopted this amendment to align spending requirements related to the direct care rate increases in the new Section 355.304 and the direct care staff enhancement program in Section 355.308. The adopted amendment removes provisions allowing providers with a enrollment limitation to submit the request for revision report or request for recalculation. The adopted amendment also removes references to reinvestment, as this section is no longer applicable.

An example of the calculations for the spending requirements associated with participation in the direct care staff enhancement program is provided below. The example does not include enhanced staffing requirements, as these have not changed.

Figure 3. An example of the Direct Care Staff Enhancement Spending Requirement.

Direct Care Staff Enhancement Add-On and Spending Requirement		Level	RE Add-On	Total Units	Spending Enhancement
	Period 1	27	\$ 0.40	10,781	\$ 116,435
Direct Care Staff Enhancement Revenue	Period 2	27	\$ 0.40	1,345	\$ 14,526
					Total Enhancement
9/1/2023 Direct Care Rate Revenue	\$ 1,256,566		156,471	\$ 1,413,037	\$ 130,961
					Spending Requirement
Total Direct Care Staff Revenue (Base Revenue + Enhancement)	\$ 1,373,001		\$ 170,997	\$ 1,543,998	70% = \$ 1,080,798
Did the Facility Meet the Direct Care Staff Spending Floor Requirement?	Met				

The direct care staff enhancement add-on is calculated by multiplying the enhancement add-on by the total units of service for each reporting period. Each level is equal to a \$0.40 add-on amount.

The spending requirement is 70 percent of the total direct care staff enhancement add-on. This calculation applies to Medicaid resident days only.

This calculation does not include Direct Care Spending Mitigation of Staffing or Dietary and Fixed Capital Mitigation of Spending.

The facility meets the requirement if total direct care expenditures are greater than 70% of the enhancement funding.

In this example, the nursing facility received a total staff enhancement of \$130,961 for the reporting period. The spending requirement associated with participation in the Direct Care Staff Enhancement program is 70 percent of the total direct care revenues, including base revenue and enhancements. In this case, the spending requirement would equal \$1,080,798. The nursing facility met the spending

requirement as their total direct care expenses of \$1,326,840 (identified in Figure 1) are greater than the spending requirement.

An example of total direct care spending requirement associated with rate increases effective September 1, 2023 and participation in the Direct Care Staff Enhancement Program is provided below.

Figure 4. An example of Total Direct Care Spending Requirements.

Total Direct Care Rate Spending Requirement	Direct Care Staff Base Spending Floor	+	9/1/23 Increase Spending Requirement	+	Rate Enhancement Spending Requirement	=	Total Spending Requirement
	\$ 812,192		\$ 227,487		\$ 130,961		\$ 1,170,639
	Total Direct Care Expenses		Direct Care Spending Floor + Staff Enhancement Spending Requirement		Spending Difference Amount		
	\$ 1,326,840	-	\$ 358,447	=	\$ 968,393		
Did the Facility Meet the Requirement	Met				\$ -	Estimated Recoupment Amount	

The total spending requirement is calculated by summing the direct care base spending floor, direct care spending floor associated with the 9/1/23 increases, and direct care staff enhancement spending requirement.

The estimated recoupment is calculated by subtracting total direct care expenses during the cost reporting period and spending requirements associated with Direct Care Increase Spending and Rate Enhancement spending requirements.

If the result is below zero, then the facility has not met the spending requirement, and the estimated recoupment is shown.

There is no recoupment associated with the Direct Care Staff Base Rate Spending Floor.

This calculation does not include any recoupments related to the direct care enhanced staffing requirements associated with minimum Licensed Vocational Nurse (LVN) equivalent minutes or spending mitigation.

The first line above provides the spending requirements associated with the Direct Care Staff Base Rate Spending Floor, 9/1/23 rate increase spending requirement (also called the Direct Care Spending Floor), and Rate Enhancement spending requirement. In this example, the total spending requirement for this nursing facility provider would equal \$1,170,639 for the reporting period. The provider would meet the spending requirement as their total direct care expenses of \$1,326,840 is greater than the spending requirement. While this example does not require HHSC to recoup any funds, the recoupment calculation is provided as the difference between the total direct care expenditures minus the Direct Care Spending Floor and Direct Care Staff Enhancement Spending Requirements. As noted previously, this example does not include any spending mitigation or recoupments associated with enhanced staffing requirements in the Direct Care Staff Enhancement Program.

Reporting Requirements associated with the Direct Care Staff Enhancement Program

Reporting requirements associated with participation in the direct care staff enhancement program were not changed as a result of the adopted amendment to 1 TAC Section 355.308. Attachment 1 includes information related to the required 2023 accountability report and 2024 cost report for participating providers.

Please contact the HHSC PFD, Long-term Services and Supports, Center for Information and Training at PFD-LTSS@hhs.texas.gov or (737) 867-7817 if you have questions regarding the rates or this letter.

Sincerely,

[signature on file]

Samuel West
Director of Provider Finance
for Long-term Services and Supports

Attachment 1: Reporting Requirements for Providers Participating in the Direct Care Staff Enhancement Program in 2023 and 2024 Rate Years

Provider Fiscal Year	FY2023 Accountability Report			FY2024 Cost Report		
	2023 Accountability Reporting Period	Direct Care Spending Requirements Rate Period	Report Due Date	2024 Cost Report Reporting Period	Direct Care Spending Requirements Rate Period	Report Due Date
February-January	February 1, 2022 – January 31, 2023	N/A	April 30, 2024	February 1, 2023 – January 31, 2024	September 1, 2023 – January 31, 2024	April 30, 2025
March-February	March 1, 2022 – February 28, 2023	N/A	April 30, 2024	March 1, 2023 – February 29, 2024	September 1, 2023 – February 29, 2024	April 30, 2025
April-March	April 1, 2022 – March 31, 2023	N/A	April 30, 2024	April 1, 2023 – March 31, 2024	September 1, 2023 – March 31, 2024	April 30, 2025
May-April	May 1, 2022 - April 30, 2023	N/A	April 30, 2024	May 1, 2023 - April 30, 2024	September 1, 2023 – April 30, 2024	April 30, 2025
June-May	June 1, 2022 – May 31, 2023	N/A	April 30, 2024	June 1, 2023 – May 31, 2024	September 1, 2023 – May 31, 2024	April 30, 2025
July-June	July 1, 2022 – June 30, 2023	N/A	April 30, 2024	July 1, 2023 – June 30, 2024	September 1, 2023 – June 30, 2024	April 30, 2025
August-July	August 1, 2022 - July 31, 2023	N/A	April 30, 2024	August 1, 2023 - July 31, 2024	September 1, 2023 – July 31, 2024	April 30, 2025
September-August	September 1, 2022 – August 31, 2023	N/A	April 30, 2024	September 1, 2023 – August 31, 2024	September 1, 2023 – August 31, 2024	April 30, 2025
October-September	October 1, 2022 – September 30, 2023	September 1, 2023 – September 30, 2023	April 30, 2024	October 1, 2023 – September 30, 2024	October 1, 2023 – September 30, 2024	April 30, 2025
November-October	November 1, 2022 – October 31, 2023	September 1, 2023 – October 31, 2023	April 30, 2024	November 1, 2023 – October 31, 2024	November 1, 2023 – October 31, 2024	April 30, 2025
December-November	December 1, 2022 – November 30, 2023	September 1, 2023 – November 30, 2023	April 30, 2024	December 1, 2023 – November 30, 2024	December 1, 2023 – November 30, 2024	April 30, 2025
January-December	January 1, 2023 – December 31, 2023	September 1, 2023 – December 31, 2023	April 30, 2024	January 1, 2024 – December 31, 2024	January 1, 2024 – December 31, 2024	April 30, 2025

Attachment 2: Reporting Requirements for Providers not Participating in the Direct Care Staff Enhancement Program in 2023 and 2024 Rate Years

Provider Fiscal Year	Direct Care Spending Requirements Rate Period	Special Accountability Report Needed?	Special Accountability Report Information		FY2024 Cost Report		
			Reporting Period	Report Due Date	Reporting Period	Direct Care Spending Requirements Reporting Period	Report Due Date
February-January	N/A	No, a special accountability report is not needed because 2024 cost report covers the required time period	N/A	N/A	February 1, 2023 – January 31, 2024	September 1, 2023 – January 31, 2024	April 30, 2025
March-February	N/A	No, a special accountability report is not needed because 2024 cost report covers the required time period	N/A	N/A	March 1, 2023 – February 29, 2024	September 1, 2023 – February 29, 2024	April 30, 2025
April-March	N/A	No, a special accountability report is not needed because 2024 cost report covers the required time period	N/A	N/A	April 1, 2023 – March 31, 2024	September 1, 2023 – March 31, 2024	April 30, 2025
May-April	N/A	No, a special accountability report is not needed because 2024 cost report covers the required time period	N/A	N/A	May 1, 2023 - April 30, 2024	September 1, 2023 – April 30, 2024	April 30, 2025
June-May	N/A	No, a special accountability report is not needed because 2024 cost report covers the required time period	N/A	N/A	June 1, 2023 – May 31, 2024	September 1, 2023 – May 31, 2024	April 30, 2025
July-June	N/A	No, a special accountability report is not needed because 2024 cost report covers the required time period	N/A	N/A	July 1, 2023 – June 30, 2024	September 1, 2023 – June 30, 2024	April 30, 2025
August-July	N/A	No, a special accountability report is not needed because 2024 cost report covers the required time period	N/A	N/A	August 1, 2023 -July 31, 2024	September 1, 2023 – July 31, 2024	April 30, 2025

September-August	N/A	No, a special accountability report is not needed because 2024 cost report covers the required time period	N/A	N/A	September 1, 2023 – August 31, 2024	September 1, 2023 – August 31, 2024	April 30, 2025
October-September	September 1, 2023 – September 30, 2023	No, a special accountability is not needed because in accordance with 1 TAC section 355.105(b)(4)(D)(ii), HHSC can excuse a reporting period of less than or equal to 30 calendar days or one entire calendar month	N/A	N/A	October 1, 2023 – September 30, 2024	October 1, 2023 – September 30, 2024	April 30, 2025
November-October	September 1, 2023 – October 31, 2023	Yes, a special accountability report is needed and will be requested.	September 1, 2023 – October 31, 2023	April 30, 2024	November 1, 2023 – October 31, 2024	November 1, 2023 – October 31, 2024	April 30, 2025
December-November	September 1, 2023 – November 30, 2023	Yes, a special accountability report is needed and will be requested.	September 1, 2023 – November 30, 2023	April 30, 2024	December 1, 2023 – November 30, 2024	December 1, 2023 – November 30, 2024	April 30, 2025
January-December	September 1, 2023 – December 31, 2023	Yes, a special accountability report is needed and will be requested.	September 1, 2023 – December 31, 2023	April 30, 2024	January 1, 2024 – December 31, 2024	January 1, 2024 – December 31, 2024	April 30, 2025