

Attachment A  
Qualifying Requirements

05-2021

**1. Community Needs Waiver**

A community needs waiver is designed to meet the needs of communities that do not have reasonable access to acceptable nursing facility care.

- A) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic or health needs studies that documents:
  - i. an immediate need for additional Medicaid beds in the community; and
  - ii. Medicaid residents in the community do not have reasonable access to acceptable nursing facility care.
- B) The application must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.
- C) The demographic or health needs study must include at least the following information pertaining to the community's population:
  - i. population growth trends;
  - ii. population growth trends specific to the elderly, including income or financial condition;
  - iii. Medicaid bed occupancy data;
  - iv. level of acceptable care provided by local nursing facilities in accordance with 26 Texas Administrative Code (TAC) §554.2322(e); and
  - v. any existing allocated Medicaid beds not currently certified but that could be used for a new Medicaid nursing facility.
- D) The applicant must submit documentation of substantial community support for the new nursing facility or beds.
- E) When determining the immediate need for additional Medicaid beds, and whether residents have reasonable access to acceptable nursing facility care, HHSC considers:
  - i. the number and occupancy rate of certified Medicaid beds that comply with level of acceptable care requirements in 26 TAC §554.2322(e); and
  - ii. the number of encumbered Medicaid beds that have been approved by HHSC but are not yet certified.
- F) Replacement beds or waiver beds approved in accordance with subsection (f)(1) or (h) of 26 TAC §554.2322 will not be considered in the calculation if the owner of the replacement beds or waiver beds has not purchased land for a new construction site within 24 months after the date HHSC initially approves the replacement request or the waiver for the beds.
- G) HHSC considers an application withdrawn if it is not completed within 90 days after the application is submitted to HHSC.
- H) HHSC notifies local nursing facilities when a complete community needs waiver application is received and affords local nursing facilities an opportunity to comment on the waiver application. The notification includes a deadline for submission of comments. HHSC limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

## 2. Economically Disadvantaged Waiver

The economically disadvantaged waiver is designed to meet the needs of residents of ZIP codes located in communities where a majority of residents have an average income below the countywide average income and do not have reasonable access to acceptable nursing facility care.

- A) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic or health needs studies that documents:
  - i. the ZIP code in which the new nursing facility will be constructed has a population with an income that is at least 20 percent below the average income of the county according to the most recent U.S. census or more recent census projection;
  - ii. an immediate need for additional Medicaid beds in the ZIP code in which the new nursing facility will be constructed; and
  - iii. residents in the ZIP code in which the nursing facility or beds will be located do not have reasonable access to acceptable nursing facility care.
- B) The application must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.
- C) The demographic or health needs study must include at least the following information pertaining to the community's population:
  - i. population growth trends;
  - ii. population growth trends specific to the elderly, including income or financial condition;
  - iii. Medicaid bed occupancy data;
  - iv. level of acceptable care provided by local facilities in accordance with 26 TAC §554.2322(e); and
  - v. any existing allocated Medicaid beds not currently certified but could be used for a new Medicaid nursing facility.
- D) When determining the immediate need for additional Medicaid beds, and whether residents have reasonable access to acceptable nursing facility care, HHSC considers:
  - i. the number and occupancy rate of certified Medicaid beds that comply with level of acceptable care requirements in 26 TAC §554.2322(e); and
  - ii. the number of encumbered Medicaid beds that have been approved by HHSC but are not yet certified.
- E) Replacement beds or waiver beds approved in accordance with subsection (f)(1) or (h) of 26 TAC §554.2322 will not be considered in the calculation if the owner of the replacement beds or waiver beds has not purchased land for a new construction site within 24 months after the date HHSC initially approves the replacement request or the waiver for the beds.
- F) HHSC considers an application withdrawn if it is not completed within 90 days after the application is submitted to HHSC.
- G) HHSC notifies local nursing facilities when a complete economically disadvantaged waiver application is received and affords local nursing facilities an opportunity to comment on the waiver application. The notification includes a deadline for submission of comments. HHSC limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

## 3. Small House Waiver

A small house waiver is designed to promote the construction of smaller nursing facility buildings that provide a homelike environment.

- A) A facility must meet the requirements in 26 TAC §554.345 (relating to Small House and Household Facilities) for HHSC to grant a small house waiver for the facility.
- B) An applicant for a small house waiver must submit an application to HHSC and a schematic building plan of the proposed facility with sufficient detail to demonstrate that the proposed project meets the requirements in 26 TAC §554.345 (relating to Small House and Household Facilities).
- C) An applicant that is granted a small house waiver must submit final construction documents in accordance with 26 TAC §554.344 (relating to Plan Review) before facility construction begins.
- D) HHSC notifies local nursing facilities when a complete small house waiver application is received and allows the local nursing facilities to comment on the waiver application. The notification includes the deadline for submitting comments. HHSC limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.
- E) HHSC does not approve more than 16 beds for a small house facility or for a household in a facility that is granted a small house waiver.
- F) HHSC considers an application withdrawn if it is not completed within 90 days after the application is submitted to HHSC.
- G) Subject to subparagraph (E) of this paragraph, HHSC approves the replacement or transfer of beds certified at a small house nursing facility in accordance with subsection (f)(1) or (2) of 26 TAC §554.345 (relating to Small House and Household Facilities) only to another small house or household facility.

#### 4. Rural County Waiver

A rural county waiver is designed to meet the needs of rural areas of the state that do not have reasonable access to acceptable nursing facility care. For purposes of this waiver, a rural county is one that has a population of 100,000 or less according to the most recent census and has no more than two Medicaid-certified nursing facilities. HHSC approves no more than 120 additional Medicaid beds per county per year and no more than 500 additional Medicaid beds statewide in a calendar year under this waiver provision. HHSC considers a waiver application on a first-come, first-served basis. Requests received in a year in which the 500-bed limit has been met will be carried over to the next year. The county commissioner's court must request the waiver.

- A) The commissioner's court must notify HHSC of its intent to consider a rural county waiver and obtain verification from HHSC that the county complies with the definition of rural county.
- B) The commissioner's court must publish a notice in the *Texas Register* and in a newspaper of general circulation in the county. The notice must seek:
  - i. comments on whether a new Medicaid nursing facility should be requested; and
  - ii. proposals from persons or entities interested in providing additional Medicaid-certified beds in the county, including persons or entities currently operating Medicaid-certified facilities with high occupancy rates. HHSC, in its sole discretion, may eliminate from participating in the process persons or entities that submit false or fraudulent information.
- C) The commissioner's court must determine whether to proceed with the waiver request after considering all comments and proposals received in response to the notices provided under subparagraph (B) of this paragraph. In determining whether to proceed with the waiver request, the commissioner's court must consider:
  - i. the demographic and economic needs of the county;
  - ii. the quality of existing Medicaid nursing facilities in the county;
  - iii. the quality of the proposals submitted, including a review of the past history of care provided, if any, by the person or entity submitting the proposal; and

- iv. the degree of community support for additional Medicaid nursing facility services.
- D) The commissioner's court must document the comments received, proposals offered, and factors considered in subparagraph (C) of this paragraph.
- E) If the commissioner's court decides to proceed with the waiver request, it must submit a recommendation that HHSC issue a waiver to a person or entity who submitted a proposal for new or additional Medicaid beds. The recommendation must include:
  - i. the name, address, and telephone number of the person or entity recommended for contracting for the Medicaid beds;
  - ii. the location, if the commissioner's court desires to identify one, of the recommended nursing facility;
  - iii. the number of beds recommended; and
  - iv. the information listed in subparagraph (D) of this paragraph used to make the recommendation.

## **5. Alzheimer's Waiver**

The Alzheimer's waiver is designed to meet the needs of communities that do not have reasonable access to Alzheimer's nursing facility services.

- A) The applicant must document that:
  - i. the nursing facility is affiliated with a medical school operated by the state;
  - ii. the nursing facility will participate in ongoing research programs for the care and treatment of persons with Alzheimer's disease;
  - iii. the nursing facility will be designed to separate and treat residents with Alzheimer's disease by stage and functional level;
  - iv. the nursing facility will obtain and maintain voluntary certification as an Alzheimer's nursing facility in accordance with 26 TAC §§554.2204, 554.2206, and 554.2208 (relating to Voluntary Certification of Facilities for Care of Persons with Alzheimer's Disease, General Requirements for a Certified Facility, and Standards for Certified Alzheimer's Facilities); and
  - v. only residents with Alzheimer's disease or related dementia will be admitted to the Alzheimer's Medicaid beds.
- B) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic studies that documents the need for the number of Medicaid Alzheimer's beds requested. The study must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.
- C) HHSC notifies local nursing facilities when a complete Alzheimer's waiver application is received and affords local nursing facilities an opportunity to comment on the waiver application. The notification will include a deadline for submission of comments. HHSC limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.
- D) HHSC considers an application withdrawn if it is not completed within 90 days after the application is submitted to HHSC.

## **6. High Occupancy Waiver**

A high occupancy waiver is designed to meet the needs of counties and certain precincts that have a high county or precinct occupancy rate for multiple months.

- A) HHSC monitors monthly county or precinct occupancy rates. If HHSC determines that a county or precinct occupancy rate equals or exceeds 85 percent for at least nine of the previous twelve months, HHSC may initiate a waiver process by placing a public notice in

the *Texas Register* and the Electronic State Business Daily (ESBD) to announce an open solicitation period.

- B) The public notice announces that HHSC may allocate 90 additional Medicaid beds in the county or precinct.
- C) The notice identifies the county or precinct and the beginning and end dates of the solicitation period. The notice also includes the HHSC address to which the application for additional Medicaid beds must be submitted and specifies that the application must be received by HHSC before the close of business on the end date of the solicitation period.
- D) An applicant for additional Medicaid beds must comply with the level of acceptable care requirements in 26 TAC §554.2322(e).
- E) An applicant must submit a complete HHSC waiver application.
- F) At the end of the solicitation period, HHSC determines if an applicant is eligible for additional Medicaid beds. If multiple applicants are eligible, the applicant who will receive the allocation of beds will be chosen by a lottery selection.
- G) If no application for the waiver process is received or if no applicant meets the requirements in this section, HHSC conducts no further solicitation. HHSC closes the process without allocating Medicaid beds.

## **7. Waiver Assignments**

A waiver recipient may request that HHSC approve the assignment of an approved waiver to another entity in accordance with this paragraph. A waiver recipient may request HHSC approval of only one assignment. A waiver assignment is not valid unless and until it is approved by HHSC:

- A) The waiver recipient or the owner of the waiver recipient must maintain majority ownership and management control of the assignee.
- B) The assignee must not have an owner or controlling person who was not an owner or controlling person of the waiver recipient.
- C) The assignee must own the physical plant of the waiver facility at the time of licensure and certification (as landlord) or be the licensee at the time of licensure and certification (as the licensed operator). Under either circumstance, the allocated beds are subject to subsection (c) of this section.
- D) The assignee must meet the requirements in 26 TAC §554.2322(e) regarding level of acceptable care.

A waiver recipient entity may remove a controlling person from ownership of the entity, but the waiver recipient entity must not add an owner after the waiver is approved by HHSC. A change to the ownership of the waiver recipient entity or the waiver assignment entity must be reported to HHSC.