



Medicaid Behavioral Health In-Lieu-Of Services Annual Report

**As Required by
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Regular Session, 2019**

**Texas Health and Human Services
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TEXAS
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Executive Summary

In accordance with Senate Bill (S.B.) 1177, 86th Texas Legislature, Regular Session, 2019, the Texas Health and Human Services Commission (HHSC) must implement contract provisions to permit Medicaid managed care organizations (MCOs) to offer medically appropriate, cost-effective, evidence-based behavioral health services in lieu of specified Medicaid state plan services. The State Medicaid Managed Care Advisory Committee (SMMCAC) must approve the list of services. Government Code Section 533.005(g), as amended by S.B. 1177, also requires HHSC to prepare and submit an annual report on the number of times during the preceding year a service from the list included in the contract is used.

This annual report provides background information and status updates about implementation activities to date. Utilization data is not included in this report because the in-lieu-of services have not yet been implemented.

HHSC divided the SMMCAC recommended services into three phases for implementation. HHSC is currently implementing MCO requirements for certain phase-one in-lieu-of services approved by the SMMCAC. These phase-one services include partial hospitalization, intensive outpatient program services, and coordinated specialty care. HHSC will amend MCO contract requirements by the end of 2022 to implement phase-one. MCOs may need additional time to implement the phase-one services after the contractual requirements are published.

1. Introduction

S.B. 1177 amended Government Code § 533.005(g), which requires HHSC to implement contract provisions allowing MCOs to offer their members certain medically appropriate, cost-effective, evidence-based services in lieu of mental health or substance use disorder services specified in the Texas Medicaid State Plan. The SMMCAC must approve the list of services. HHSC must consider the actual cost and use of these services when setting the capitation rates under the MCO contracts. Furthermore, HHSC must annually report to the Legislature on the number of times during the preceding year a service from the approved in-lieu-of services list included in the MCO contracts was utilized.

HHSC divided the recommended services into three phases for implementation. Phase-one services include services in lieu of inpatient hospitalization. Phase-two services include services in lieu of outpatient services. Phase-three services include in-lieu-of services which apply only to specific populations, need further review to determine the appropriate corresponding state plan service, or contain components that are already covered by Medicaid.

This report provides an update on HHSC's implementation of S.B. 1177. The last report was released November 2021.

2. Background

The Texas Medicaid State Plan describes the nature and scope of the Medicaid program, including administration, client eligibility, benefits, and provider reimbursement. State plans must be approved by the Centers for Medicare & Medicaid Services (CMS).

Under managed care, HHSC contracts with MCOs to provide Medicaid services to members. Members have a choice between at least two MCOs in each Texas Medicaid managed care service area. After choosing a plan, members receive Medicaid services through the health plan's network of providers.¹

In-lieu-of services are services offered by MCOs that substitute for Medicaid state plan services or settings, as allowed by 42 Code of Federal Regulations (CFR) § 438.3(e)(2). Per federal regulations, in-lieu-of services must be a medically appropriate and cost-effective substitute for the covered service or setting under the state plan. The Medicaid member must not be required by the MCO to use the in-lieu-of service.

Federal regulations also state that CMS must review and approve Medicaid MCO contracts and allow the state to offer agreed upon in-lieu-of services. Per federal regulations and Texas Government Code § 533.005(g), the state must take the actual utilization and cost of the in-lieu-of services into account in developing the capitation rate paid to the MCOs.

Currently, Texas Medicaid allows two in-lieu-of services:

1. MCOs may provide inpatient services for acute psychiatric conditions in a free-standing psychiatric hospital in lieu of an acute care inpatient hospital setting.²
2. MCOs may provide substance use disorder treatment services in a chemical dependency treatment facility in lieu of an acute care inpatient hospital setting.

¹ The STAR Health program is the only exception and has one single statewide MCO.

² Per federal regulations in 42 CFR § 438.6 (e), this in-lieu-of service is available for up to 15 days per calendar month for Medicaid members in managed care, ages 21-64. Inpatient admission in free-standing psychiatric hospitals is a Medicaid state plan benefit for members ages 20 years and younger and 65 years and older.

3. In-Lieu-Of Services Implementation Overview

In accordance with the requirement under S.B. 1177 for SMMCAC to approve the list of in-lieu-of services, the committee developed a list of recommendations for additional in-lieu-of services with input from the public. SMMCAC submitted the committee-approved in-lieu-of service recommendations to HHSC in December 2019.

HHSC divided SMMCAC's recommendations into three phases for evaluation and implementation. Phase-one services are comprised of services in lieu of inpatient services. Phase-two services are comprised of services in lieu of outpatient services. Phase-three services include in-lieu-of services which apply only to specific populations, need further review to determine the appropriate corresponding state plan service, or contain components that are already covered by Medicaid.

Phase One – Services In Lieu Of Inpatient Services:

- Coordinated specialty care (CSC)
- Crisis respite
- Crisis stabilization units
- Extended observation units
- Partial hospitalization
- Intensive outpatient program (IOP) services

Status Update On Phase-One Services

HHSC reviewed data from peer-reviewed articles and information about the in-lieu-of services allowed by other state Medicaid programs. Based on this research, HHSC has determined all phase-one proposed services are evidence-based.

HHSC staff also completed the cost-effectiveness review for phase-one in-lieu-of services. The cost-effectiveness review determined whether the service being considered for inclusion in the Medicaid managed care contracts would cost the

Medicaid program less than or the same amount as the state plan service it would be offered in lieu of, including consideration of projected cost offsets. To conduct the cost-effectiveness review, HHSC used standard rate setting methodology to develop proxy rates for the proposed in-lieu-of services. HHSC projected costs and savings using the proxy rate information and utilization assumptions based on recent trends from general revenue-funded services and literature review. The Clinical Management for Behavioral Health Services (CMBHS) system was used to gather data on the delivery of proposed in-lieu-of-services currently provided by HHCS outside of Medicaid and funded by general revenue and other sources.³ HHSC also used information from peer-reviewed articles and a review of other states' payment rates for utilization assumptions.

The cost-effectiveness review determined that all phase-one services and settings are medically appropriate and cost-effective substitutes for services covered under the Texas Medicaid State Plan.

HHSC had been working toward a March 1, 2021, implementation date for the phase-one in-lieu-of services. HHSC drafted an amendment to add phase-one services to the UMCM, which defines and interprets the procedures that MCOs in Texas Medicaid must follow to meet certain contractual requirements. HHSC posted the proposed UMCM amendment for MCO comment in December 2020.

In February 2021, CMS raised questions about the phase-one services and requested additional time to render a decision regarding all phase-one services and to note concerns about the availability of federal financial participation for the services. HHSC informed SMMCAC members and other stakeholders of the delay at the SMMCAC meeting held on February 24, 2021. HHSC met with CMS and submitted written responses to CMS's questions about phase-one services. CMS was notified in March 2022 that HHSC is moving forward with implementing three of the phase-one services because CMS did not identify issues that would prevent implementation of these services:

- CSC services,
- partial hospitalization, and
- IOP services.

³ CMBHS is used across the state with the HHSC-contracted substance use and mental health treatment service providers, and others who qualify, to collect data on services provided by HHSC. CMHBS does not readily separate Medicaid from non-Medicaid data.

HHSC continues to work with CMS to address questions about the remaining phase-one services.

HHSC is working toward a December 2022 implementation date for CSC, partial hospitalization, and IOP services and is amending the UMCM to add these phase-one services. HHSC plans to post the proposed UMCM amendment for MCO comment in fall 2022. MCOs may begin offering these in-lieu-of services upon adoption of the corresponding UMCM amendments. The UMCM amendment will include language defining the new in-lieu-of services, describing provider qualifications, and establishing requirements for MCOs that choose to offer these in-lieu-of services to Medicaid members. The UMCM amendment will also prohibit MCOs from offering outpatient in-lieu-of services in place of inpatient hospitalization services for Medicaid members who are at immediate risk of harming themselves or others.

Additionally, the UMCM amendment will establish that MCOs must:

- Document the member's choice to receive in-lieu-of services;
- Educate providers and members about the availability of in-lieu-of services, if providing in-lieu-of services;
- Develop and maintain an operational plan that describes how the MCO will operationalize in-lieu-of services prior to implementation;
- Ensure that there is not a duplication of services or payment when providing in-lieu-of services and Covered Services; and
- Have clinical guidelines in place for the medical appropriateness and utilization management processes and share these guidelines with HHSC upon request.

MCOs previously reported that three to six months are needed to implement in-lieu-of services. This timeline accounts for making system changes, training staff, updating materials, identifying service providers, and educating providers and members.

Phase Two – Services In Lieu Of Outpatient Services:

- Cognitive rehabilitation
- Multisystemic therapy (MST)

- Functional family therapy (FFT)

Status Update On Phase-Two Services

HHSC has determined all phase two proposed services are evidence-based.

HHSC is reviewing cognitive rehabilitation, MST, and FFT for cost-effectiveness, using standard rate setting methodology to develop proxy rates for the proposed phase-two in-lieu-of services. HHSC created cost and savings projections, using the proxy rate information and utilization assumptions based on a literature review of peer-reviewed articles.

Phase Three – Additional In-Lieu-Of Services:

- Integrated Pain Management Day Program
- Health and behavior assessment and intervention
- Systemic, therapeutic, assessment, resources, and treatment
- Treatment/therapeutic foster care
- Mobile crisis outreach team

Status Update On Phase-Three Services

Phase-three services require additional analysis. HHSC will analyze these services after phase-one and phase-two services are analyzed and implemented.

Some phase-three services only apply to specific populations, such as children in foster care and individuals with co-occurring intellectual or developmental disabilities and serious mental illness. For other phase-three services, HHSC needs to identify which state plan services they could be offered in lieu of and confirm assumptions with CMS. Finally, some of the services contain components that are already covered by Medicaid as part of another benefit or service or could be implemented in an alternate way, which requires additional analysis.

Collaborative Care model was previously included in the list of phase-three in-lieu-of services. However, S.B. 672, 87th Legislature, 2021, Regular Session, required HHSC to reimburse applicable providers for collaborative care model activities under Medicaid. Therefore, HHSC added the collaborative care model benefit to the Medicaid service array under the Texas Medicaid State Plan effective June 2022, rather than considering implementing the benefit as an in-lieu-of service.

4. Conclusion

Government Code § 533.005(g), as amended by S.B. 1177, requires HHSC to give MCOs the flexibility to offer certain medically appropriate, cost-effective, evidence-based behavioral health services in lieu of covered Medicaid state plan services. HHSC anticipates that implementation of in-lieu-of services will enhance the behavioral health care available to Medicaid members and be cost effective.

HHSC will continue to research services approved and recommended by the SMMCAC and collect cost-effectiveness data for the evaluation of in-lieu-of services. HHSC will amend the managed care contracts and UMCM to allow MCOs to provide approved in-lieu-of services. Utilization of these services may begin once the UMCM amendments are effective and MCOs implement systems and other changes. Utilization data will be provided in future annual reports once the data is available.

List of Acronyms

Acronym	Full Name
CFR	Code of Federal Regulations
CMBHS	Clinical Management for Behavioral Health Services
CMS	Centers for Medicare & Medicaid Services
CSC	Coordinated Specialty Care
FFT	Functional Family Therapy
IOP	Intensive Outpatient Program
HHSC	Health and Human Services Commission
MCO	Managed Care Organization
MST	Multisystemic therapy
S.B.	Senate Bill
SMMCAC	State Medicaid Managed Care Advisory Committee
UMCM	Uniform Managed Care Manual