



Medicaid Behavioral Health In-Lieu-Of Services Annual Report

**As Required by
Texas Government Code Section
533.005(h)**

**Texas Health and Human Services
November 2024**



TEXAS
Health and Human
Services

Table of Contents

Executive Summary	2
1. Introduction	3
2. Background	4
3. In-Lieu-Of Services Implementation Overview.....	5
Phase One – Services In Lieu Of Inpatient Services:	5
Phase Two – Services In Lieu Of Outpatient Services:.....	8
Phase Three – Additional ILOSs:	9
4. Conclusion.....	10
List of Acronyms	11

Executive Summary

[Texas Government Code, Section 533.005\(h\)](#) requires the Texas Health and Human Services Commission (HHSC) to implement contract provisions that permit Medicaid managed care organizations (MCOs) to offer medically appropriate, cost-effective, evidence-based services in lieu of behavioral health services, including mental health or substance use disorder services, specified in the Medicaid State Plan. The State Medicaid Managed Care Advisory Committee (SMMCAC) must approve the list of services.

[Section 533.005\(h\)](#) 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 since the last [annual report](#) about implementation activities to date. Utilization data are not included in this report because data are not yet available for the new in-lieu-of services and settings (ILOSs). HHSC expects to have utilization data for state fiscal year 2025 available for the 2026 annual report.

HHSC divided the SMMCAC-approved services into three phases for implementation. HHSC published [Uniform Managed Care Manual \(UMCM\) Chapter 16.3](#) to add new MCO requirements for ILOSs and permit MCOs to offer certain phase-one ILOSs approved by the SMMCAC. Phase-one services include partial hospitalization program (PHP), intensive outpatient program (IOP), and coordinated specialty care (CSC) services. HHSC reviewed and approved the MCOs' operational plans for phase-one services, and MCOs that chose to implement these ILOSs are preparing to begin operations.

Phase-two services include services in lieu of outpatient services. Phase-three services include ILOSs 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.

1. Introduction

[Section 533.005\(h\)](#) requires HHSC to implement contract provisions allowing MCOs to offer their members certain medically appropriate, cost-effective, evidence-based services in lieu of behavioral health services specified in the Texas Medicaid State Plan. For instance, HHSC allows MCOs to offer IOP services in lieu of inpatient hospitalization. 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 ILOS 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. To implement phase-one services, HHSC published UMCM 16.3, which adds new requirements for MCOs and allows MCOs to offer PHP, IOP, and CSC services.

UMCM 16.3 requires MCOs to submit operational plans, which describe how the MCO will operationalize the ILOSs. MCOs must submit the plans to HHSC prior to implementing the phase-one ILOSs. The HHSC review of the ILOS operational plans was delayed to ensure HHSC and MCOs are in compliance with [new guidance](#) from the Centers for Medicare & Medicaid Services (CMS). Operational reviews for phase-one services are now complete, and MCOs that chose to implement ILOSs are preparing to begin operations. HHSC is currently updating Medicaid policies to incorporate the additional requirements associated with the CMS guidance.

Phase-two services include services in lieu of outpatient services. Phase-three services include ILOSs 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.

Analysis, review and possible implementation of phase-two and phase-three proposed services will continue after HHSC implements the new CMS guidance. Phase-three services also require additional analysis to determine if they are eligible to be ILOSs.

This report provides an update on HHSC's implementation of [Section 533.005\(h\)](#) since the last annual report, published November 2023.

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 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.¹ After choosing a plan, members receive Medicaid services through the MCO's network of providers.

ILOSs are services and settings offered by MCOs that substitute for Medicaid state plan services or settings, as allowed by Title 42 Code of Federal Regulations (CFR) Section [438.3\(e\)\(2\)](#). Per 42 CFR Section 438.3(e)(2), ILOSs must be a medically appropriate and cost-effective substitute for the covered service or setting under the state plan. Additionally, the Medicaid member must not be required by the MCO to use the ILOS and ILOSs must be optional for MCOs to provide.

Per 42 CFR Section 438.3(e)(2)(iv) and [Texas Government Code, Section 533.005\(h\)](#), the state must take the actual utilization and cost of the ILOS into account in developing the capitation rate paid to the MCOs.

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

3. In-Lieu-Of Services Implementation Overview

In accordance with [Section 533.005\(h\)](#), the SMMCAC developed a list of recommendations for additional ILOSs with input from the public. SMMCAC submitted the committee-approved list of ILOSs to HHSC in December 2019.

HHSC divided the SMMCAC's recommendations into three phases for evaluation and implementation. Phase-one services are composed of services in lieu of inpatient services. Phase-two services are composed of services in lieu of outpatient services. Phase-three services include ILOSs 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:

- PHP
- IOP
- CSC
- Crisis respite
- Crisis stabilization units
- Extended observation units

Status Update on Phase-One Services

HHSC reviewed data from peer-reviewed articles and information about ILOSs 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 ILOSs. 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 ILOSs. 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 system was used to gather data on the delivery of proposed ILOSs currently provided by HHSC outside of Medicaid and funded by general revenue funds and other sources.² 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.

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. HHSC notified CMS in March 2022 that HHSC is moving forward with implementing three of the phase-one services (PHP, IOP, and CSC services) because CMS did not identify issues that would prevent implementation.

In December 2022, HHSC published UMCM 16.3 "[In-Lieu-of-Covered Services and Settings](#)" which added CSC, PHP, and IOP services as ILOSs. The UMCM amendment includes definitions of new ILOSs, describes provider qualifications, and establishes requirements for MCOs that choose to offer these ILOSs to Medicaid members. The UMCM amendment prohibits MCOs from offering outpatient ILOSs in place of inpatient hospitalization services for Medicaid members who are at immediate risk of harming themselves or others.

Additionally, the UMCM amendment requires that MCOs must:

² The Clinical Management for Behavioral Health Services system 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. The Clinical Management for Behavioral Health Services system does not readily separate Medicaid from non-Medicaid data.

- Retain documentation of the member’s choice to receive ILOSs or require providers to retain the documentation and provide it to the MCO upon request;
- Educate providers and members about the availability of ILOSs, if providing ILOSs;
- Ensure that there is not a duplication of services or payment when providing ILOSs 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.

UMCM 16.3 also requires MCOs offering ILOSs to develop and maintain operational plans which describe how the MCO will operationalize ILOSs. The operational plans must include information about how they will meet the requirements in UMCM 16.3, including how members and providers may request ILOSs and how member choice will be documented. MCOs must also include information about how the MCO will transition members between inpatient hospitalization and outpatient ILOSs, when medically necessary. MCOs must submit the operational plans to HHSC at least 60 days in advance of the MCO’s intended implementation date of new ILOSs.

On January 4, 2023, CMS issued a [State Medicaid Director letter](#) clarifying existing requirements and providing new requirements for using ILOSs. On May 3, 2023, CMS proposed a new rule that aligned with the January 2023 CMS guidance for ILOSs and included additional requirements both related and unrelated to ILOSs. On May 10, 2024, CMS published the [Medicaid and CHIP Managed Care Access, Finance, and Quality Final Rule](#), which amended the CFR, including 42 CFR Sections 438.3(e)(2) and 438.16.

The 2023 CMS guidance clarified, “ILOSs must not violate any applicable federal requirements, including...general prohibitions on payment for room and board costs under Title XIX of the Social Security Act”. The 2024 rule also added 42 CFR Section 438.16(b), which requires that “An ILOS must be approvable as a service or setting through a waiver under section 1915(c) of the Act or a State plan amendment, including section 1905(a), 1915(i), or 1915(k) of the Act.” HHSC plans to review whether the following phase-one services may still be implemented:

- Crisis respite
- Crisis stabilization units

- Extended observation units

Based on the new guidance and rule, HHSC identified the following changes are needed for compliance with the new ILOSs:

- Updates to MCO contractual requirements, including information in MCO member handbooks, to add information about member rights and protections when members are eligible to be offered or elect to receive ILOSs, as required by 42 CFR Section [438.10\(g\)\(2\)\(ix\)](#); and to require the use of specific procedure codes and modifier combinations for ILOSs.
- New cost reporting to CMS, as required by 42 CFR Sections [438.7\(b\)\(6\)](#) and (c)(4) and [438.16](#).
- A new requirement for ILOSs data in the annual Managed Care Program Annual Report, which HHSC submits to CMS, as required by 42 CFR Section [438.66\(e\)\(2\)\(vi\)](#).

HHSC is in the process of updating the UMCM to ensure compliance with the new requirements.

HHSC received operational plans required by UMCM 16.3 to implement phase-one services from 14 out of 16 MCOs. Fourteen MCOs submitted operational plans that included IOP and PHP as ILOSs. Six MCOs also included CSC in their operational plans.

HHSC created an operational plan review template listing the requirements in UMCM 16.3 and reviewed each operational plan for whether the information from the MCOs met the requirements. If the information was insufficient to meet the requirement, HHSC asked follow-up questions and requested additional information, if necessary. Operational plans were reviewed by at least two HHSC employees to ensure continuity across the review process.

As of November 2024, HHSC approved 14 MCOs to provide IOP; 14 MCOs to provide PHP; and six MCOs to provide CSC.

Phase Two – Services In Lieu Of Outpatient Services:

- Cognitive rehabilitation
- Multisystemic therapy

- Functional family therapy

Status Update on Phase-Two Services

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

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

Phase-two proposed services cannot move forward until HHSC implements the changes identified in the review of the new CMS guidance.

Phase Three – Additional ILOSs:

- Integrated pain management day program
- Health and behavior assessment and intervention
- Systemic, therapeutic, assessment, resources, and treatment
- Treatment/therapeutic foster care

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 people with co-occurring intellectual or developmental disabilities and serious mental illness. For other phase-three services, HHSC needs to identify which state plan services 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.

4. Conclusion

[Section 533.005\(h\)](#) 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 ILOSs will enhance the behavioral health care available to Medicaid members and be cost effective.

HHSC will continue to research services approved by the SMMCAC and collect cost-effectiveness data for the evaluation of ILOSs. HHSC will continue to amend the UMCM to add new ILOSs and to align with CMS guidance on ILOSs. Utilization of approved ILOSs may begin once MCO operational plans are approved. Due to the amount of time needed for claims and encounter data to be considered complete, HHSC expects to have utilization data for state fiscal year 2025 available for the 2026 annual report.

List of Acronyms

Acronym	Full Name
CFR	Code of Federal Regulations
CMS	Centers for Medicare & Medicaid Services
CSC	Coordinated Specialty Care
ILOS	In-Lieu-of Service or Setting
IOP	Intensive Outpatient Program
HHSC	Health and Human Services Commission
MCO	Managed Care Organization
PHP	Partial Hospitalization Program
SMMCAC	State Medicaid Managed Care Advisory Committee
UMCM	Uniform Managed Care Manual