



Date: July 30, 2021

To: Intermediate Care Facility for Individuals with an Intellectual Disability or Related Condition (ICF/IID) Program Providers

Subject: Information Letter No. 2021-37, Payments for Leave Due to the COVID-19 Pandemic (replaces IL 2021-05)  
(Revised: 7/30/2021)

The Health and Human Services Commission (HHSC) is authorized by the Center for Medicare and Medicaid Services to pay an ICF/IID program provider for up to 90 days if the program provider reserved a bed for a resident who took a temporary leave of absence during the period of March 20, 2020 through March 1, 2021 to reduce the risk of COVID-19 transmission. This leave, known as COVID-19 therapeutic leave, is in addition to therapeutic leave, extended therapeutic leave, and special leave. COVID-19 therapeutic leave is now governed by 26 TAC §261.352, Emergency Rule Related to Leave During the COVID-19 Pandemic, effective July 30, 2021. COVID-19 therapeutic leave is also governed by 26 TAC §261.351, Emergency Rule Related to Leave During the COVID-19 Pandemic, which was effective January 29, 2021 and expired May 28, 2021.

For a program provider to receive payment for COVID-19 therapeutic leave, a resident's individual program plan (IPP) must provide that the resident took the leave to reduce the risk of COVID-19 transmission. A program provider may add this information to a resident's IPP after the temporary leave of absence was taken and without having an interdisciplinary team meeting.

For a program provider to receive payment for COVID-19 therapeutic leave, the program provider must submit a revenue comparison attestation or a net profit comparison attestation on an HHSC form, as described below, and request payment for COVID-19 therapeutic leave no later than September 28, 2021, which is 60 days after the effective date of 26 TAC §261.352. The program provider must submit the attestation form on or before the date the program provider submits the request for payment.

#### Revenue Comparison Attestation

By signing an HHSC attestation form ([HHS Form 1598-ICF-NP](#)) that contains a revenue comparison, a program provider acknowledges that HHSC may recoup an

overpayment made to the program provider if HHSC determines, based on a federal or state audit or any other authorized third-party review, that the program provider:

- received an inappropriate payment, such as payment for more days than allowed for COVID-19 therapeutic leave;
- received duplicate payments for services, such as payment for COVID-19 therapeutic leave for a day on which HHSC paid the program provider for therapeutic, extended therapeutic, or special leave; or
- received funding from any other source to pay for the days of COVID-19 therapeutic leave for which payment is requested; or
- the program provider's revenue during one or more of the quarters of March–May 2020, June–August 2020, September–November 2020, and December 2020–February 2021 exceeded its revenue:
  - ▶ during the quarter of December 2019 through February 2020; or
  - ▶ during an alternative pre-pandemic period authorized in writing by HHSC.

*Net Profit Comparison Attestation*

By signing an HHSC attestation form ([HHS Form 1598-ICF-NP](#)) that contains a net profit comparison, a program provider acknowledges that HHSC may recoup an overpayment made to the program provider if HHSC determines, based on a federal or state audit or any other authorized third-party review, that the program provider:

- received an inappropriate payment, such as payment for more days than allowed for COVID-19 therapeutic leave;
- received duplicate payments for services, such as payment for COVID-19 therapeutic leave for a day on which HHSC paid the program provider for therapeutic, extended therapeutic, or special leave; or
- received funding from any other source to pay for the days of COVID-19 therapeutic leave for which payment is requested; or
- the program provider's net profit during one or more of the quarters of March–May 2020, June–August 2020, September–November 2020, and December 2020–February 2021 exceeded its net profit:
  - ▶ during the quarter of December 2019 through February 2020; or
  - ▶ during an alternative pre-pandemic period authorized in writing by HHSC.

In addition to the comparison of revenue or net profit, program providers must attest that during the time period for which payment is requested, the program provider:

- did not lay off any staff members who were working on March 19, 2020, due to lack of work, not work performance; and
- maintained staff member wages and benefits at least at the levels that existed on March 19, 2020.

An attestation form includes a submission button. A program provider will receive an email confirming that HHSC has received the form.

If a program provider had previously submitted an attestation form and a request for payment for COVID-19 therapeutic leave in accordance with IL 2021-05, no action is necessary unless the program provider wants to submit a request for payment for additional COVID-19 therapeutic leave in accordance with this information letter.

## **Form and Claim Submission**

A program provider must submit all requests for payment for COVID-19 therapeutic leave no later than September 28, 2021.

To submit a request for payment for COVID-19 therapeutic leave, a program provider must enter the leave on the Texas Medicaid Healthcare Partnership Long-Term Care Online Portal using the ASA code after submitting an attestation form. HHSC will limit the use of the ASA code to 90 days per resident by creating a resident hold record in the HHSC Service Authorization System. To submit the ASA code for a resident who has not returned to the ICF/IID, an Individual Movement (IMT) Return must be entered for the current combined therapeutic leave and extended therapeutic leave so the program provider can submit the ASA COVID-19 therapeutic leave IMT to begin on the same date. If a resident has returned to the ICF/IID and the program provider has entered a return date, the program provider may submit the COVID-19 therapeutic leave IMT using the ASA code.

If a program provider intends to submit requests for payment for some or all of the available 90 days of COVID-19 therapeutic leave and the program provider has submitted an Individual Movement (IMT) form using the therapeutic leave code (ATH) or the extended therapeutic leave code (AEV) for the **same days**, the program provider must back out IMTs and submit new IMTs. This is only necessary if the program provider wants to request payment for COVID-19 therapeutic leave for days the program provider has already entered the ATH and AEV leave code combination.

## **Steps for Backing Out IMTs**

A program provider must follow these steps to back out IMTs and submit new IMTs:

- (1) Add a note to all IMTs that need to be backed out that says 'this record is invalid'.
- (2) Contact Provider Claims Services (PCS) at 512-438-2200, Option 1, to receive a fax number to send a list of affected residents.
- (3) Fax the complete list of all affected residents that includes the Name, Medicaid ID, CARE ID, Movement Type and Date.
- (4) After PCS staff notifies the program provider that the applicable IMTs have been marked Invalid/Complete, submit new IMTs using the ASA code. PCS will provide this notification via phone call.
- (5) Enter a note in field **98 Comments** that says, 'ASA for COVID-19 related absence' on the new IMT Absence with absence type ASA.
- (6) Any claims paid for dates of service from March 20, 2020 through March 1, 2021 will automatically adjust based on the new IMTs. A program provider should monitor claims for reprocessing and must submit new claims for any dates of service not previously claimed.

**NOTE:** It is highly recommended that a program provider complete submission of new IMTs within the same week previous IMTs are backed out to avoid recoupment.

Examples of how leave should be entered for different circumstances are included with this information letter.

## **Locate the Emergency Rule in the Texas Register**

On the day it is filed, to find a link to a copy of the emergency rule and the date of the Texas Register issue in which the rule will be published in the Texas Register:

- Go to the Texas Register website - <https://www.sos.texas.gov/texreg/index.shtml>
- Click on Search the Texas Register
- Use the Texas Register Viewer to enter:
  - ▶ Title Number 26
  - ▶ Chapter Number 261
  - ▶ Rule Number 352
- Then click on Find

## **Instructions to Find the Emergency Rule on COVID-19 Therapeutic Leave in the *Texas Register***

To find 26 TAC §261.352 'Emergency Rule Related to Leave During the COVID-19 Pandemic' in the *Texas Register*:

Information Letter No. 2021-37  
Payments for 90 days of Leave Due  
to the COVID-19 Pandemic  
July 30, 2021  
Page 5

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- Go to the *Texas Register* website -  
<https://www.sos.texas.gov/texreg/index.shtml>
- Left click on "Search the *Texas Register*"
- On the page titled "*Texas Register Viewer*":
  - type "26" in the box for Title Number
  - type "261" in the box for Chapter Number
  - type "352" in the box for Rule Number
- Left click on "Find"
- Left click on "26 TAC §261.352" in the first column.

Sincerely,

***[signature on file]***

Emily Zalkovsky  
Deputy State Medicaid Director  
Medicaid and CHIP Services

Attachment

**Attachment: Examples of COVID-19 Therapeutic Leave and Instructions to Find the Emergency Rule on COVID-19 Therapeutic Leave**

These following scenarios are only examples. If you have a question about a specific situation, please contact Provider Claims Services (PCS) at 512-438-2200.

**Example 1:** A resident left a facility on April 1, 2020 to reduce the risk of COVID-19 transmission and has not returned. Therapeutic leave and extended therapeutic leave may be combined for up to 13 days of paid leave while the individual was absent from the facility. To enter that leave, the program provider should have entered the ATH and AEV<sup>1</sup> codes (with a return date in between) as instructed by HHSC in the following alerts:

—Alert: [Providers Must Log Residents' Leave](#) with updated information published on June 5<sup>th</sup>; and

—Alert: [Community-based ICF/IID Logging Extended Leave Update](#) published on June 30<sup>th</sup>.

To bill for an additional 90 days of COVID-19 therapeutic leave, the provider enters a Return IMT for the ATH and AEV absence and enters an ASA IMT for the same date as the return to establish 90 additional billable days. If the return date was April 14, the provider may bill for COVID-19 therapeutic leave for April 14 – July 12, 2020.

**Example 2:** A resident is absent from a facility to reduce the risk of COVID-19 transmission in July for 30 full days and August for 15 full days but returned to the facility between those absences. The provider should have entered ATH and AEV combination for 13 days of leave for July and ATH for 3 days of leave in August. The resident left the facility again on November 22 and returned on December 28 (absent 35 full days).

The provider may back out the IMT for the 16 days of ATH and AEV entered in July and August. The provider can then enter COVID-19 Therapeutic Leave for 45 days in July and August, and 35 days in November and December.

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<sup>1</sup> Appendix IV, Resident Absences from a Non-State Operated ICF/IID  
<https://hhs.texas.gov/laws-regulations/handbooks/appendices/appendix-iv-resident-absences-a-non-state-operated-icfiid>