



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

January 8, 2009

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

To: Home and Community-based Services (HCS) Providers

Subject: Revisions to Texas Administrative Code Rules Governing Cost Reporting and Fiscal Accountability

Effective June 25, 2008, the Health and Human Services Commission (HHSC) adopted rule amendments to Title 1 of the Texas Administrative Code (TAC) §355.722 relating to Reporting Costs by Home and Community-based Services (HCS) Providers. Complete details of the amendments were published in the February 15, 2008 (33 *TexReg* 1203) and June 20, 2008 (33 *TexReg* 4859) issues of the *Texas Register*. Effective November 2, 2008, HHSC adopted rule amendments to 1 TAC §355.105 relating to General Reporting and Documentation Requirements, Methods, and Procedures. Complete details of the amendments were published in the May 2, 2008 (33 *TexReg* 3506) and October 24, 2008 (33 *TexReg* 8759) issues of the *Texas Register*.

Archived issues of the *Texas Register* can be accessed through the following website:

<http://texinfo.library.unt.edu/texasregister/2008.htm>

The most significant of these changes to 1 TAC §355.722 and §355.105 are detailed below. Please read this letter and the rule amendments referenced above carefully as they will impact the completion of your 2009 HCS Medicaid Cost Report(s) and fiscal accountability.

Reporting and Documentation Requirements for Non-Related-Party Staff

Paragraph (a)(2) was revised to replace reporting and documentation requirements for staff whose duties include work other than the provision of direct services with a reference to 1 TAC §355.105 relating to General Reporting and Documentation Requirements, Methods and Procedures. **NOTE** that this amendment codified existing requirements rather than imposing additional requirements.

1 TAC §355.105 includes subsection (b)(2)(B)(xii)(I) which details requirements for continuous daily timesheets for staff required to maintain such time sheets and subsection (b)(2)(B)(xii)(II) which describes which employees in the HCS program are required to maintain continuous daily time sheets. **This means** that staff performing more than one type of direct care work (e.g., employee is both: direct care worker and direct care worker supervisor; RN and direct care worker supervisor; direct care trainer and direct care trainer supervisor; etc.) and staff who

perform both direct care and indirect care (e.g., employee is both: direct care worker and housekeeper; administrator and RN etc.) must maintain continuous daily time sheets in order for their time and compensation to be allowable for Medicaid cost reporting and fiscal accountability purposes.

Continuous, daily time sheets must document, for each day, the staff member's start time, stop time, total hours worked, and the actual time worked (in increments of 30 minutes or less) providing direct services for the provider, the type of direct service provided (e.g., direct care worker, direct care worker supervisor, etc.), the actual time worked performing other functions, and paid time off. The employee must sign each timesheet. The employee's supervisor must sign the timesheets each payroll period or at least monthly. **NOTE** that this rule does not preclude electronic methods of recording time worked. Any form of time documentation that meets all the requirements spelled out in the rule is acceptable.

Reporting and Documentation Requirements for Owners and Related-Party Employees

Subsection (h) was revised to apply to both: 1) owner and related-party employees who provide multiple types of direct service and/or both direct hands-on support and first-level supervision of direct care workers; and 2) owner and related-party employees who provide both direct and indirect services. **This means** that all of these individuals must maintain daily time sheets that record the time spent on activities in each area as well as documentation relating to the compensation, bonuses, and benefits of each owner or related party.

Allowable Owner and Related-Party Hours, Hourly Wage Rates and Benefits

Subsection (h) was modified to indicate that owner and related-party hours, hourly wage rates and benefits for direct service work are limited to the lower of:

1) Actual hours worked, hourly wage rate paid and benefits;

Or

2) The hours, hourly wage rate and benefits for a comparable direct care staff person assumed in the fully-funded model.

If at least 40 percent of total labor hours in the related-party's direct service type were provided by non-related-parties, the related-party's hourly wage rate is limited to the higher of:

1) The hours for a comparable direct care staff person assumed in the fully-funded model;

Or

2) The non-related party average for that direct service type, so long as the non-related party average does not exceed the related-party's actual hourly wage.

For the 2009 cost report, the fully-funded hourly wage rates referred to in (h) are as follows:

Sleep and/or Awake Staff Setting

Direct Care Worker = \$8.65 per hour

Direct Care Worker Supervisor = \$12.00 per hour

Foster/Companion Care

Foster/Companion Care Coordinator = \$14.66 per hour

Day Habilitation Services

Direct Care Worker = \$8.93 per hour

Direct Care Worker Supervisor = \$11.70 per hour

Case Management Services

Case Manager = \$15.03 per hour

Case Manager Supervisor = \$17.72 per hour

Supported Home Living Services

Direct Care Worker = \$9.20 per hour

Direct Care Worker Supervisor = \$12.00 per hour

Supported Employment

Direct Service Staff (Job Coaches) = \$10.10 per hour

Direct Service Staff Supervisor = \$12.00 per hour

Respite Services

Direct Care Staff = \$8.65 per hour

Psychology Services

Contract Psychologist = \$72.66 per hour

Dietary Services

Contract Dietitian = \$46.54 per hour

Social Work Services

Contract Social Worker = \$44.30 per hour

Nursing Services

Nurse = \$20.54 per hour

Nurse Supervisor = \$23.13 per hour

PT/OT/Speech/Audiology

Contract Therapist = \$69.41 per hour

For the 2009 cost report, the hours from the fully-funded model referred to in (h) are as follows:

Sleep and/or Awake Staff Setting Hours per Unit of Service Provided

	Direct Care Worker	Direct Care Worker Supervisor
Intermittent (LON 1)	6.06	0.66
Limited (LON 5)	6.77	0.73
Extensive (LON 8)	7.78	0.84
Pervasive (LON 6)	9.51	1.03
Pervasive Plus (LON 9)	16.41	1.78

Day Habilitation Services Hours per Unit of Service Provided

	Direct Care Worker	Direct Care Worker Supervisor
Intermittent (LON 1)	0.89	0.10
Limited (LON 5)	1.11	0.13
Extensive (LON 8)	1.48	0.17
Pervasive (LON 6)	2.22	0.25
Pervasive Plus (LON 9)	8.89	1.00

Various Hours per Unit of Service Provided

Foster Companion Care Coordinator	0.38
Case Manager	8.46
Case Manager Supervisor	0.85
SHL Direct Care	1.65
SHL DC Supervisor	0.12
SE Direct Service	1.92
SE Direct Service Supervisor	0.24
Respite Direct Care Staff	1.00
Contract Psychologist	1.00
Contract Dietitian	1.00
Contract Social Worker	1.00
Nurse	1.76
Nurse Supervisor	0.13
Contract Therapist	1.00

Total Direct Care Hours Allowed for any Individual Owner or Related-Party Cannot Exceed 2,600

Subsection (h) was modified to indicate that during any single fiscal year, the sum of all direct care hours reported on HCS cost reports for any individual owner or related-party cannot exceed 2,600. **This means** that each individual owner or related-party is limited to reporting a maximum of 2,600 direct care hours on all HCS cost reports. Any other hours worked must be reported as administrative hours.

Owner and Related-party Hours, Hourly Wage Rates and Benefits above the Limits of (h)

New paragraph (h)(5) was added. This clause indicates that owner and related-party hours, hourly wage rates and benefits above the limits described in (h) are to be reported as administrative hours, hourly wages and benefits. **This means** that any owner or related-party hours, hourly wage rates or benefits above the limits described in (h) must be reported as administrative hours, wages and benefits rather than be excluded from the cost report.

Recoupment of Funds if a Provider Fails to Submit an Acceptable Cost Report

New subparagraphs (j)(2)(B) and (j)(2)(C) were added. These subparagraphs mandate recoupment of funds related to fiscal accountability if a provider fails to submit an acceptable cost report within 60 days of the placement of a vendor hold due to the failure to submit a cost report or within 60 days of a change of ownership or contract termination and that the recoupment will become permanent if no cost report is received within 365 days of the report

due date. **This means** that if a provider does not submit required cost reports within the prescribed timelines, the provider will be required to pay DADS the difference between 65 percent of direct service revenues and 95 percent of direct service revenues.

Requirements for Compliance with Fiscal Accountability to be calculated in the Aggregate
New paragraph (j)(8) was added. This paragraph formalizes requirements for compliance with spending requirements to be calculated in the aggregate for entities which control more than one HCS component code. **This means** that an entity controlling more than one HCS component code or commonly owned corporation may request that compliance with fiscal accountability be evaluated in the aggregate for all HCS component codes the entity or commonly owned corporation controlled at the end of its fiscal year or at the effective date of the change of ownership or termination of its last HCS contract. Under this section, the following terms have the following definitions:

Entity – a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

Control – greater than 50 percent ownership by the entity.

Commonly owned corporations – two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

If you have any questions about this letter or the amendments to 1 TAC §355.722 or §355.105, please contact Judy Myers, Senior Rate Analyst at 512-491-1179 or judy.myers@hhsc.state.tx.us.

Sincerely,

- *Signature on file* -

Pam McDonald, Director
Rate Analysis for Long term Care