

**Houston Independent School District
Medicaid Finance Department**

**Written Comments Submitted To:
HHSC Provider Finance – SHARS**

**RE: Proposed Changes to 355.8443 Reimbursement Methodology for
School Health and Related Services (SHARS)
Comments on Proposed Rule 22R067**

May 25, 2022



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Attached, please find the Houston Independent School District (HISD) “Written Comments” that relates to the Proposed Changes to §355.8443 Reimbursement Methodology for School Health and Related Services (SHARS) due to HHSC Provider Finance – SHARS on or before May 31, 2022.

The Houston Independent School District (HISD) would like to thank the Texas Health and Human Services Commission (THHSC) and the HHSC Provider Finance Department for the opportunity to submit our written response and comments for review. The HISD serves approximately 21,978 special education students, that on a daily basis, require medical, health or related services pursuant to the Individuals with Disabilities Education Act (IDEA).

The additional Medicaid reimbursement funding that is generated from our SHARS program has enabled the district to enhance, improve, and expand the level and quality of health and related services being delivered to our students. The HISD strives to be in compliance with Medicaid and IDEA requirements and will work with HHSC to further assist the district in achieving higher levels of regulatory compliance.

HISD looks forward to working with the THHSC to discuss and bring about meaningful policy changes that are not restrictive and prohibitive for school districts to seek Medicaid reimbursement for providing allowable Title XIX services to students with disabilities. If you should have any questions, please contact Michael Gonzalez, General Manager of Medicaid Finance, at 713-556-9130 (Office) or 713-205-6946 (Cell).

Michael Gonzalez
General Manager
Medicaid Finance and Consulting Services
Houston Independent School District

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Proposed Changes to 355.8443 Reimbursement Methodology for
School Health and Related Services (SHARS)**

Section: (c) Parental Consent

Proposed HHSC Change: *Parental Consent. Prior to submitting its annual cost report, the LEA must meet the parental consent requirements in §354.1342 of this title (relating to Conditions for Participation) for each student included in the numerator of the following ratios required in the cost report.*

HISD Response: HISD Does Not Support the implementation of proposed Texas Health and Human Services Commission (THHSC) changes to the SHARS Program concerning the Numerator for SHARS cost allocation ratios (IEP Ratio and One-Way Trip Ratio).

Exclusion of Medicaid eligible students due to parental consent implications from the subset population represented in the Numerator impacts the overall adherence to the Office of Management and Budget (OMB) standards to accurately calculate applicable costs in providing allowable Medicaid services. The Numerator represent the subset Medicaid population of the Total Universal Population being represented in the Denominator for a LEA's Medicaid population being served pursuant to federal law.

Office of Management and Budget (OMB) Requirements Potentially Being Overlooked by THHSC:

The current IEP Ratio and One-Way Trip Ratios for the SHARS Cost Report Settlement Process meets federal OMB standards for allocation of allowable and applicable cost for the federal award (Title XIX), and specifically takes into account that Local Education Agencies, as Medicaid Service Providers, are providing allowable Medicaid services to students with special needs under IDEA legislation, regardless of the complication LEA's encounter with 34 C.F.R. §300.154 parental consent for Personally Identified Information (PII) and Personal Health Information (PHI) as it applies to Medicaid reimbursement.

The current methodology for SHARS Cost Report Ratio Development and Reconciling to the Cost Report, meets established OMB cost allocation methodologies pursuant to the Office of Management and Budget (OMB) Circular A-87 and A-133 standards for Subset Populations identified in the respective Numerator and its respective association as a Subset Population to the overall Total Universal Population being represented in the denominator.

Current SHARS Cost Report Settlement Process Ensures Medicaid/Title XIX Payment to LEA Medicaid Service Providers:

The HISD supports and will continue to meet the IDEA parental consent requirement prior to billing to the Single State Medicaid Agency for Medicaid allowable services being provided to special needs students. The HISD believes that while the U.S. Department of Education's (DOE), 34 C.F.R. §300.154(d)(2)(iv)(A) requirement for parental consent does impact a LEA's ability to seek Medicaid reimbursement for interim payments, it should not impact the Annual SHARS Cost Report Settlement Process and the full disclosure

of the total Medicaid cost of providing allowable Medicaid services to its Medicaid eligible students. Equity for LEA Medicaid Service Providers is found in the current cost report settlement process, and it should not be changed because LEAs are providing required Medicaid allowable services, pursuant to federal law, to Medicaid eligible students with disabilities. The current cost report settlement process works equitably to “Hold Harmless” LEAs as Medicaid Service Providers, to be reimbursed and paid for providing allowable Medicaid services just like other Medicaid Service Providers in the healthcare sector that do not have to contend with the complications of implementing 34 C.F.R. §300.154(d).

In the federal court case, *“United States of America ex rel. John and Jane Doe v. The Taconic Hills Central School District, the Honorable Paul A. Crotty, United States District Judge, Southern District of New York”*, stated: *“Here Relators cite 34 C.F.R. §300.154(d)(2)(iv)(A) as the basis for the parental consent requirement, see Compl. ¶ 17, but it does not condition Medicaid reimbursement on compliance with its terms. In fact, nothing in the regulation mentions Medicaid reimbursement; rather, the regulation focuses on ensuring that services are provided in compliance with the IDEA. See generally 34 C.F.R. §300.154. Thus, Relator cannot assert a false claim based on the DOE’s alleged failure to notify parents or to obtain their consent before billing Medicaid.”* Pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court dismissed the claims concerning the parental consent requirement via 34 C.F.R. §300.154, against the Taconic Hills Central School District without prejudice.

There have been several other federal court cases that addressed the materiality of the DOE, 34 C.F.R. §300.154(d)(2)(iv)(A) requirement, and the same outcome seems to be decreed by the federal courts, that *“Relator cannot assert a false claim based on alleged failure to notify parents or to obtain their consent before billing Medicaid.”*

Many of these federal court cases make their final rulings about the materiality of DOE parental consent requirements based on the Social Security Administration Act, (42 U.S.C. §1396a(a), 42 U.S.C. §1396b), provisions that Title XIX-Medicaid Service Providers must be paid by the Single State Medicaid Agency, outright, for allowable Title XIX services being provided to Medicaid eligible recipients.

Federal Law and Congressional Intent:

The intent of the United States Congress pursuant to 42 U.S. Code §1396b(c), was that the U.S. Department of Health and Human Services, (HHS), was not to prohibit and/or restrict payment for medical assistance for covered services provided to a child with a disability pursuant to IDEA. Pursuant to federal court decree, the *“Government concludes that consistent with IDEA and Title XIX of the Social Security Act, a school district may seek reimbursement from Medicaid to pay for (covered) services necessary to ensure the provisions of (free appropriate public education) to Medicaid-eligible children with disabilities”*. Assistant U.S. Attorney Sarah S. Normand’s letter dated March 14, 2014, ECF No. 87, to the Honorable Paul A. Crotty, stated that: *“Title XIX of the Social Security Act warns that nothing in its subchapter should be “construed as prohibiting or restricting, payment under subsection (a) of this section for medical assistance for covered services furnished to a child with a disability because such services are included in the child’s individual education program established pursuant to part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411).”*

The intent of Congress under 42 U.S.C. §1396b(c) to ensure that school districts are afforded medical assistance under Title XIX for the IDEA mandate to provide medical and health related services to students

with disabilities, must also be followed by the Single State Medicaid Agency and the THHSC is not precluded from this federal law. The Texas Health and Human Services Commission's (THHSC), proposed changes to the SHARS Program concerning the manipulation of the numerator for SHARS cost allocation ratios significantly restricts and prohibits a school district and/or LEA's ability to seek Medicaid reimbursement, under federal law, for providing allowable and necessary Title XIX services to children with disabilities pursuant to IDEA legislation.

The manipulation of the numerator as a subset of the universal population being represented, with arbitrary criterion such as parental consent indicators, is not a unique criterion to the total universal population that is currently being represented in the denominator for a LEA's Medicaid population being identified as the applicable cost pursuant to OMB standards.

To meet this OMB standard, the THHSC would have to ensure that the "total universal population" contained and/or identified in the denominator are subjected to parental consent requirements as well, to meet unique criterion requirements of OMB requirements for subset populations and their correlation to universal populations being identified as components of total applicable costs criteria. This policy change in methodology by THHSC, significantly impacts the manipulation of the numerator for SHARS cost allocation ratios since this proposed change in THHSC policy would significantly restrict or prohibit school districts from seeking Medicaid reimbursement under 42 U.S.C. § 1396b(c).

Houston ISD Does Not Support THHSC's Proposed Changes to Cost Report Allocation Ratios:

The Houston Independent School District (HISD) Does Not Support the proposed THHSC changes to the Numerator for the calculation and/or development of the IEP Ratio and the One-Way Trip Ratio specifically, or all SHARS cost report ratios that would be impacted by this proposed change based on IDEA parental consent requirements.

The HISD is recommending that THHSC and the HHSC Provider Finance (SHARS) Department meet and work collaboratively with Local Education Agencies to further discuss these proposed changes, to the cost report ratios, that will have significant impacts to the scope of operations for LEA's that provide SHARS services. Local Education Agencies consider these proposed changes to the cost reconciliation and cost report settlement process via proposed changes to the Numerator's development to be restrictive and prohibitive in their ability to seek Medicaid reimbursement, as a Medicaid Service Provider, for providing allowable Medicaid services to children with disabilities under federal law.

cc: Glenn Reed: HISD Chief Financial Officer
Millard L. House II: HISD Superintendent of Schools
Texas Legislators: Harris County Delegation
Federal Legislators: Harris County Delegation
Manish Naik, Director, Legislative Services, Council of the Great City Schools
Tracy Ginsberg, Executive Director, Texas Association of School Business Officials
Curtis Culwell, Executive Director, The Texas School Alliance