



December 13, 2001

No. 143

IMPORTANT DEADLINE:

Comments Due on Proposed DHS Rules Implementing SB 43
(Children's Medicaid Simplification)

- ***Come Testify: Public hearing December 14, Texas Department of Human Services Public Hearing room, 701 West 51st Street, Austin, 10 a.m.***
- ***Submit written comments by December 24, 2001. Groups and individuals testifying at the December 14 hearing should also submit their comments in writing.***

On November 23, proposed Texas Department of Human Services (DHS) rules implementing SB 43, (Children's Medicaid Simplification) were published in the Texas Register. It is very important that all interested parties comment on these proposed rules. All Texas CHIP Coalition members, local child health and CHIP Coalition members, community-based organizations, and health care providers are encouraged to submit written comments.

Due to time constraints, the Texas CHIP Coalition has not adopted a formal group position. However, the Coalition's SB 43 workgroup has developed the following core comments, which reflect the current consensus among Coalition workgroup members. These organizations will include these points in their comments, along with any additional recommendations or concerns that the individual organizations may want to add.

SB 43 IMPLEMENTATION PROCESS

The Texas CHIP Coalition's SB 43 workgroup met weekly with state agency staff from Texas Health and Human Services Commission (HHSC) and DHS in September and October to provide input as the agencies developed both the proposed rules and operational procedures for SB 43. The real "nuts and bolts" of the plan for Children's Medicaid Simplification can be found in the "**SB 43 Proposed Implementation Outline**" (see www.hhsc.state.tx.us/Medicaid). Comments on the Proposed Implementation Outline were due on November 30, 2001. (You can read CPPP's comments at www.cppp.org.) The proposed DHS rules, developed with active oversight and

involvement by HHSC, can only be understood in combination with the outline.

PROPOSED RULES REQUIRE ORIENTATION AND CURRENT CHECK-UPS TO BE ELIGIBLE FOR MAIL-IN RENEWAL

The proposed rules are fairly skeletal, which is not unusual for Texas agency rules. This means that most of the real details about how Children's Medicaid Simplification will work are not spelled out in the proposed rule. (You can see the proposed rules at www.cppp.org.) One of the most significant provisions of the rules would require that parents receive a one-time "health care orientation" (HCO) and that their children be up-to-date with Texas Health Steps check-ups as a condition of being allowed to re-certify (renew) a child's Medicaid by mail. **Parents who do not meet these requirements would have to continue to go to a DHS eligibility office to renew coverage.**

It is important to note that the language in SB 43 does not mandate a penalty for parents who fail to comply with these requirements; all the law says is that parents must receive an orientation and that their children be up-to-date with their check-ups. Most Texas CHIP Coalition members oppose denying mail-in re-certifications to parents who fail to comply with the requirement. It is possible that the state is over-stepping its legal authority by creating a penalty (mandating a face-to-face interview) where none is specifically authorized in the law. However, key legislators have told HHSC that they are not opposed to limiting access to mail-in re-certification for parents who do not meet these standards, as long as the standards are applied in a highly flexible manner that does not penalize parents

who cannot comply with the requirements due to shortcomings of the Texas Medicaid system. Because legislators and the Governor appear to support sanctioning parents, it is important that advocates recommend changes to the rule that will protect parents from unfair or overly rigid penalties.

Texas CHIP Coalition members also want to make sure that if these requirements are imposed, they will not simply create a new set of barriers to replace the ones removed by SB 43. For example, parents should not be penalized if they cannot get the health care orientation because the state has not made it easily accessible, nor should they be penalized because Texas Medicaid data systems cannot provide accurate information about check-ups. Parents should also not be penalized because they lack transportation, cannot find a doctor or clinic to deliver a check-up, or cannot get an appointment during hours when they are not working.

CHIP Coalition will request an “SB 43 Operations Manual” to complement the rules

Coalition members have many detailed concerns about SB 43 implementation that are not addressed by the proposed rules. Many of these issues were addressed in the SB 43 Proposed Implementation Outline (see www.hhsc.state.tx.us/Medicaid), or raised in our comments on that outline submitted to HHSC on November 30, 2001. **Because of the critical importance of those operational guidelines for SB 43 implementation, we are requesting that HHSC develop an “SB 43 Operations Manual” and that the rules include a specific reference to this manual,** which would encompass and describe all processes related to SB 43, including the roles of HHSC, the Texas Department of Health/Texas Health Steps, DHS, any contractors [i.e., community-based organizations (CBOs), Maximus, Birch and Davis], and any other parties involved. The manual should encompass all the topics included in the Proposed Implementation Outline, including additional topics added as the result of the comment process on the proposed rules. **This manual, while not subject to the notice and comment periods that apply to formal rules under the Texas Administrative Code, should be a public document that is available on the HHSC web page, and is regularly updated to reflect current policies and procedures.**

SPECIFIC COMMENTS ON PROPOSED RULES

The following revisions to the proposed rule are strongly recommended: (underlining is suggested new text; ~~crossed-out text~~ is suggested deletions).

TAC 40, Part 1, Chapter 4, Subchapter A, §4.1012

(i) A parent or guardian of a child under 19 receiving Medicaid must (1) receive a health care orientation from ~~attend an in-person counseling session with a department representative not later than the 31st day after the date the child originally establishes eligibility;~~ or (2) accompany the child to an appointment with a health care provider for a comprehensive health care orientation not later than the 61st day after the date the child originally establishes eligibility; or (3) have a face to face interview to renew the child's eligibility for Medicaid and to receive the health care orientation. ~~appropriate counseling on the need for comprehensive health care.~~

Rationale: The deadlines listed above in the draft rule are unnecessary. Under Texas law, provisions already articulated in the state law need not be repeated in administrative rules. Also, the “business rules” (also known as the operating procedures) for SB 43 will treat these target deadlines flexibly to ensure that parents are not punished because the state has not made the health care orientation readily accessible for working poor parents, or because the child’s doctor or other provider cannot schedule an appointment for a new patient within the 61-day period. The business rules/operating procedures can describe in detail how and when a parent can obtain this health care orientation, and should be a public document [see below, suggested new subsection (k)]. Also, the term “health care orientation” is substituted for “in person counseling session” for added clarity, since the proposed rules include no definitions.

(j) Children under 19 who are receiving Medicaid and are eligible for the Texas Health Steps program must be in compliance with the regimen of care prescribed by the Texas Health Steps program or have a face to face interview to renew the child's eligibility for Medicaid and to receive appropriate counseling on the need for comprehensive health care. (no change)

(k) In administering the services and policies under (h), (i) and (j) of this section, DHS and its contractors shall follow the procedures specified in the Health and Human Service Commission's Medicaid Simplification Operations Manual which shall be published and available to the public by January 1, 2002, and updated monthly to reflect any procedural changes.

Rationale: The use of a required face-to-face interview as a “stick” to get parents to access the

new health care orientation and keep their children current on check-ups is only acceptable if there are published standards to ensure that parents are not being punished for the shortcomings of Texas Medicaid and its data systems. Advocates are relying on the flexible and realistic approach described in HHSC-DHS working papers, which explain the business

rules/operating procedures that will be used. **We cannot support the proposed rules unless 1) the rules reference the Operations Manual, 2) the manual is a public document, and 3) the manual is updated when processes change. We encourage HHSC to post the manual on its web page, as it has very effectively done with so many policy documents.**

If your organization chooses, you may wish to also recommend changing the proposed rules to delete all references to a required face-to-face interview at TAC 40, Part 1, Chapter 4, Subchapter A, §4.1012 (i) and (j). SB 43 nowhere states that Medicaid should continue to require face-to-face re-certification at a DHS office for parents who are tardy in obtaining a “health care orientation,” or whose children are not completely up-to-date with Texas Health Steps check-ups, yet the proposed rules would create this requirement. Many CHIP Coalition members do not believe that the proposed rules should deny access to the simplified process in this way. CPPP believes that the other changes to the proposed rule (described above) should be made, whether or not the required face-to-face interview is deleted.

Written comments should be sent to:

Supervisor, Rules and Handbooks Unit-21
Texas Department of Human Services E-205
P.O. Box 149030
Austin, Texas 78714-9030

And copied to:

Don Gilbert, Commissioner
Linda Wertz, State Medicaid Director
Jason Cooke, Director for Medicaid/CHIP
Operations
Texas Health and Human Services Commission
P O Box 13247
Austin, TX 78711

Jim Hine, Commissioner
Members, Texas Board of Human Services
Texas Department of Human Services
701 W. 51st St.
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BACKGROUND: WHY IS A FLEXIBLE APPROACH TO THE HEALTH CARE ORIENTATION AND TEXAS HEALTH STEPS SO IMPORTANT?

Simplification under SB 43 must be up and running in January 2002. Agencies will not have had time to fully develop systems to deliver the orientation or to track Texas Health Steps check-ups. Because of the problems associated with the delivery of a health care orientation and the barriers to participation in Texas Health Steps, DHS must develop flexible standards to implement these new requirements.

Health Care Orientation: The health care orientation does not yet exist, there is no network in place to deliver the orientation, and no funds have been appropriated to pay for new state staff or CBOs to deliver the orientation. HHSC and DHS need time to establish a statewide network of

CBOs and other sites where parents can get the orientation; otherwise we will be creating a NEW barrier to Medicaid participation. .

Texas Health Steps has tremendous data Problems. The data systems needed to allow tracking of Texas Health Steps check-ups on a child-by-child basis do not exist, in part because federal reporting standards for Texas Health Steps do not require this level of accuracy; the federal “Participant Ratio” only assesses the ratio of enrolled children to the total number of check-ups delivered.

The multiple computer systems that must interface in Texas Medicaid compound the challenge. In the latest published evaluation of Texas Medicaid Managed Care data, only 42% of medical services found in patients’ medical records were correctly entered in the HMOs’ computer (“encounter data”) files (i.e., had the correct patient, doctor, date, and the service provided). In one quarter of 1998, one plan only reported 27% of the EPSDT screens that the auditors found in the

doctors' medical records. In the same quarter, another plan reported nearly twice as many screens as were actually documented in the medical records.

Even outside Medicaid Managed Care, the data is only slightly better. Health care providers report that their Medicaid clients are constantly being sent letters telling them that they are behind on check-ups, even though the doctor has provided and billed for the service. Doctors do not have to bill for Medicaid check-ups for 95 days, so data on check-ups received always lags far behind utilization. Claims that contain a mistake or are appealed often are not ever incorporated into the main DHS computer system (SAVERR). **It is far beyond the current capacity of Texas Medicaid to account for services delivered in an accurate and timely way.**

Adding to the problems, the current DHS computer system mandates that each child get his check-up within the 90 days following his birthday. Thus, parents with several children cannot take all their children in for shots and check-ups at the same time (e.g., in July before school starts) and be considered in compliance.

Texas Medicaid has been striving to improve all these data problems since 1993, the year when Medicaid Managed Care started and also when the Texas first became involved in a federal class action lawsuit alleging that the Medicaid program was not complying with federal EPSDT laws, which entitle children to check-ups and related follow-up care. Despite continued pressure and efforts to improve (and some significant progress as a result of those efforts), data systems remain profoundly inadequate. Given that eight years of efforts have not resulted in good Texas Health Steps data, there is no reason to believe that these problems will be resolved promptly, despite good faith efforts.

Both parents and doctors face barriers to Texas Health Steps participation. Medicaid provider shortages are a problem in many (perhaps most) parts of Texas. Access to appointments at times that are accessible for working poor parents, especially those with transportation barriers, is also limited. Doctors complain of a variety of administrative problems, ranging from what they have to do to enroll as a Texas Health Steps provider, to how they can bill for their services.

Current Texas Health Steps statistics suggest a rigid interpretation would deny the mail-in renewal option to about 50% of children enrolled. Babies under age one are supposed to get six screens: at birth, by two weeks, and around two, four, six, and nine months. According to Texas Medicaid 1999 Managed Care data, only about 50-55% of children under age one got at least ONE check-up. About 20% of kids ages 2-20 got at least one exam (per the 1999 data). Texas' Participant Ratios for Texas Health Steps medical check-ups have improved annually for most of the period (1991-1999) for which the state has been reporting. However, the 1999 ratio (.57) showed a drop from the 1998 level (.66). According to the Texas Department of Health's analysis, about 4% of the overall 9% decline was due to the changes in federal methodology for EPSDT reporting. The rest of the drop is thought to be the result of an actual decline combined with unreliable Medicaid Managed Care check-up data.

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