



August 9, 2024

Texas Health and Human Services Commission
Attention: Provider Finance Department
Austin, Texas 78714-9030
PFD-LTSS@hhs.texas.gov

Re: Biennial Fee Review for Medicaid and Non-Medicaid Payment Rates and Rate Methodologies: Intermediate Care Facilities (ICFs), TxHmL, CLASS, and Home and Community-based Services (HCS) Group Homes

Educare Community Living (Educare) operates Medicaid-funded ICF and group home services for individuals with intellectual and developmental disabilities (IDD) in Texas and 17 other states. Services for these individuals look similar from state to state and include help with activities such as eating, bathing, dressing, and toileting, among many other supports depending on individualized need. Our Direct Support Professionals (DSPs) assist the individuals we serve on a 24/7 basis and are critical in ensuring the individuals we support have a high quality of life, good health, and regular access to their communities.

As one of the larger IDD providers in Texas, Educare serves more than 3,200 Texans with disabilities in urban and rural areas. Our primary objective is keeping individuals with chronic and complex long-term care needs healthier in their homes and communities and out of costlier, less-integrated care settings such as hospitals, emergency rooms, and nursing homes. These community-based settings are where the individuals we support want to be, and the services (otherwise known as Long-Term Services and Supports) present a significant cost savings to the state.¹

Direct Support Professional (DSP) Workforce Shortage in Texas

Educare's longtime history serving as a contracted care provider for HHSC has led to extensive experience with the cost reporting processes and rate methodologies for both the Intermediate Care Facility (ICF) and HCS waiver programs. We appreciate the opportunity to engage with HHSC as the state considers changes to the rate methodologies for these Medicaid-funded programs because ICF and HCS waiver services are not funded at levels which support adequate Direct Support Professional (DSP) wages.

Below are a few statistics that underscore the severity of the workforce crisis we're experiencing across the state:

- Approximately 40% of our DSP positions are vacant (going unfilled);

¹ "How Many People Use Medicaid Long-Term Services and Supports and How Much Does Medicaid Spend on Those People?" by Chidambaram, P., and Burns, A., *Kaiser Family Foundation*. August 14th, 2023. Retrieved online. <https://www.kff.org/medicaid/issue-brief/how-many-people-use-medicaid-long-term-services-and-supports-and-how-much-does-medicaid-spend-on-those-people/>



- Nearly 40% of the service hours provided by Educare, which are worked by our Direct Support Professionals, are overtime hours;
- For the first half of 2024, Educare has employed an average of 1,000 DSPs statewide. In 2021, Educare employed more than 1,465 DSPs statewide. This means our Texas workforce has contracted by one third over the past three years; and
- Since 2021, Educare has been forced to close more than 50 ICFs and HCS group homes, impacting the lives of hundreds of vulnerable individuals we serve across the state.

DSPs are critical frontline staff who help ensure the safety and well-being of the individuals we serve on a 24/7 basis. The severe DSP shortage is a result of low IDD industry wages. ICF and HCS group home closures or consolidations have negative outcomes for the Texans served by the IDD care system. Absent staffing improvements, we anticipate more closures/consolidations among all providers in the state, resulting in disruptions for individuals already in service, reduced access to services for those waiting for services, and, ultimately, a broadening of the already significant challenges providers face in meeting the quality standards that providers, HHSC, CMS, and Texans with disabilities expect and deserve.

ICF and HCS Rate Methodologies

Deficiencies in the current rate-setting methodologies compound the challenges we experience with staffing shortages and quality of care. The current methodologies do not cover many of our ongoing operational expenses, extraordinary nursing care, overtime wages for staff, or the capital improvements to our homes that must occur over time. Moreover, the process in which the rates are developed is challenged by the following:

- HHSC's collection of biennial cost reports, which are used to inform the state's budget, results in outdated cost data being used in funding decisions;
- The level-of-need based on the current ICAP assessment tool does not accurately determine the cost of care for individuals;
- The staffing ratios underlying HCS rates were established as part of a study performed more than 20 years ago and do not address increases in staffing needs due to changes that have been made to service delivery requirements;
- Cost reports are not appropriately capturing all the costs to provide quality, economical, and efficient care; and
- The current administrative cost allocation methodology does not accurately reflect the cost of care by service.

To address the flaws integrated into the cost reporting and ICF/waiver rates structure, we recommend that HHSC partner with ICF and waiver providers to analyze, identify, and create solutions for the portions of the rates which do not reflect the true cost of providing care. Broader collaboration



between the rate-setters and the providers is critical to ensuring that sufficient, sustainable rates are in place to mitigate the DSP staffing crisis.

Unfunded State and Federal Challenges Continue to Harm the IDD Care System in Texas

The IDD provider community is also challenged by numerous cost-increasing unfunded state and federal mandates that are not addressed within existing rate methodologies. Systems implementations such as TMHP, PEMs, and the mandated use of EVV, coupled with the Department of Labor's new overtime threshold regulation and the impending Medicaid Access Rule issued by the Centers for Medicare and Medicaid Services (CMS), are only a few examples of recent changes which continue to increase provider staffing and operational expenses without commensurate rate increases.

Ongoing Medicaid Eligibility Issues

Finally, IDD providers have an extensive list of individuals we serve who have lost Medicaid eligibility inappropriately due to systemic issues. Until these individuals have their IDD Medicaid eligibility reinstated, ICF and HCS providers are responsible for the uninterrupted provision of care despite their inability to be guaranteed payment. In addition to saddling providers with tremendous risk, the lapses in eligibility shift a disproportionate amount of administrative oversight resources from critical quality-related oversight to eligibility restoration activities. Any and all additional resources that HHSC can shift to helping providers navigate eligibility issues would bring much-needed relief to providers, families, and Texans with disabilities.

Conclusion

Thank you for inviting our comments and for your consideration of our feedback. We look forward to additional opportunities for more direct input and collaboration with HHSC on ICF and waiver rates, including better alignment between state and provider community data to establish a shared and accurate depiction of the severity of the issues providers navigate each day. Together as partners we have a tremendous opportunity to implement workable solutions that will improve existing programs while expanding access to services. We are encouraged and grateful about some the actions and dialogue that are already in process.

Thank you for your attention to these important issues and for HHSC's partnership in providing care for Texans with disabilities. We will happily answer any questions you may have.

With Regards,

A handwritten signature in black ink, appearing to read "Jodie Braden", written in a cursive style.

Jodie Braden
State Director, Texas
Educare Community Living