TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 353 MEDICAID MANAGED CARE
SUBCHAPTER O DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

ADOPTION PREAMBLE

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.1302, concerning Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019.

The amendment of §353.1302 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6670). This rule will be republished.

BACKGROUND AND PURPOSE

HHSC sought and received approval from the Centers for Medicare and Medicaid Services (CMS) to create the Quality Incentive Payment Program (QIPP) in state fiscal year 2018. HHSC has not made modifications to the program since state fiscal year 2022. Directed payment programs authorized under 42 C.F.R. §438.6(c) are expected to continue to evolve over time so that the program can continue to advance the quality goal or objective the program is intended to impact.

The amendment modifies the eligibility criteria for non-state government-owned nursing facilities. Beginning in state fiscal year 2025, the eligibility criteria related to the nursing facility being located in the same Regional Healthcare Partnership (RHP) as, or within 150 miles of, the non-state governmental entity taking ownership of the facility would be amended to require the non-state government-owned nursing facility to be located in the state of Texas in the same county as, or county contiguous to, the non-state governmental entity taking ownership of the facility.

The amendment also requires a non-state government-owned nursing facility eligible to participate in QIPP due to an active partnership, to produce certain documentation in connection with the enrollment application that demonstrates an active partnership between the nursing facility and the governmental entity exists. The amendment to the active partnership criteria enables HHSC to confirm non-state government-owned nursing facility eligibility at the time of program enrollment.

Beginning in state fiscal year 2026, QIPP-enrolled nursing facilities that undergo a change of ownership (CHOW) that changes the class of the facility during the program period will be removed from the program for the remainder of the program period after the CHOW effective date. This amendment will reduce the administrative burden of reconfirming eligibility by classification and modification to the program scorecards.

The amendment also modifies the funding allocations and frequency of QIPP payment distributions beginning in state fiscal year 2025: Component 1 would be equal to 44 percent of the program funding and would shift to being paid quarterly; Component 2 would be equal to 20 percent of the program funding and would shift to being paid quarterly; Component 3 would be equal to 20 percent of the program funding and would continue to be paid quarterly; and Component 4 would be equal to 16 percent of the program funding and would continue to be paid quarterly. The amendment to the funding allocations simplifies the allocation formulas and provides more transparency of each component's program funding size. The frequency of the QIPP payment distribution will align with QIPP quality metrics, pursuant to 1 Texas Administrative Code (1 TAC) §353.1304.

HHSC made other minor clarifying or grammatical edits to improve the readability of the rule text.

COMMENTS

The 31-day comment period ended December 18, 2023.

During this period, HHSC received comments regarding the proposed rule from approximately 100 commenters, including Barton Valley Rehabilitation and Healthcare Center; Beacon Harbor Healthcare & Rehabilitation; Beacon Hill; Bel Air at Teravista; Borger Healthcare Center; Bridgecrest Rehabilitation Suites; Brownfield Rehabilitation & Care Center; Canton Oaks; Cass Valley Healthcare Center with Nexion Health; Childress Healthcare Center; Coleman Healthcare; Colonial Manor Nursing; Colonnades at Refection Bay by Cantex Continuing Care Network; Coronado at Stone Oak by Cantex Continuing Care Network; Coronado Healthcare Center/Senior Living Properties; Crest View Court by Cantex Continuing Care Network; Crestwood Health and Rehabilitation Center; Cross Timbers Rehabilitation & Healthcare Center; Ensign Services; Fort Bend Healthcare Center by Cantex Continuing Care Network; Grand Terrace Rehabilitation and Healthcare - The Heart of Mc Allen; Green Valley Healthcare and Rehabilitation Center; Gulf Shores Rehabilitation and Healthcare Center; Haskell Healthcare Center; Hillside Heights Rehabilitation Suites in Amarillo; Holly Mead by Cantex Continuing Care Network; Jacksonville Healthcare Center; Keystone Care; Lake Hills Healthcare Center; Las Brisas Rehabilitation & Wellness Suites; Laurel Court; Legend Oaks Healthcare and Rehab of Gladewater; Lily Springs Rehabilitation and Healthcare Center; Lone Star Ranch Rehabilitation and Healthcare Center; Los Arcos del Norte Nursing & Rehab; M Chest Pharmacy; McAllen Transitional Care Center; Meadowbrook Care Center; Mill Creek; Nexion Health Management, Inc; Fundamental; Oak Manor of Commerce Nursing and Rehab; Oakwood Manor Nursing Home; Palma Real Transitions Care Center; Paradigm Healthcare, LLC; Park Valley Inn Health Center; Prairie Estates by Cantex Continuing Care Network; Renaissance Care Center; Retama Manor; San Remo by Cantex Continuing Care Network; Sandy Lake Rehab & Care Center-Coppell; Senior Living Properties; Solera at Weston Houston; Solutions Healthcare; Sorrento by Cantex Continuing Care Network; Spend Management SLP Operations; State Long-Term Care Ombudsman; Sterling Hills Rehab & Healthcare; Sterling Oaks Rehabilitation;

Sundance Inn Health Center; Terrell HeathCare; Texas Health Care Association; Texas Hospital Association; Texas Medical Association; Texas Organization of Rural and Community Hospitals; The Bradford at Brookside by Cantex Continuing Care Network; The Courtyards at Pasadena; The Crescent Transitional Care; The Independent Coalition of Nursing Home Providers ("Coalition "); The Madison on March by Cantex Continuing Care Network; The Manor At Seagoville; The Villa of Mountain View by Cantex Continuing Care Network; The Villages of Dallas; Trinity Nursing & Rehab of Granbury; Truman W. Smith Children's Care Center; Villa Haven Health and Rehabilitation; Whispering Springs Rehabilitation and Healthcare Center; Windmere at Westover Hills; Wood Memorial in Mineola - Senior Living Properties; and Woodville Health and Rehab Center. A summary of comments relating to the rule and HHSC's responses follows.

Comment: One commenter expressed appreciation for the amendment to the non-state government-owned nursing facilities eligibility requirement, including the same or contiguous county requirement. The commenter stated that a non-state government owner who is in the same community as a nursing facility will have a greater interest in the operations of that facility and will better understand the community that the facility serves. The commenter expressed concerns that the eligibility requirement related to the same or contiguous county would apply to a management company of a non-state government-owned nursing facility.

Response: HHSC acknowledges the comment and appreciates the support of the amendment. To clarify, HHSC confirms the non-state government-owned nursing facility eligibility requirement related to the same county or contiguous counties applies to the nursing facility and the non-state governmental entity taking ownership of the facility. The location of a management company cannot be utilized to meet the eligibility requirement. No revisions were made in response to this comment.

Comment: One commenter expressed appreciation for the active participation requirements that are a part of the non-state government-owned nursing facility eligibility requirements. The commenter stated that active partnerships improve oversight, collaboration, and problem-solving between nursing facility owners and operators, which will lead to improved outcomes for residents.

Response: HHSC acknowledges the comment and appreciates the support of the amendment. No revisions were made in response to this comment.

Comment: Several commenters requested the addition of the word "or " between the first and second non-state government-owned nursing facility eligibility criteria. Commenters shared the addition of the word "or " would ensure a clear understanding that a nursing facility that is owned by a non-state governmental entity for no less than four years prior to the first day of the program period would be eligible to participate in QIPP, and would not require a demonstrative active partnership.

Response: HHSC disagrees that the text of the rule requires clarification and declines to revise the rule in response to the comment. The suggested change is not grammatically necessary. HHSC confirms that if a nursing facility is owned by the same non-state governmental entity for four or more years, that nursing facility does not have to satisfy the active partnership requirement described in the rule to be eligible to participate in the QIPP.

Comment: One commenter suggested that HHSC consider an exception to ineligible private facilities to meet the active partnership requirements. The commenter stated private facilities generally do not learn whether they will be eligible to participate until after the application date. The commenter further shared that if a private facility is not eligible to participate, the private facility will not have an opportunity to partner with a non-state government-owned facility unless the facility is located within the same county as the non-state government-owned facility due to the amended eligibility criteria for non-state government-owned facilities.

Response: HHSC acknowledges the comment and declines to revise the rule in response to the comment. While the QIPP program contains provisions regarding changes of ownership for participation in QIPP, the rule does not limit a facility's ability to enter into a CHOW in accordance with their business practices and needs. The limitations related to CHOWs in the QIPP rules intended to enable HHSC to have reasonable certainty in financial modeling used to establish capitation rates for the managed care organizations. Because QIPP is a quality-improvement program, HHSC has imposed additional requirements in QIPP to ensure that the owners of facilities are engaged in promoting the improved quality for the Medicaid beneficiaries that reside in their facilities. As such, HHSC does not make decisions regarding these timelines to facilitate decision-making by a current nursing facility owner to sell their facility for the seeming sole purpose of maintaining eligibility for QIPP. HHSC encourages providers to serve Medicaid beneficiaries and reminds providers that participation as a private facility requires the facility to "have a percentage of Medicaid NF days of service that is greater than or equal to 65 percent."

Comment: Multiple commenters recommended that nursing facilities and non-state governmental entities be given more time to undergo a CHOW and demonstrate active partnership activities in relation to state fiscal year 2025 QIPP program eligibility requirements. Commenters sought clarification regarding CHOW deadlines and the requirement of non-state government-owned nursing facilities that are eligible to participate in QIPP due to an active partnership to provide documentation of activities that demonstrate an active partnership has occurred in the prior two months before application as well as a detailed plan for maintaining the partnership in the months following the application date through the end of the program period. One commenter suggested that HHSC delete the requirement for the documentation of activities.

Response: HHSC acknowledges the comment and declines to revise the rule in response to this comment. HHSC confirms a nursing facility's QIPP eligibility at the

time of enrollment. To confirm eligibility, a non-state government-owned nursing facility eligible to participate in QIPP based on an active partnership between the nursing facility and the governmental entity that owns the nursing facility must be able to provide documentation of activities that demonstrate an active partnership for HHSC to confirm the nursing facility's eligibility. There is not a specific CHOW deadline related to the demonstration of an active partnership. The governmental entity that owns the nursing facility and the nursing facility will be required to demonstrate the active partnership as outlined in the amendment.

Comment: Several commenters requested that, for state fiscal year 2026, the timeframe for which as active partnership must be demonstrated at enrollment be changed from nine months to six months. Commenters shared that the program period starts six months after the date of application, therefore demonstrating active partnership activities six months before the date of application effectively provides one year of active partnership before the start of the program period.

Response: HHSC acknowledges the comment and declines to revise the rule in response to this comment. HHSC confirms a nursing facility's QIPP eligibility at the time of enrollment. To confirm eligibility, a non-state government-owned nursing facility eligible to participate in QIPP based on an active partnership between the NF and the governmental entity that owns the NF must be able to provide documentation of activities that demonstrate an active partnership as well as a detailed plan for maintaining the partnership in the months following the application date through the end of the program period. The active partnership activities include monthly, quarterly, and annual activities. Before the proposal to amend §353.1302 was published, a workgroup was convened that consisted of industry representatives to discuss and receive feedback on the QIPP program. The workgroup's feedback was evaluated and incorporated into the rule amendment, including the feedback requiring between six and twelve months of active partnership activities at the time of enrollment. HHSC preferred twelve months, but agreed to require nine months due to our understanding that twelve months was not the preference of workgroup participants.

Comment: One commenter requested that HHSC exempt non- nursing facilities that are owned by a non-state governmental entity as of the effective date amendment from the application of the amendment. The commenter shared that nursing facilities that have been owned by a non-state governmental entity for fewer than four years at the time of rule implementation and do not comply with the geographic requirement would be ineligible for QIPP for one or more program years.

Response: HHSC acknowledges the comment and declines to revise the rule in response to this comment. The eligibility requirements for non-state government-owned nursing facilities require the nursing facility to be located in the state of Texas in the same county as, or if separate counties, a contiguous county of, the non-state governmental entity taking ownership of the facility; to be owned by the non-state governmental entity for no less than four years before the first day of the

program period; or to be able to provide documentation of activities that demonstrate an active partnership has occurred in the prior two months (for state fiscal year 2025) and in the prior nine months (for state fiscal year 2026) before application as well as a detailed plan for maintaining the partnership in the months following the application date through the end of the program period.

HHSC anticipates that if a non-state government-owned nursing facility is more than 150 miles aways from the non-state governmental entity that owns the facility and is not in the same county as that entity or a county contiguous to the county in which the non-state governmental entity is located, the nursing facility would be eligible to participate in QIPP based on an active partnership between the facility and the non-state governmental entity that owns the facility. The amendment pertaining to the state fiscal year 2025 eligibility criteria requires the submission of documents for only two months of activities before enrollment, and nine months in state fiscal year 2026.

Comment: Multiple commenters recommended that if an enrolled nursing facility undergoes a CHOW that changes the class of the facility from privately-owned to non-state government-owned during the program period, the enrolled nursing facility be permitted to participate in the program for the remainder of the program period, but only as a privately-owned facility eligible to receive payments for Component Two and Component Three. The commenters shared that a nursing facility that participates in QIPP as a privately-owned facility may be forced to not participate in QIPP for a year if they drop below the 65 percent eligibility criteria or temporarily not participate in QIPP if they undergo a CHOW with a non-state governmental entity in order to continue to participate in QIPP.

Response: HHSC acknowledges the comment and declines to make the suggested change. A nursing facility must maintain its eligibility to participate in QIPP for an entire program period. If a nursing facility no longer meets the eligibility requirements under which the facility enrolled in QIPP, the facility is no longer eligible to participate in QIPP. Allowing a nursing facility to participate in or continue to participate in QIPP based on a different classification than the nursing facility's actual operational classification contradicts the program requirements and could introduce significant financial risk into to the program.

Comment: One commenter recommended that the Component One payment continue to be paid monthly, rather than the quarterly basis. The commenter shared cashflow concerns with the non-state government-owned nursing facilities that are eligible to receive Component One payments based on achievement of Component One metrics.

Response: HHSC acknowledges the comment and declines to make the suggested change. The amendment regarding the frequency of payments aligns with the proposed state fiscal year 2025 quality metrics. Pursuant to 1 TAC §353.1304, HHSC published proposed state fiscal year 2025 QIPP quality metrics on December 1, 2023, held a public hearing regarding the proposed metrics, and stakeholders

were able to submit comments regarding those metrics through December 15, 2023.

Comment: Several commenters requested that QIPP Component Four be combined with QIPP Component One metrics creating an enhanced Component One equal to 60 percent of the total program value for the program period. The commenters also requested the enhanced Component One would maintain the proposed achievement of 1 metric would earn 90 percent and achievement of 2 metrics earns 100 percent of the total dollars included in the new "combined " Component. The commenters shared that this request would simplify the program implementation, improve administrative efficiency, and better focus those participating public nursing homes for improved quality performance.

Response: HHSC disagrees with the suggested changes and declines to revise the rule in response to the comment. The amendment to 1 TAC §353.1302 aligns with the proposed state fiscal year 2025 quality metrics. Pursuant to 1 TAC §353.1304, HHSC published proposed state fiscal year 2025 QIPP quality metrics on December 1, 2023, held a public hearing regarding the proposed metrics, and allowed stakeholders to submit comments regarding those metrics through December 15, 2023.

Comment: Several commenters requested to change the allocation across quality metrics for Components Two, Three, and Four from each quality metric being equally weighted to align with the allocation for Component One. The allocation would change so achievement in one metric earns 90 percent and achievement in two metrics earns 100 percent of the total dollars included in the component. Commenters indicated that the suggested change would incentivize participants who are already high achievers in one metric to continue to improve their quality in other metrics, knowing that failure to meet the continuous improvement requirement in one metric could negatively impact program performance.

Response: HHSC acknowledges the comment. HHSC declines to revise the rule in response to the comment as the comment related to Components Three and Four. With regards to Component Two, HHSC revised the allocation of funds within the component so that in state fiscal year 2025, achievement in 1 metric earns 70 percent and achievement in 2 metrics earns 100 percent of total dollars included in the component; in state fiscal year 2026, achievement in 1 metric earns 60 percent, achievement in 2 metrics earns 85 percent, and achievement in 3 metrics earns 100 percent of total dollars included in the component; and in state fiscal year 2027 and subsequent state fiscal years, each quality metric will be allocated an equal portion of the total dollars included in the component.

Comment: Multiple commenters recommended the non-dispersed funds remain within each Component and only be distributed to qualifying nursing facilities that achieved metrics within the same Component.

Response: HHSC acknowledges the comment and declines to make the suggested change. The non-dispersed funds pool is the total funds paid through the capitation

rate to the managed care organizations, less the total funds earned by facilities. The total funds paid through the capitation rate are not separated or allocated by component amounts. Revising the methodology to distribute non-dispersed funds by component would require HHSC to base the calculation on an estimate of funds paid by component instead of the actual capitation payment and could inject unacceptable risks into the program. HHSC, however, did make changes to the way in which non-disbursed funds are distributed in response to other comments received.

Comment: One commenter expressed appreciation for the addition of the staffing component and recommended the component should be increased to at least 25 percent of the total program value.

Response: HHSC acknowledges the comment and the importance of staffing and appreciates the support of the comment, but HHSC declines to make the suggested change. The amendment aligns with the proposed state fiscal year 2025 quality metrics. Pursuant to 1 TAC §353.1304, HHSC published proposed state fiscal year 2025 QIPP quality metrics on December 1, 2023, HHSC held a public hearing regarding the proposed metrics, and allowed stakeholders to submit comments regarding those metrics through December 15, 2023. The QIPP proposed state fiscal year 2025 quality metrics for Component Two pertain to staffing. Component Two is amended to be equal to 20 percent of the total program value for the program period in the amendment. Additionally, changes were made to the distribution of non-disbursed funds that may support facilities that choose to focus on enhancing staffing at the facility.

In addition to the QIPP program, there are additional Medicaid revenues a nursing facility may receive to support staffing. The other Medicaid revenues include the Medicaid base rate, which was increased on September 1, 2023, pursuant to the 2024-25 General Appropriations Act (GAA), Article II, Rider 24, which provides "appropriations for reimbursement rate increases that will increase the wages and benefits of direct care staff. "Furthermore, a nursing facility may choose to participate in the Direct Care Staff Enhancement program (rate enhancement). Rate enhancement participating providers receive additional funding to their Medicaid base rates and agree to use that funding on compensation for direct care staff compensation.

Comment: Multiple commenters recommended modifications specific to the QIPP Components or metrics. The comments pertained to increasing Component One metrics from five metrics to eight metrics; moving to a trailing four-quarter average for performance targets; the new calculation methodology for the Nursing Facility Specific Relative Improvement Target; and the performance requirements set at the national mean.

Response: HHSC acknowledges these comments. The comments are not relevant to the amendment because they are outside the scope of the rule being amended. Pursuant to 1 TAC 353.1304, HHSC published proposed state fiscal year 2025 QIPP quality metrics on December 1, 2023, held a public hearing regarding the proposed

metrics, and stakeholders were able to submit comments regarding those metrics through December 15, 2023.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

This agency hereby certifies that this adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADDITIONAL INFORMATION

For further information, please call: (737) 867-7817.

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§353.1302. Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019.

(a) Introduction. This section establishes the Quality Incentive Payment Program (QIPP) for nursing facilities (NFs) providing services under Medicaid managed care on or after September 1, 2019. QIPP is designed to incentivize NFs to improve quality and innovation in the provision of NF services to Medicaid recipients through the use of metrics that are expected to advance at least one of the goals and objectives of the state's quality strategy.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this and other sections of this subchapter may be defined in §353.1301 (relating to General Provisions) or §353.1304 (relating to Quality Metrics for the Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019) of this subchapter.

(1) CHOW application--An application filed with HHSC for a NF change of ownership (CHOW).

(2) Program period--A period of time for which an eligible and enrolled NF may receive the QIPP amounts described in this section. Each QIPP program period is equal to a state fiscal year (FY) beginning September 1 and ending August 31 of the following year.

(3) Network nursing facility--A NF located in the state of Texas that has a contract with a Managed Care Organization (MCO) for the delivery of Medicaid covered benefits to the MCO's enrollees.

(4) Non-state government-owned NF--A network nursing facility where a non-state governmental entity located in the state of Texas holds the license and is a party to the NF's Medicaid provider enrollment agreement with the state.

(5) Private NF--A network nursing facility not owned by a governmental entity located in the state of Texas, and holds a license.

(6) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform as defined and established under Chapter 354, Subchapter D, of this title (relating to Texas Healthcare Transformation and Quality Improvement Program).

(7) Runout Period--A period of 23 months following the end of the program period during which the MCO may make adjustments to the MCO member months.

(c) Eligibility for participation in QIPP. A NF is eligible to participate in QIPP if it complies with the requirements described in this subsection.

(1) The NF is a non-state government-owned NF.

(A) The non-state governmental entity that owns the NF must certify the following facts on a form prescribed by HHSC.

(i) That it is a non-state government-owned NF where a non-state governmental entity holds the license and is party to the facility's Medicaid contract; and

(ii) That all funds transferred to HHSC via an intergovernmental transfer (IGT) for use as the state share of payments are public funds.

(B) For the program periods beginning on or before September 1, 2023, but on or after September 1, 2019, the NF must be located in the state of Texas in the same RHP as, or within 150 miles of, the non-state governmental entity taking ownership of the facility; must be owned by the non-state governmental entity for no less than four years prior to the first day of the program period; or must be able to certify in connection with the enrollment application that they can demonstrate an active partnership between the NF and the non-state governmental entity that owns the NF.

(C) For the program period beginning September 1, 2024, the NF must be located in the state of Texas in the same county as, or if separate counties, a contiguous county of, the non-state governmental entity taking ownership of the facility; must be owned by the non-state governmental entity for no less than four years prior to the first day of the program period; or must be able to provide documentation of activities that demonstrate an active partnership that have occurred in the prior two months before application as well as a detailed plan for maintaining the partnership in the months following the application date through the end of the program period.

(D) For program periods beginning on or after September 1, 2025, the NF must be located in the state of Texas in the same county as, or if separate counties, a contiguous county of, the non-state governmental entity taking ownership of the facility; must be owned by the non-state governmental entity for no less than four years prior to the first day of the program period; or must be able to provide documentation of activities that demonstrate an active partnership that have occurred in the prior nine months before application as well as a detailed plan for maintaining the partnership in the months following the application date through the end of the program period.

(E) The following criteria demonstrate an active partnership between the NF and the non-state governmental entity that owns the NF.

(i) Monthly meetings (in-person or virtual) with NF administrative staff to review the NF's clinical and quality operations and identify areas for improvement. Meetings should include patient observations; regulatory findings; review of Certification And Survey Provider Enhanced Reports (CASPER) reports, quality measures, grievances, staffing, risk, incidents, accidents, and infection control measures; root cause analysis, if applicable; and design of performance improvement plans.

(ii) Quarterly joint trainings on topics and trends in nursing home care best practices or on needed areas of improvement.

(iii) Annual, on-site inspections of the NF by a non-state governmental entity-sponsored Quality Assurance team.

(2) The NF is a private NF. The NF must have a percentage of Medicaid NF days of service that is greater than or equal to 65 percent. For each private NF, the percentage of Medicaid NF days is calculated by summing the NF's Medicaid NF fee-for-service and managed care days of service, including dual-eligible demonstration days of service, and dividing that sum by the facility's total days of service in all licensed beds. Medicaid hospice days of service are included in the denominator but excluded from the numerator.

(A) The days of service will be annualized based on the NF's latest cost report or accountability report but from a year in which HHSC required the submission of cost reports.

(B) HHSC will exclude any calendar days that the NF was closed due to a natural or man-made disaster. In such cases, HHSC will annualize the days of service based on calendar days when the NF was open.

(d) Data sources for historical units of service. Historical units of service are used to determine an individual private NF's QIPP eligibility status and the distribution of QIPP funds across eligible and enrolled NFs.

(1) All data sources referred to in this subsection are subject to validation using HHSC auditing processes or procedures as described under §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports).

(2) Data sources for the determination of each private NF's QIPP eligibility status are listed in priority order below. For each program period, the data source must be from a cost-reporting year and must align with the NF's fiscal year.

(A) The most recently available Medicaid NF cost report for the private NF. If no Medicaid NF cost report is available, the data source in subparagraph (B) of this paragraph must be used.

(B) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for the private NF. If no Medicaid Direct Care Staff Rate Staffing and Compensation Report is available, the data source in subparagraph (C) of this paragraph must be used.

(C) The most recently available Medicaid NF cost report for a prior owner of the private NF. If no Medicaid NF cost report for a prior owner of the private NF is available, the data source in subparagraph (D) of this paragraph must be used.

(D) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for a prior owner of the private NF. If no Medicaid Direct Care Staff Rate Staffing and Compensation Report for a prior owner of the private NF is available, the private NF is not eligible for participation in QIPP.

(3) Data sources for determination of distribution of QIPP funds across eligible and enrolled NFs are listed in priority order below. For each program period, the data source must be from a cost-reporting year and must align with the NF's fiscal year.

(A) The most recently available Medicaid NF cost report for the NF. If the cost report covers less than a full year, reported values are annualized to represent a full year. If no Medicaid NF cost report is available, the data source in subparagraph (B) of this paragraph must be used.

(B) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for the NF. If the Staffing and Compensation Report covers less than a full year, reported values are annualized to represent a full year. If no Staffing and Compensation Report is available, the data source in subparagraph (C) of this paragraph must be used.

(C) The most recently available Medicaid NF cost report for a prior owner of the NF. If the cost report covers less than a full year, reported values are annualized to represent a full year. If no Medicaid NF cost report for a prior owner of the NF is available, the data source in subparagraph (D) of this paragraph must be used.

(D) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for a prior owner of the NF. If the Staffing and Compensation Report covers less than a full year, reported values are annualized to represent a full year.

(e) Conditions of Participation. As a condition of participation, all NFs participating in QIPP must do the following.

(1) The NF must submit a properly completed enrollment application on a form prescribed by HHSC by the due date determined by HHSC. The enrollment period must be no less than 30 calendar days, and the final date of the enrollment period will be at least nine days prior to the IGT notification.

(2) The entity that owns the NF must certify, on a form prescribed by HHSC, that no part of any payment made under the QIPP will be used to pay a contingent fee; and that the entity's agreement with the nursing facility does not use a reimbursement methodology containing any type of incentive, direct or indirect, for inappropriately inflating, in any way, claims billed to Medicaid, including the NF's receipt of QIPP funds. The certification must be received by HHSC with the enrollment application described in paragraph (1) of this subsection.

(3) If a provider has changed ownership in the past five years in a way that impacts eligibility for the program, the provider must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership or the management of the provider, and which reference the administration of, or payment from, this program.

(4) The NF must ensure that HHSC has access to the NF records referenced in subsection (c) of this section and the data for the NF from one of the data sources listed in subsection (d) of this section. Participating facilities must ensure that these records and data are accurate and sufficiently detailed to support legal, financial, and statistical information used to determine a NF's eligibility during the program period.

(A) The NF must maintain these records and data through the program period and until at least 90 days following the conclusion of the runout period.

(B) The NF will have 14 business days from the date of a request from HHSC to submit to HHSC the records and data.

(C) Failure to provide the records and data could result in adjustments pursuant to §353.1301(k) of this subchapter.

(5) Report all quality data denoted as required as a condition of participation in subsection (g) of this section.

(6) Failure to meet any conditions of participation described in this subsection will result in removal of the provider from the program and recoupment of all funds previously paid during the program period.

(f) Non-federal share of QIPP payments. The non-federal share of all QIPP payments is funded through IGTs from sponsoring non-state governmental entities. No state general revenue is available to support QIPP.

(1) HHSC will share suggested IGT responsibilities for the program period with all QIPP eligible and enrolled non-state government-owned NFs at least 15 days prior to the IGT declaration of intent deadline. Suggested IGT responsibilities will be based on the maximum dollars available under the QIPP program, plus eight percent, for the program period as determined by HHSC; forecast STAR+PLUS NF member months for the program period as determined by HHSC; and the distribution of historical Medicaid days of service across non-state government-owned NFs enrolled in QIPP for the program period. HHSC will also share estimated maximum revenues each eligible and enrolled NF could earn under QIPP for the program period. Estimates are based on HHSC's suggested IGT responsibilities and an assumption that all enrolled NFs will meet 100 percent of their quality metrics. The purpose of sharing this information is to provide non-state government-owned NFs with information they can use to determine the amount of IGT they wish to transfer.

(2) Sponsoring governmental entities will determine the amount of IGT they wish to transfer to HHSC for the entire program period and provide a declaration of intent to HHSC 15 business days before the first half of the IGT amount is transferred to HHSC.

(A) The declaration of intent is a form prescribed by HHSC that includes the total amount of IGT the sponsoring governmental entity wishes to transfer to HHSC and whether the sponsoring governmental entity intends to accept Component One payments.

(B) The declaration of intent is certified to the best knowledge and belief of a person legally authorized to sign for the sponsoring governmental entity but does not bind the sponsoring governmental entity to transfer IGT.

(3) Sponsoring governmental entities will transfer the first half of the IGT amount by a date determined by HHSC. The second half of the IGT amount will be transferred by a date determined by HHSC. The IGT deadlines and all associated dates will be published on the HHSC QIPP webpage by January 15 of each year.

(4) Reconciliation. HHSC will reconcile the actual amount of the non-federal funds expended under this section during each program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter.

(g) QIPP capitation rate components. QIPP funds will be paid to MCOs through four components of the STAR+PLUS NF managed care per member per month (PMPM) capitation rates. The MCOs' distribution of QIPP funds to the enrolled NFs will be based on each NF's performance related to the quality metrics as described in §353.1304 of this subchapter. The NF must have had at least one Medicaid client in the care of that NF for each reporting period to be eligible for payments.

(1) Component One.

(A) The total value of Component One will be equal to:

(i) For program periods beginning on or before September 1, 2023, but on or after September 1, 2019, 110 percent of the estimated amount of the non-federal share of the QIPP.

(ii) For program periods beginning on or after September 1, 2024, 44 percent of total program value for the program period.

(B) Interim allocation of funds across qualifying non-state government-owned NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Private NFs are not eligible for payments from Component One.

(D) For program periods beginning on or before September 1, 2023, but on or after September 1, 2019, the interim allocation of funds across qualifying non-state government-owned NFs will be reconciled to the actual distribution of Medicaid NF days of service across these NFs during the program period as captured by HHSC's Medicaid contractors for fee-for-service and managed care 120 days after the last day of the program period.

(E) For program periods beginning on or before September 1, 2023, but on or after September 1, 2019, NFs must report quality data as described in §353.1304 of this subchapter as a condition of participation in the program.

(F) For program periods beginning on or after September 1, 2024, payments to NFs will be triggered by achievement of performance requirements as described in §353.1304 of this subchapter.

(2) Component Two.

(A) The total value of Component Two will be equal to:

(i) For the program periods beginning on or before September 1, 2020, but on or after September 1, 2019, 30 percent of total program value for the program period after accounting for the funding of Component One and Component Four.

(ii) For the program periods beginning on or before September 1, 2023, but on or after September 1, 2021, 40 percent of total program value for the program period after accounting for the funding of Component One and Component Four.

(iii) For program periods beginning on or after September 1, 2024, 20 percent of total program value for the program period.

(B) Allocation of funds across qualifying non-state government-owned and private NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Payments to NFs will be triggered by achievement of performance requirements as described in §353.1304 of this subchapter or, if applicable in a program period, a uniform rate increase for which a NF must report quality data as described in §353.1304 of this subchapter as a condition of participation in the program.

(3) Component Three.

(A) The total value of Component Three will be equal to:

(i) For the program periods beginning on or before September 1, 2020, but on or before September 1, 2019, 70 percent total program value for the program period after accounting for the funding of Component One and Component Four.

(ii) For the program periods beginning on or before September 1, 2023, but on or after September 1, 2021, 60 percent after accounting for the funding of Component One and Component Four.

(iii) For the program period beginning September 1, 2024, 20 percent of the program period funds.

(B) Allocation of funds across qualifying non-state government-owned and private NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Payments to NFs will be triggered by achievement of performance requirements as described in §353.1304 of this subchapter.

(4) Component Four.

(A) The total value of Component Four will be equal to 16 percent of the total program value for the program period.

(B) Allocation of funds across qualifying non-state government-owned NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Payments to non-state government-owned NFs will be triggered by achievement of performance requirements as described in §353.1304 of this subchapter.

(D) Private NFs are not eligible for payments from Component Four.

(5) Non-Disbursed Funds.

(A) For program periods that begin on or before September 1, 2023, funds that are non-disbursed due to failure of one or more NFs to meet performance requirements will be distributed across all QIPP NFs based on each NF's proportion of total earned QIPP funds from Components One, Two, Three, and Four combined.

(B) For program periods that begin on or after September 1, 2024, funds that are non-disbursed due to failure of one or more NFs to meet performance requirements will be distributed across QIPP NFs who have demonstrated achievement of a measure established in accordance with §353.1304 of this subchapter and designated by HHSC as the measure on which distribution of non-disbursed funds will be based. Funds distributed under this subparagraph will be allocated to each achieving NF based upon each NF's proportion of total earned QIPP funds from Components One, Two, Three, and Four combined compared to the total amount paid to achieving NFs from all components.

(h) Distribution of QIPP payments.

(1) Prior to the beginning of the program period, HHSC will calculate the portion of each PMPM associated with each QIPP-enrolled NF broken down by QIPP capitation rate component, quality metric, and payment period. For example, for a NF, HHSC will calculate the portion of each PMPM associated with that NF that would be paid from the MCO to the NF as follows.

(A) Component One.

(i) For the program periods beginning on or before September 1, 2023, but on or after September 1, 2019, monthly payments from Component One as a uniform rate increase will be equal to the total value of Component One for the NF divided by twelve.

(ii) For program periods beginning on or after September 1, 2024, quarterly payments from Component One associated with each quality metric will be equal to the total value of Component One associated with the quality metric divided by four.

(B) Component Two.

(i) For the program periods beginning on or before September 1, 2023, but on or after September 1, 2019, monthly payments from Component Two associated with each quality metric will be equal to the total value of Component Two associated with the quality metric divided by twelve.

(ii) For program periods beginning on or after September 1, 2024, quarterly payments from Component Two associated with each quality metric will be equal to the total value of Component Two associated with the quality metric divided by four.

(C) Component Three. For program periods beginning on or after September 1, 2019, quarterly payments from Component Three associated with each quality metric will be equal to the total value of Component Three associated with the quality metric divided by four.

(D) Component Four. For program periods beginning on or after September 1, 2019, quarterly payments from Component Four associated with each quality metric will be equal to the total value of Component Four associated with the quality metric divided by four.

(E) Allocation Across Quality Metrics

(i) For program periods beginning on or before September 1, 2023, but on or after September 1, 2019, for purposes of the calculations described in subparagraphs (B), (C), and (D) of this paragraph, each quality metric will be allocated an equal portion of the total dollars included in the component.

(ii) For program periods beginning on or after September 1, 2024, for purposes of the calculations described in subparagraph (A) of this paragraph, achievement in 1 metric earns 90 percent and achievement in 2 metrics earns 100 percent of total dollars included in the component. For the calculations described in subparagraphs (C) and (D) of this paragraph, each quality metric will be allocated an equal portion of the total dollars included in the component.

(iii) For purposes of the calculations described in subparagraph (B) of this paragraph:

(I) for program periods beginning on September 1, 2024, achievement in 1 metric earns 70 percent and achievement in 2 metrics earns 100 percent of total dollars included in the component;

(II) for program periods beginning on September 1, 2025, achievement in 1 metric earns 60 percent, achievement in 2 metrics earns 85 percent, and achievement in 3 metrics earns 100 percent of total dollars included in the component; and

(III) for program periods beginning on or after September 1, 2026, each quality metric will be allocated an equal portion of the total dollars included in the component.

(F) In situations where a NF does not have enough data for all quality metrics to be calculated, the funding associated with that metric will be evenly distributed across all remaining metrics within the component. If a NF does not have enough data for any quality metrics to be calculated, no funds will be earned.

(2) MCOs will distribute payments to enrolled NFs as they meet their reporting and quality metric requirements. Payments will be equal to the portion of the QIPP

PMPM associated with the achievement for the time period in question multiplied by the number of member months for which the MCO received the QIPP PMPM. In the event of a CHOW, the MCO will distribute the payment to the owner of the NF at the time of the payment.

(i) Changes of ownership.

(1) A NF undergoing a CHOW from privately owned to non-state government-owned or from non-state government-owned to privately-owned will only be eligible to enroll as the new class of facility if HHSC received a completed CHOW application no later than 30 days prior to the first day of the enrollment period. All required documents pertaining to the CHOW (i.e., HHSC must have a complete application for a change of ownership license as described under 26 TAC §554.201 (relating to Criteria for Licensing) and 26 TAC §554.210 (relating to Change of Ownership and Notice of Changes) must be submitted in the timeframe required by HHSC.

(2) If an enrolled NF changes ownership, including to a new class of facility following the enrollment period or during the program period, the NF under the new ownership must meet the eligibility requirements described in this section for the new owner's facility class in order to continue QIPP participation during the program period.

(3) For program periods beginning on or after September 1, 2025, if an enrolled NF undergoes a CHOW that changes the class of the facility, from privately owned to non-state government-owned or from non-state government-owned to privately owned, during the program period, the enrolled NF will be removed from the program for the remainder of the program period after the CHOW effective date.

(4) An enrolled NF must notify the MCOs it has contracts with of a potential CHOW at least 30 days before the anticipated date of the CHOW. Notification is considered to have occurred when the MCO receives the notice.

(j) Changes in operation. If an enrolled NF closes voluntarily or ceases to provide NF services in its facility, the NF must notify the HHSC Provider Finance Department by email at qipp@hhs.texas.gov. Notification is considered to have occurred when HHSC receives the notice.

(k) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(j) and §353.1301(k) of this subchapter.