



Texas Association for
Home Care & Hospice
Leading ★ Advancing ★ Advocating

Administrator Program

Monday, November 15, 2020

9:00am-10:00am

A. Industry Update: If You're in Home Care, You're in Politics!

Presented by:

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and

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LEGISLATIVE & REGULATORY UPDATE

Rachel Hammon, Executive Director and Jennifer
Elder, Director of Regulatory Affairs

Texas Association for Home Care & Hospice

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OVERVIEW

▪ **State Issues:**

- SB 809*
- SB 8 (ARPA funding)*
- Legislative Appropriations Request
- HCSSA Permanent Emergency Rules (558.960)
- Draft proposed rules to Medicaid HH services
- PEMS

▪ **Public Relations**

- **Advocacy**

▪ **Federal Issues:**

- Vaccine Mandates*
- CMS IFR*
- OSHA ETS*
- Choose Home Act
- Heat Act
- HH Payment Rules
- Hospice Rules
- No Pay RAPs – January 1, 2022
- Revalidation Activities Resumed

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SB 809

- Per HHSC Provider Finance Department, “the reporting associated with SB 809 is separate from federal HRSA reporting and is required of all listed provider types in Question 1 regardless of if any funding was received.”
- WHY? The 87th Texas Legislature directed HHSC to collect information from Health Care Providers and Institutions regarding COVID-19-related Federal Funds. HHSC must report this information to the Governor, Legislative Budget Board, and any appropriate standing committee in the Legislature in writing on a quarterly basis.
- WHAT? Providers are required to report all Federal Provider Relief Funds they have received during the PHE through the SB 809 reporting process, with the exception of PPP loans. HCSSA's will not report PPP funds on this report. If a provider did not receive any Federal Provider Relief Funds, they will enter \$0 in all the questions regarding the funding or the expenditures of the funds.
- WHEN? Providers will complete an initial report, then, following submission of the initial report, reports will be required monthly by the 15th of each month.

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SB 809

- WHERE? You will submit reports online (links above) through the HHSC Provider Finance Department Website. You will not get a separate confirmation of submission, but you will get a confirmation at the time you submit the report. Please keep this confirmation for your records.
- HHSC granting a “grace Period”. The grace period ends Dec. 1, 2021. **Required reports include the initial report and any subsequent reports due between 10/1 and 11/31.*
- The report is due no later than 5:00 p.m. on the 15th day of the following month of the reporting period. For example - if a provider is submitting the September report, the due date is 5:00 p.m. on October 15.
- When submitting the subsequent reports, per HHSC, “Initial submission” is not referring to the initial report, it is asking if it's the first time the provider has submitted for that reporting period. If they are submitting a correction to a report they've already submitted, they would select “Correction.”

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SB 809

- For providers who have multiple NPIs, TPI's, etc. under a single TIN, HHSC clarified there is an "offline process".
- If you are a member, we posted that information on the Open forum.
- The purpose of the offline form is so that providers with multiple facilities/NPIs can report all at once instead of completing the online report multiple times.
- We posted both the offline form and the PDF of report questions, so you are able to see which questions are required by provider type. You will return this form to the provider finance department at HHSC_PFD_Survey@hhs.texas.gov by the 15th of every month.
- Contact the HHSC Provider Finance Department with additional questions at HHSC_RAD_Survey@hhs.texas.gov

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SB 8

TAHC&H was successful in securing appropriation under SB 8 for home health industry:

- SECTION 33. HEALTH AND HUMAN SERVICES COMMISSION: STAFFING NEEDS. The amount of \$378,300,000 is appropriated to the Health and Human Services Commission for the Health and Human Services Commission to administer one-time grants related to providing critical staffing needs resulting from frontline health care workers affected by COVID-19, including recruitment and retention bonuses for staff:
- of nursing facilities, assisted living facilities, **home health agencies**, and facilities that serve persons with intellectual or developmental disabilities in an intermediate care facility for individuals with intellectual disabilities or related conditions (ICF/IID); or
- who provide community attendant services.
- APPROPRIATED AMOUNTS:
- (1) \$200,000,000 shall be used only for grants for nursing facilities; and
- (2) **\$178,300,000** shall be used only for grants for assisted living facilities, home health agencies, community attendants, and facilities that serve persons with intellectual or developmental disabilities in an intermediate care facility for individuals with intellectual disabilities or related conditions (ICF/IID).

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SB 8 CONT.

- SECTION 33 (cont.)
- Requires compliance with reporting requirements under Rider 143, SB 1, General Appropriations Act, 87th Legislature and **SB 809, 87th Legislature.**
- HHSC shall report to the Legislative Budget Board not later than December 1st of the year on the grants awarded. The report must include: year covered by report; amount of grants awarded; award recipients; and total amount of each grant per recipient.
- Subsection (e): It is the intent of the legislature that the Health and Human Services Commission consider federal COVID-19 relief money received by providers when allocating the money described by Subsection (d)(2) of this section.

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WHAT'S NEXT FOR SB 8?

- HHS must develop Grant Criteria
- HHS still contemplating legislative intent
- HHS contemplating method of stakeholder feedback
- TAHC&H meeting with HHS this week
- Remember the related importance of SB809 reporting

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FEDERAL VACCINE AND TESTING

- **AS of 11-14-2021, TWO (2) rules apply to home care providers**
 1. The CMS Interim Final Rule (IFR) that includes a Vaccine Mandate. This rule is applicable to any entity that is required to provide services under the CoPs.
 2. The Healthcare ETS (1910.502) released June 2021. Applicable to all licensed HCSSAs.
- The November Vaccine and Testing ETS (1910.501) is currently on hold due to court challenges.
 1. Currently this ETS **DOES NOT** apply to health care providers covered by the June Healthcare ETS.
 2. ****We are working on additional clarifications related to employees that are not covered by the June Healthcare ETS. However, **for now, this ETS is not applicable** to home care providers.
 3. It is important to note that if, at any time, the Healthcare ETS (1910.502) is no longer in effect, providers with over 100 employees would be covered by the Vaccine and Testing ETS (1910.502).

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JUNE HEALTH CARE ETS

- Applies to all licensed HCSSAs
- The deadline for compliance with the ETS was July 6, 2021, with the exception of Physical Barriers, Ventilation, and Training; the deadline for compliance with these parts of the rule was July 21, 2021.
- The ETS is to remain in effect until December 21, 2021. We will let members know if the ETS is extended. If not, providers would revert to the November ETS, that is currently under a court stay.
- There is a great deal of information and resources available to providers (including Templates, PDF Documents, Training Resources, Flow Charts, FAQ's, etc.) at the OSHA Healthcare ETS Website

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CMS INTERIM FINAL RULE (IFR)

- Applicable only to those agencies subject to the CoPs
- Separate entities in TX very important
- **Key Provisions Phase 1**
 1. **Phase 1** must be implemented by December 5th 2021 (30 days post publication in Fed. Register)
 2. All staff receive first dose or only dose as applicable or;
 3. Have requested or been granted an exemption
 4. Facilities must have appropriate policies and procedures developed and implemented

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CMS IFR, CONT.

- **Key Provisions Phase 2**
 1. Completion of primary vaccination series by January 4th 2022
 2. Exceptions: staff who have been granted exemptions
 3. An individual is compliant if they have completed the primary vaccinations series even if the 14 day waiting period for “full vaccination” status has not been achieved by the deadline
- **Other Key Provisions:**
 1. The Vaccination provisions are not limited to front line or clinical staff but apply to all staff including volunteers
 2. 100% remote workers are exempt
 3. Infrequent workers (ex. Contracted accountants) that provide “one off” services are also exempt

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CMS IFR, CONT.

▪ **Documentation:**

- Providers must track and securely document the vaccination status of each staff member
- Including those for whom there is a temporary delay in vaccination (such as recent receipt of monoclonal antibodies or convalescent plasma)
- Vaccine exemption requests and outcomes must also be documented. This documentation will be an ongoing process as new staff are on-boarded.

▪ **Acceptable Examples:**

1. CDC COVID-19 vaccination record card (or a legible photo of the card),
2. Documentation of vaccination from a health care provider or electronic health record, or
3. State immunization information system record.
4. If vaccinated outside of the U.S., a reasonable equivalent of any of the previous examples would suffice.

- **Resources:** CDC has a free generic Excel based staff vaccination tracking tool that may be used by providers on the [NHSN website](#).

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CMS IFR, CONT.

- Depending on the nature of the PHE, CMS may retain these provisions as permanent
- There is no sunset clause
- IFRs expire after 3 years unless they are finalized
- CMS states they expect to make a determination on finalizing these rules based on public comments, incidence and disease outcomes.
- Comments due by January 4th, 2022

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IF YOU'RE IN HOME CARE - YOU'RE IN POLITICS

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Organizations that take a serious, systematic approach to political risk management are likely to be surprised less often and recover better. Companies that don't get these basics right are more likely to get blindsided.

Thesis: Mitigating Political Risk requires political engagement

HOW CAN WE GET GOOD INFORMATION ABOUT THE POLITICAL RISKS WE FACE?

- Trade Associations are a key tool in your toolkit
 - Information has to be specific - not generic
 - Newsletters, education, legislative and regulatory updates
- PR - Associations have key PR opportunities to advance issues in the public domain
- Advocacy - Cohesive Combined Efforts



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HOW DO ASSOCIATIONS HELP?

- Sharing information:
 - White papers, key talking points, ongoing education and resources agencies can use with their staff.
- Collective Action:
 - Providing the platform for collective political and grassroots advocacy at the right time and with the right message. <https://www.tahch.org/advocacy/getinvolved>

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ENGAGING EARLY

- When ideas are contemplated (ex. CMMI)
- Shaping the outcome
- Proactive approach leads businesses into early planning to adapt early vs. reacting to new innovations



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LIMITING THE DAMAGE WHEN SOMETHING BAD HAPPENS

- Building Relationships:
 - *“You Make relationships when you want to, not when you need to – because when you need to, it’s too late already” (Adam Goldstein, Pres. Royal Caribbean)*
- Associations Key tool
 - Conduit to relationship building
 - Grassroots advocacy
 - Pooling resources to secure appropriate representation
 - Better engagement = more frequent relational development opportunities

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