



Issue Brief: Attendant Care Services

April 2018

Objective

Attendant care services can reduce Medicaid costs by providing services to keep people over the age of 65 and those with disabilities in their community.

Key Facts

- During federal fiscal year 2016, Texas spent \$1.4 billion in General Revenue (\$3.3 billion All Funds) on attendant care services.
- ADLs are activities related to personal care such as bathing or eating.
- IADLs are activities related to independent living such as preparing meals or managing money.
- HMAs are those tasks that can be performed without delegation from a registered nurse

Key References

Texas Health and Safety Code §250.003: Outlines background check requirements for personal care attendants.

Texas Administrative Code §354.1177: Outlines requirements for Texas Medicaid regarding the implementation and use of EVV systems for attendant services.

Texas Medicaid provides attendant care services to people age 65 and older and those with disabilities who need assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs) and health maintenance activities (HMAs). Attendant care services provide Medicaid clients the assistance they need to stay in their community, instead of living in a long-term care (LTC) facility such as a nursing facility or other institution. Attendant care services are typically personal care services provided by unlicensed attendants and differ from healthcare services that require a licensed medical professional, such as a nurse or home health aide, to administer the service within a client's home.

Texas Medicaid and Attendant Care Services

Eligible clients may receive attendant care services if they have a functional limitation with at least one personal care task. Federal law establishes broad eligibility requirements for who may receive these services. States have the option to provide these services to additional populations through its state plan or waivers upon approval from the Centers for Medicare & Medicaid Services. Figure 1 shows how Texas Medicaid provides attendant care services across several different programs, through its state plan and waivers. Medicaid clients, or their legal representatives, may choose to receive these services from agencies contracted with the Health and Human Service Commission (HHSC) or MCOs, or may hire and manage their personal care attendant through the consumer-directed services model (CDS).

Office of Inspector General and Attendant Care Services

The HHSC Office of Inspector General (OIG) is responsible for the prevention, detection, and investigation of fraud, waste, and abuse in the delivery of all health and human services in Texas. Ensuring program integrity for attendant care services takes on added importance because attendants provide care in a person's home and clients may be at risk of unintentional harm or potential neglect and exploitation. The OIG's Medicaid Program Integrity (MPI) division investigates allegations of fraud, waste and abuse by Medicaid providers, receives, tracks and reports on provider complaints. During the second quarter of fiscal year 2018, 38 percent of MPI complaints received across all provider types were allegations of fraud, waste, and abuse specific to attendants.

Fraud, Waste, and Abuse in Attendant Care Services

While cost-effective and beneficial for clients, receiving attendant care services may pose unique risks to clients' health and safety because services are not delivered in a traditional medical setting and may be provided without supervision. Verifying that attendant care services are delivered is a long-standing concern of federal and state governments. According to the Government Accountability Office, attendant care services have a high rate of improper payments. Part of the state's responsibility is to ensure the health and safety of Medicaid clients by ensuring agencies that hire attendants adhere to their licensing requirements and Medicaid managed care organizations (MCOs) adhere to program integrity requirements.

Figure 1: Texas Medicaid Attendant Care Services as of April 2018

| Program: | Personal Assistance Services (PAS) | Personal Care Services (PCS) | Community First Choice (CFC) | Community Attendant Services (CAS) |
|----------------------------|---|---|---|---|
| Age Served: | Ages 21 or older | Ages 20 or younger | All ages | Ages 18 and older |
| Eligibility: | 1. Meet the financial or functional requirements to receive Texas Medicaid or be eligible for Social Security Supplemental Security Income (SSI); 2. Functional limitation with at least one personal care task due to a medical condition | 1. Meet the financial or functional requirements to receive Texas Medicaid or be eligible for SSI 2. Functional limitation with at least one personal care task due to a medical condition 3. Meet institutional level of care requirements | 1. Meet the financial or functional requirements to receive Texas Medicaid or be eligible for SSI 2. Functional limitation with at least one personal care task due to a medical condition 3. Meet institutional level of care requirements | 1. Have an income of less than 300 percent of the SSI income limit, but does not meet Medicaid financial eligibility 2. Functional limitation with at least one personal care task |
| Medicaid Authority: | Medicaid State Plan and Section 1115 waiver | Medicaid State Plan and Section 1115 waiver | Medicaid State Plan through 1915 (k); includes habilitation services | Medicaid State Plan; attendant care is the only Medicaid benefit CAS clients receive |
| Delivered through: | Fee for Service (Primary Home Care) and STAR+PLUS | Fee for Service, STAR Kids and STAR Health | Fee for Service (including for individuals in STAR, CLASS, DBMD, HCS, and TxHmL), STAR+PLUS, STAR Health, STAR Kids, and MDCP | Fee for Service |

Fraud, Waste, and Abuse in Attendant Care Services (Continued)

While most attendants, clients, and home health agencies who employ attendants are honest, fraud may come from dishonest agencies or attendants. Fraudulent agencies or attendants may falsify timesheets to bill for services that were not delivered; coerce or conspire with clients to falsify timesheets, sometimes offering the client payment for collaborating with the fraud; bill for attendant care services while working another full-time job; bill for services when the client is not at home; conspire to obtain authorization for unneeded services or for more services than a client has a need for; and pay kickbacks to self-employed attendants to join their agency in order to receive and split the higher Medicaid reimbursement paid to the agency. Fraudulent agencies and attendants may also improperly solicit Texas Medicaid clients to receive attendant care services to increase the number of claims the agencies or attendants can bill to Medicaid.

The U.S. Congress passed the 21st Century CURES Act in 2016 that strengthened program integrity requirements for attendant care services. It requires states to implement Electronic Visit Verification (EVV) systems for attendant care services by January 2019 and for home health care services by 2023. EVV systems are designed to verify the client, time, location, provider, and time and length of service. Texas Medicaid began using EVV in March 2011 and, as of September 2017, is one of 11 states using the service. HHSC requires Community Attendant Services, Community First Choice, Personal Assistance Services, Personal Care Services, Community Living Assistance and Support Services, and Medically Dependent Children Program providers to use EVV systems. Clients receiving attendant care services through CDS are currently exempt from using EVV, but the CURES Act will require CDS providers to use EVV systems by January 2019.

Agencies providing attendant care services must be licensed as a Home and Community Support Services Agency (HCSSA) and/or certified to provide services in one of Texas' Medicaid waiver programs. HCSSAs, which are more commonly referred to as home health agencies, must search annually for their attendants in the nurse aide registry and the employee misconduct registry. Although some attendants may be certified nurse aides, there are no federal or state requirements for attendants to be certified or licensed. HCSSAs, waiver providers, and clients choosing the CDS option must conduct Texas criminal history checks on employed personal care attendants before their attendants provide client services. HCSSAs must adopt written policies for reporting and investigating alleged acts of abuse, neglect, and exploitation of clients. Medicaid MCOs are responsible for providing their enrolled members with adequate access to attendant care services, credentialing attendant care agencies, and ensuring contracted agencies are adhering to state and federal program integrity guidelines, including checking employment registries and the state and federal OIGs' exclusion list.