

May 31, 2022

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Reference: Texas Registry, Volume 47, Number 1, Proposed Changes to 355.8443 Reimbursement Methodology for School Health and Related Services (SHARS) Comments on Proposed Rule 22R067

Thank you for the opportunity to provide comment on the proposed changes to 355.8443 which would impact over 900 School Health and Related Services (SHARS) participating school districts across Texas. We are grateful for the support and hard work that Health and Human Services (HHSC) does on behalf of our state, our schools, and the students we all serve. Attached you will find written comment that relates to the proposed changes to 355.8443 Reimbursement Methodology for School Health and Related Services (SHARS) on proposed rule 22R067

Public education's primary responsibility lies in meeting children's academic needs. However, unmet healthcare needs can impair students' ability to attain their full academic potential. Schools have a unique opportunity to provide direct medical services to students with disabilities in a setting that sees them far more frequently than traditional medical settings, allowing healthcare needs to be addressed with less disruption to the educational program. SHARS provides much needed funds that allow districts to support the diverse health related needs of our most vulnerable students, despite rising health care costs.

As the state agency that oversees SHARS, HHSC in coordination with the Texas Education Agency must establish and maintain a program that meets federal requirements, provides for the students we all serve and allows schools to simultaneously maintain the integrity of the educational program as well as the Medicaid program. HHSC and the Texas Education Agency (TEA) should work with school districts to create guidelines that meet the federal standards associated with School Medicaid, while also recognizing the diversity of schools across our state and the need for flexibility to align requirements between school Medicaid and school operations.

To that end, the Texas Association of School Boards (TASB) and the Texas Association of School Business Officials (TASBO) have attached our input on the proposed SHARS policy changes in fourteen specific areas. Generally, we raise three main concerns:

- Parental Consent, its application and impact on school districts;
- Documentation standards and requirements;
- The need for increased transparency, clarity and stakeholder participation in the creation of SHARS policy.

Under the proposed changes, districts will be negatively impacted, staff will find new requirements cumbersome, and students will suffer as a result of loss funding. Using an analysis of a percentage of districts in the state, it is estimated at about a 30% reduction for our state and school districts which is estimated to be about \$200 million dollars annually. These changes are not minor changes in policy but include major rewrites to the methodology currently used in the program.

(Data from % of districts in the state)	Historical Method	Historical Method	New Method	New Method
<b>Numerator</b>	IEP with Service & Medicaid Eligible	1,337.6	IEP with Service, Medicaid Eligible & Parental Consent	680.4
<b>Denominator</b>	All IEP with Service with or without Parental Consent	1794	All IEP with Service with or without Parental Consent	1794
<b>IEP Ratio</b>	<b>Resulting Ratio</b>	<b>68.73%</b>	<b>Resulting Ratio</b>	<b>37.92%</b>
<b>Difference between new method and historical method</b>		0%		- 30.81%

Increasingly, the need for guidelines and standards is evident in the variation in understanding and implementation of the program across districts in our state. While many of the proposed updates to policy for the school Medicaid program in Texas stand to level set the program and avoid the current confusion among participants, we have significant concerns over potential unintended consequences that may arise from many of the proposed changes.

We appreciate the effort that HHSC has taken in working towards additional clarity in the School Health and Related Services program. However, several key changes being considered will negatively impact schools, staff, and the children they serve. We would like to see (1) the removal of parental consent as part of the cost report, (2) the removal of the 100% standard for claiming personal care services and specialized transportation, and (3) more transparency and input into the process, which could be addressed through the establishment of a SHARS advisory group. We think modifications could better align SHARS requirements to school operations, requirements of IDEA and overall student needs.



Texas Association of School Boards



We appreciate the opportunity to provide input. If you have any questions please free to contact me, Karlyn Keller, Ed.D, Division Director, TASB Special Education and Student Solutions, by email at [Karlyn.keller@tasb.org](mailto:Karlyn.keller@tasb.org), or by phone at 512-505-2896.

Sincerely,

Karlyn Keller, Ed.D.  
Division Director, Student and Special Education Solutions  
Texas Association of School Boards

Enclosures

CC: Hailey Kemp, Chief Public Affairs Officer HHSC  
Victoria Ford, Chief Policy and Regulatory Officer HHSC  
Trey Wood, Chief Financial Officer HHSC  
Karen Ray, Chief Counsel HHSC

The above organizations submit the following recommendations on the Proposed Changes to 355.8443 Reimbursement Methodology for School Health and Related Services (SHARS) Comments on Proposed Rule 22R067.

Draft Policy Reference	Draft Policy Proposal	Primary Input Area	Stance on Proposal	Support for Stance
Background, Purpose and Section by Sections	<p>“The proposal also implements changes to increase the integrity of the program by requiring additional detail to be collected regarding services reimbursed through the SHARS program, including data related to both individual recipients and specific services. This rule update also adds detail to increase transparency by clarifying definitions and processes for the SHARS program and includes new language on informal review processes and further information on appeals.”</p>	Parental Consent, its application and impact on school districts	Withdraw proposal and better address the revenue issue that this proposed change has on the state.	<p>The overall background, purpose, section by sections summary of the proposed new TAC, does not adequately explain the changes being made with this proposed rule. The clarifications mentioned throughout are more than simple clarifications. They are complete rewrites of the program that will impact the amount of required documentation as the threshold has been raised significantly as discussed in other sections of our input. It also significantly impacts the revenue resulting in an estimated 30% reduction for our state and school districts which is estimated to be about \$200 million dollars annually. (Estimation based on a review of actual data associated with a percentage of districts in the state.) In addition, HHSC will see a reduction in the 1% administrative fee in alignment with the reduction schools experience.</p>
Fiscal Note and Public Benefits and Costs	No mention of the impact included.	Parental Consent, its application and impact on school districts	Withdraw proposal and better address the revenue issue that this proposed change has	<p>The fiscal note and public benefits and costs associated with the proposed new TAC does not cover the enormous impact this change will have on our state through the redefining of the ratios associated with the cost report. It is clear that HHSC does</p>

			on the state.	not adequately understand the impact these seemingly minor changes will have on our state and school districts. There is an estimated 30% reduction in Medicaid revenue for our state and school districts which is estimated to be about \$200 million dollars annually. (Estimation based on a review of actual data associated with a percentage of districts in the state.) In addition, HHSC will see a reduction in the 1% administrative fee in alignment with the reduction schools experience.
IDEA Alignment	<p>“(a) Introduction. <u>Reimbursement is available to a Local Education Agency (LEA) for providing certain direct medical and transportation services, known as SHARS, to a Medicaid-enrolled student with a disability age 20 years of age or younger. SHARS services are described in and must be prescribed in accordance with §354.1341 of this title (relating to Benefits and Limitations).</u></p> <p><del>{Direct medical services and transportation are available to children age 20 and under who are enrolled in Medicaid and eligible to receive services under the Individuals with Disabilities Education Act (IDEA). The</del></p>	The need for increased transparency, clarity and stakeholder participation in the creation of SHARS policy.	Withdraw the removal of the IDEA reference in the proposal.	<p>This rewrite removes mention of the Individuals with Disability Education from §355.8443.a is problematic. The authority for the School Health and Related Services (SHARS) is rooted in IDEA. The removal of this is troublesome as the necessary alignment has been silenced. When IDEA is rewritten which may include changes to the school Medicaid program, this removal of IDEAs identify may result in a loss of necessary changes required to keep the program in step with the actual program that is primary to its inception.</p> <p>Given the inclusion of Section 504 Audiology, it would be more accurate to include this in the introduction rather than deidentify the program from IDEA.</p>

	<p><del>services must be included in the child's individualized education program (IEP) established under IDEA.] (b) Definitions."</del></p>			
<p>Cost Report Due Date</p>	<p>"The cost report is due on or before April 1 of the year following the reporting period and must be certified in a manner specified by the Texas Health and Human Services Commission (HHSC)."</p>	<p>Documentation standards and requirements</p>	<p>Provide clear, detailed information in the proposal without ambiguity. Removal of broad authority of HHSC to define the program at their discretion. Increased transparency in decision making for the SHARS program. Creation of a stakeholder group to provide input to HHSC on the SHARS program.</p>	<p>The cost report due date is established as April 1 of the year following the reporting period in §355.8443.b. This has been problematic over the last few years due to unforeseen circumstances such as April 1 falling on a weekend, the declaration of a state of emergency due to the COVID 19 Pandemic and the late release of the documentation system. Given this, it is recommended that this definition be expanded to include additional time in circumstances such as April 1 falling on a weekend, holiday or due to unforeseen late release after January 1 of a given year the documentation system for submission.</p>
<p>Changes in the Ratios Definitions Associated with the Cost Report - IEP Ratio in Cost Report</p>	<p><del>"[(3) IEP ratio--A comparison of the total number of Medicaid students with IEPs requiring direct medical services to the total number of students with IEPs requiring direct medical services.]"</del></p> <p><u>"(1) IEP ratio--A comparison of the total number of students enrolled in</u></p>	<p>Parental Consent, its application and impact on school districts</p>	<p>Withdraw proposal and better address the revenue issue that this proposed change has on the state.</p>	<p>IEP Ratio in the Cost Report has been redefined significantly with the removal of the definition that has managed this process in Texas for well over a decade in §355.8443.b.5(2). The redefinition of the IEP Ratio in the Cost Report in §355.8443.c.1 is not a true IEP ratio. This new definition is a Parental Consent IEP Ratio and is not in alignment with the State Plan approved by CMS, is not elsewhere in state regulation nor has it historically been part of the ratio. Texas' SHARS programs have been audited by federal agencies in several instances, most notably in December of 2005 and August of 2017 (final report dates) by</p>

	<p><u>Medicaid with individualized education programs (IEPs) requiring direct medical services to the total number of students with IEPs requiring direct medical services.”</u></p>			<p>the Department of Health and Human Services Office of Inspector General. In both cases, weaknesses were noted in areas that the state has since addressed; however, despite an in-depth review of the program inclusive of the state’s Cost Reporting process, no mention was made of Parental Consent in the Cost Report. A review of training, audits and directions for the Cost Report going back over a decade does not include the inclusion of Parental Consent into the various ratios. Further, this change is not in alignment with the Office of Management and Budget standards that require an accurate calculation of costs in providing Medicaid services as outlined in federal law. Instead, it serves to reduce the population artificially. The current ratio is in alignment with the OMB requirement in circular A-87 and A-133. Court case history supports that parental consent, while required by IDEA, is not a component of seeking reimbursement via Cost Report and to do so here would be in direct opposition with said findings (United States of America ex rel. John and Jane Doe v. The Taconic Hills Central School District, etc.). Finally, this change is not in alignment with 42 U.S. Code §1396b or Title XIX of the Social Security Act and would cause the state’s school Medicaid program to be in conflict with said federal requirements.</p>
<p>Changes in the Ratios Definitions Associated with the Cost Report - One-Way Trip Ratio in Cost Report</p>	<p><del>“(4) One-way trip ratio—A comparison of the total one-way trips for Medicaid students with IEPs requiring specialized transportation services to the total one-way trips for all</del></p>	<p>Parental Consent, its application and impact on school districts</p>	<p>Withdraw proposal and better address the revenue issue that this proposed change has on the state.</p>	<p>The One-Way Trip Ratio in the Cost Report has been redefined significantly with the removal of the definition that has managed this process in Texas for well over a decade in §355.8443.b.6(3). Like with the IEP ratio, the redefinition of the One-Way Trip Ratio is problematic. The redefinition of the One-Way Trip Ratio in the Cost Report in §355.8443.c.2 is not a true One-Way Trip ratio.</p>

	<p><del>students with IEPs requiring specialized transportation services.]”</del></p> <p><u>“(2) One-way trip ratio--A comparison of the total one-way trips for students enrolled in Medicaid with IEPs requiring specialized transportation services, who received direct medical services the same day, to the total one-way trips for all students with IEPs requiring specialized transportation services.”</u></p>		<p>This new definition is a Parental Consent One Way Trip Ratio and is not in alignment with the State Plan approved by CMS, is not elsewhere in state regulation nor has it historically been part of the ratio. Texas’ SHARS programs have been audited by federal agencies in several instances, most notably in December of 2005 and August of 2017 (final report dates) by the Department of Health and Human Services Office of Inspector General. In both cases, weaknesses were noted in areas that the state has since addressed; however, despite an in-depth review of the program inclusive of the state’s Cost Reporting process, no mention was made of Parental Consent in the Cost Report. A review of training, audits and directions for the Cost Report going back over a decade does not include the inclusion of Parental Consent into the various ratios. Further, this change is not in alignment with the Office of Management and Budget standards that require an accurate calculation of costs in providing Medicaid services as outlined in federal law. Instead, it serves to reduce the population artificially. The current ratio is in alignment with the OMB requirement in circular A-87 and A-133. Court case history supports that parental consent, while required by IDEA, is not a component of seeking reimbursement via Cost Report and to do so here would be in direct opposition with said findings (United States of America ex rel. John and Jane Doe v. The Taconic Hills Central School District, etc.). Finally, this change is not in alignment with 42 U.S. Code §1396b or Title XIX of the Social Security Act and would cause the state’s school Medicaid program to be in conflict with said federal requirements.</p>
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				<p>The One-Way Trip Ratio is inaccurate to the requirements of the program. The requirement to have a matching service is not included. Or is the state considering to expand specialized transportation services that districts may claim? If so, the addition of a matching service is not needed. Additional clarification will assist districts in better understanding the requirement.</p>
Parent Consent	<p><u>“(c) Parental Consent. Prior to submitting its annual cost report, the LEA must meet the parental consent requirements in §354.1342 of this title (relating to Conditions for Participation) for each student included in the numerator of the following ratios required in the cost report.”</u></p>	Parental Consent, its application and impact on school districts	Withdraw proposal and better address the revenue issue that this proposed change has on the state.	<p>The inclusion of Parent Consent in in §355.8443.c is problematic as the proposed rule goes well beyond the intent and requirement associated with H.B. 2658 from the last Legislative session. H.B. 2658 §7.B.32.0317 requires that “The executive commissioner shall adopt rules requiring parental consent for services provided under the school health and related services program in order for a school district to receive reimbursement for the services. The rules must allow a school district to seek a waiver to receive reimbursement for services provided to a student who does not have a parent or legal guardian who can provide consent.” In fact, no such definition or requirement is found in the definition portion of §355.8443; nor is it found in §354.1342 as described in this section. Thus, this section is not in alignment with the referenced herein.</p> <p>Further, this introduced TAC goes well beyond H.B. 2658 §7.B.32.0317 requirement by including parental consent in the various Cost Report ratios when it is not, nor has it been a requirement of the various ratios. It is not part of our State Plan (SPA), requirements from Center for Medicare and Medicaid Services for school Medicaid. It is only found in the Individuals with Disabilities</p>

			<p>Education Act (IDEA) which only requires parental consent for data exchange (43 CFR §300.154(d)(2)) not for permission to bill and with no mention of parental consent elsewhere. The filing of the cost report, cost settlement and cost reconciliation does not result in a data exchange involving accessing a student’s public benefits.</p> <p>In addition, the proposed TAC does not address the requirement from H.B. 2658 §7.B.32.0317 that requires “The rules must allow a school district to seek a waiver to receive reimbursement for services provided to a student who does not have a parent or legal guardian who can provide consent.” This oversight does not meet the requirement of H.B. 2658.</p> <p>Parental Consent into the Cost Report has not historical basis. Texas’ SHARS programs have been audited by federal agencies in several instances, most notably in December of 2005 and August of 2017 (final report dates) by the Department of Health and Human Services Office of Inspector General. In both cases, weaknesses were noted in areas that the state has since addressed; however, despite an in-depth review of the program inclusive of the state’s Cost Reporting process, no mention was made of Parental Consent in the Cost Report.</p> <p>Too, this change is not in alignment with the Office of Management and Budget standards that require an accurate calculation of costs in providing Medicaid services as outlined in federal law. Instead, it serves to reduce the population artificially. The</p>
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				<p>current ratio is in alignment with the OMB requirement in circular A-87 and A-133. Further, court case history supports that parental consent, while required by IDEA, is not a component of seeking reimbursement via Cost Report and to do so here would be in direct opposition with said findings (United States of America ex rel. John and Jane Doe v. The Taconic Hills Central School District, etc.). This change is not in alignment with 42 U.S. Code §1396b or Title XIX of the Social Security Act and would cause the state’s school Medicaid program to be in conflict with said federal requirements.</p> <p>Finally, a review of training, audits and directions for the Cost Report going back over a decade does not include the inclusion of Parental Consent into the various ratios. This new interpretation has no foundation in the SHARS program. Further, its inclusion will negatively impact schools in our state as explained elsewhere in our input. While this alone is not a reason to exclude this new requirement, it’s impact cannot be missed in making this huge change.</p>
Time Study	<p><u>“(d) Time study. The LEA must participate in the HHSC-administered time study in the manner prescribed by HHSC.”</u></p>	<p>The need for increased transparency, clarity and stakeholder participation in the creation of SHARS policy.</p>	<p>Provide clear, detailed information in the proposal without ambiguity. Removal of broad authority of HHSC to define the program at their discretion. Increased transparency in decision making for the SHARS program. Creation of a</p>	<p>The addition of the time study in §355.8443.d with the definition not included is of concern. It fully leaves HHSC to define and redefine this requirement without having to go back for public input is of concern. The lack of transparency and public input in the program continues to be of concern as changes are not always in alignment with how the program works. Recent reinterpretation for the time study is in direct opposition with how services are delivered in schools. For instance, recently school staff have been told that to include someone in the Participant List they must provide services on a weekly basis. There is no such reference anywhere else in the program.</p>

			stakeholder group to provide input to HHSC on the SHARS program.	In addition, it is not in alignment with how services are actually delivered. Assessment never occurs weekly but instead every three years and rarely more frequently. Physical Therapy, Occupational Therapy, Counseling, Psychological Services, Physician Services are rarely delivered on a weekly basis. It is clear that the lack of knowledge of what service delivery looks like in the school will impact the program logistics, potentially increase delivery of service due to well-meaning direction of weekly resulting in schools overprescribing services. Allowing HHSC to have such broad interpretation of the program as shown throughout this rewrite will impact those who actually conduct the program in schools. This process should be clear, detailed and without ambiguity. HHSC would benefit from a stakeholder group inclusive of school districts and billing companies that provides input into the program on a regular basis to help them understand school functions and better align requirements to those who implement the program.
Interim Rates	No mention of timeline.	Documentation standards and requirements	We recommend that all interim rate changes be given with 45-day notice before implementation.	We are in agreement with the redefinition of the Interim Rates in §355.8443.e.2 given how interim rates work. However, we request that additional time be given to districts to implement said changes. Too often the interim rates are introduced with little to no time for districts or the state contracted vendor for processing claims to implement said changes.
Interim Claims for Personal Care Services	<u>“(2) Interim claims. (A) LEAs must submit: (i) at least one interim claim for each direct medical service that an eligible student receives within the cost</u>	Documentation standards and requirements	The standard in §355.8443.e.2.A.i is sufficient to meet the SHARS program requirements and this	The requirement to claim all personal care services in §355.8443.e.2.A.ii is at odds with §355.8443.e.2.A.i which requires at least one interim claim for each direct medical service, and is not included in the State Plan nor in alignment with §354.1342. In addition, the standard of all is problematic as meeting a

	<p><u>report period; (ii) interim claims for all personal care services that an eligible student receives within the cost report period; and (iii) interim claims for all eligible specialized transportation trips provided within the cost report period."</u></p>		<p>section should be removed.</p>	<p>standard of 100% is nearly impossible for schools participating in the program. Educational staff have multiple duties and requirements to meet and the standard of 100% will increase pressure on staff with no transparency as to why this standard is being set. In addition, with the requirement that all services be documented within 7 days for claiming this standard is arbitrary and capricious. There is no mention of Personal Care Services in either IDEA or Section 504 and its inclusion as a subcategory of SHARS that requires all interim claims to be submitted is a bar set at an arbitrary and capricious standard without fully realizing the impact on school districts. Under this standard, if a district misses even one session they will be out of compliance.</p>
<p>Interim Claims for Eligible Specialized Transportation Trips</p>	<p><u>"(2) Interim claims. (A) LEAs must submit: (i) at least one interim claim for each direct medical service that an eligible student receives within the cost report period; (ii) interim claims for all personal care services that an eligible student receives within the cost report period; and (iii) interim claims for all eligible specialized transportation trips provided within the cost report period."</u></p>	<p>Documentation standards and requirements</p>	<p>The standard in §355.8443.e. 2.A.i is sufficient to meet the SHARS program requirements and this section should be removed.</p>	<p>The requirement to claim all specialized transportation trips services in §355.8443.e.2.A.iii is at odds with §355.8443.e.2.A.i which requires at least one interim claim for each direct medical service, and is not included in the State Plan nor in alignment with §354.1342. In addition, the standard of all is problematic as meeting a standard of 100% is nearly impossible for schools participating in the program. Educational staff have multiple duties and requirements to meet and the standard of 100% will increase pressure on staff with no transparency as to why this standard is being set. In addition, with the requirement that all services be documented within 7 days for claiming this standard is arbitrary and capricious. As a subcategory of SHARS that requires all interim claims to be submitted is a bar set at an arbitrary and capricious standard without fully realizing the impact on school districts. Under this standard, if a district misses even one session they will</p>

				<p>be out of compliance.</p> <p>Under this new interpretation, districts would be required to document all services even those not claimable as there is no mention of a matching service. Taken together the requirement of 100% and the lack of matching services creates an unrealistic standard. The standard in §355.8443.e.2.A.i is sufficient to meet the SHARS program requirements and this section should be removed. HHSC would benefit from a stakeholder group inclusive of school districts and billing companies that provides input into the program on a regular basis to help them understand school functions and better align requirements to those who implement the program.</p>
Direct Medical Salary and Contract Costs	<p><u>“Salary and contract costs must be reported in the manner prescribed by HHSC.”</u></p>	<p>The need for increased transparency, clarity and stakeholder participation in the creation of SHARS policy.</p>	<p>Provide clear, detailed information in the proposal without ambiguity. Removal of broad authority of HHSC to define the program at their discretion. Increased transparency in decision making for the SHARS program. Creation of a stakeholder group to provide input to HHSC on the SHARS program.</p>	<p>The broad inclusion that HHSC may prescribe how salary and contract costs must be submitted in §355.8443.e.4.A is problematic as it is too broad in nature. The addition of this broad discretion is of concern. It fully leaves HHSC to define and redefine this requirement without having to go back for public input via is of concern. The lack of transparency and public input in the program continues to display that those in charge of the program are out of touch with those who implement the program. Recent reinterpretation in many areas as addressed throughout our input is concerning. It is clear that the lack of knowledge of what service delivery looks like in the school will impact the program logistics. Allowing HHSC to have such broad interpretation of the program as shown throughout this rewrite will impact those who actually conduct the program in schools. This process should be clear, detailed and without ambiguity. HHSC would benefit from a stakeholder group inclusive of school districts and</p>

				<p>billing companies that provides input into the program on a regular basis to help them understand school functions and better align requirements to those who implement the program.</p>
<p>Transportation Services Salary and Contract Costs</p>	<p><u>“Salary and contract costs must be reported in the manner prescribed by HHSC.”</u></p>	<p>The need for increased transparency, clarity and stakeholder participation in the creation of SHARS policy.</p>	<p>Provide clear, detailed information in the proposal without ambiguity. Removal of broad authority of HHSC to define the program at their discretion. Increased transparency in decision making for the SHARS program. Creation of a stakeholder group to provide input to HHSC on the SHARS program.</p>	<p>The broad inclusion that HHSC may prescribe how salary and contract costs must be submitted in §355.8443.e.4.B is problematic as it is too broad in nature. The addition of this broad discretion is of concern. It fully leaves HHSC to define and redefine this requirement without having to go back for public input via is of concern. The lack of transparency and public input in the program continues to display that those in charge of the program are out of touch with those who implement the program. Recent reinterpretation in many areas as addressed throughout our input is concerning. It is clear that the lack of knowledge of what service delivery looks like in the school will impact the program logistics. Allowing HHSC to have such broad interpretation of the program as shown throughout this rewrite will impact those who actually conduct the program in schools. This process should be clear, detailed and without ambiguity. HHSC would benefit from a stakeholder group inclusive of school districts and billing companies that provides input into the program on a regular basis to help them understand school functions and better align requirements to those who implement the program.</p>
<p>Application of TAC Date</p>	<p>No timeline for implementation mentioned.</p>	<p>Documentation standards and requirements</p>	<p>Creation of a set date for application as it relates to the SHARS fiscal year.</p>	<p>The application date for these changes is unclear. In a given year schools are working on three SHARS years. As this is adopted, it needs to be clear that it will apply to the new SHARS fiscal year and not to previous fiscal periods even or cost reports associated with those fiscal periods.</p>