TEXAS HEALTH AND HUMAN SERVICES COMMISSION

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EXECUTIVE COMMISSIONER

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Notice of Deferral of Federal Funds Relating to Certain Private Hospital Payments

In June of this year, Centers for Medicare and Medicaid Services (CMS) began conducting a Financial Management Review of the Texas Healthcare Transformation and Quality Improvement Program (the §1115 waiver program). The review was initiated on the heels of the issuance by CMS of a State Medicaid Director letter intended to provide guidance to states on "the allowable and unallowable use of provider-related donations." CMS' Financial Management Review Team is relying on that guidance to analyze funding arrangements under which governmental entities in Texas provide the non-federal share of supplemental payments to private hospitals. The review began with waiver participants in Dallas and Tarrant Counties, but has expanded to participants in Regional Healthcare Partnerships (RHPs) 4, 7, 9 and 10 (Corpus Christi and surrounding, Austin and surrounding, and Dallas/Fort Worth and surrounding).

The CMS Review Team has identified certain funding arrangements it believes constitute the unallowable use of provider-related donations. As a result of these findings, CMS sent a letter to the Texas Health and Human Services Commission (HHSC) dated September 30, 2014, with notification that CMS is deferring the federal share of the amount of the alleged donations while it investigates funding arrangements underlying private hospital supplemental payments. A copy of the letter is attached to this notice. As explained in the letter:

> CMS has questions regarding the source of the non-federal share of these expenditures. In particular, CMS would like to explore further our understanding of the financing mechanism being utilized and its intersection with the recent guidance issued in State Medicaid Director Letter #14- 004 on May 9, 2014. It appears that the intergovernmental transfer (IGT) may be derived from funds that the government entity previously would have spent on providing the services that are now being provided/funded by the private entity and/or direct payments made to the governmental entity from private entities.

(A "deferral" means that CMS is withholding from the state the federal percentage of Medicaid payments the state has already made. A deferral is triggered when CMS questions the allowability of all or part of the amount of the Medicaid payments and needs additional information to resolve the question.)

The initial amount of the deferral is $75 million for uncompensated-care payments made during the 3rd quarter of this year (ending June 30, 2014) to private hospitals in RHPs 4, 9, and 10. A list of those hospitals is contained in Attachment 1 to the CMS letter. That deferral amount may increase if the Review Team identifies other funding arrangements it believes constitute impermissible donations. (The review of RHP 7 was not completed in time for the deferral letter.) In addition to uncompensated-care payments, CMS indicated that federal funds may not be available for future Delivery System Reform Incentive Payments to the private hospitals that participate in these funding arrangements.

In 2008, CMS lifted a deferral of funds for the Private Hospital Upper Payment Limit (UPL) program after HHSC and the UPL program participants put certain safeguards in place to ensure that no hold-harmless agreements existed between the hospitals and their affiliated governmental entities. Those safeguards remain in place in the current uncompensated-care program. However, based on the recent guidance from CMS in the State Medicaid Director letter, the CMS Review Team now believes that funding arrangements like those that supported Private Hospital UPL payments constitute impermissible donations. The Review Team also reports identifying direct payments from private hospitals to governmental entities.

In the next days and weeks, HHSC will be working closely with CMS to clarify any misunderstandings the Review Team may have about the nature of the questioned arrangements, with the goal of resolving this matter before the questioned funds are permanently disallowed or future waiver payments are affected. Of course, if funding arrangements exist that circumvent HHSC's safeguards, there may be little the state can do to avoid a disallowance of payments to the hospitals involved.

Given the potential negative impact to Texas hospitals if CMS disallows funds associated with this program or prohibits the continued use of public/private funding relationships, HHSC is notifying all impacted hospitals and hospital stakeholder organizations of this recent development. We will update you with information about this important matter as it becomes available. In the meantime, should you have any questions about the information in this notice, please contact Pam McDonald, HHSC Director of Rate Analysis, at pam.mcdonald@hhsc.state.tx.us or (512) 707-6079.