



**NUECES COUNTY HOSPITAL DISTRICT**  
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*Via Electronic Mail to [charles.greenberg@hhsc.state.tx.us](mailto:charles.greenberg@hhsc.state.tx.us)*

September 5, 2017

Charles Greenberg  
Director of Policy for Legal Services  
Texas Health and Human Services Commission  
4900 North Lamar Blvd.  
Mail Code 1100  
Austin, Texas 78751

**RE: Comments on Proposed Rule 1R061**

Dear Mr. Greenberg:

The Nueces County Hospital District (“NCHD”) appreciates the opportunity to comment on the Texas Health and Human Services Commission’s (“HHSC”) proposed rule 1R061, proposing to revise 1 TEX. ADMIN. CODE § 353.1301, governing the Medicaid Managed Care Delivery System and Provider Payment Initiatives (“Proposed Rule”). The Proposed Rule was published on pages 4041-4042 of the August 18, 2017 edition of the *Texas Register*.

**Request**

For the reasons explained below, NCHD requests that the proposed language at 1 TEX. ADMIN. CODE § 353.1301(j) be revised to exclude from the list of entities subject to recoupment governmental entities whose involvement in the program is limited to transferring intergovernmental transfers (“IGTs”) to HHSC. The following language reflects this proposed change:

*(j) If payments under this subchapter are disallowed by CMS, HHSC may recoup the amount of the disallowance from MCOs, providers, or governmental entities that participated in the program associated with the disallowance in a capacity other than solely as the governmental entity transferring the IGT to HHSC. If the recoupment. . .*

In the alternative, if HHSC chooses not to adopt this proposed or similar language, NCHD requests that HHSC confirm in the final rule that the phrase “governmental entities that participated in the program” at the proposed 1 TEX. ADMIN. CODE § 353.1301(j) does not include governmental entities whose sole involvement in the program is transferring IGTs to HHSC, and are not a payor, or service provider.

## **Rationale for Request**

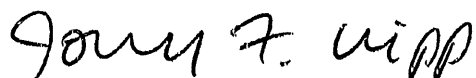
NCHD's role as a potential IGT sponsoring governmental entity for certain providers located in the Nueces service delivery area ("SDA") is different than that presented by other non-state governmental entities in that NCHD does not operate a participating hospital that will receive uniform regional rate increase payments. HHSC's proposed recoupment process for disallowed federal funding set forth in proposed section 353.1301(j) would disproportionately harm NCHD and other similarly situated governmental entities. As a potential IGT sponsoring governmental entity, NCHD would have already provided an IGT in the amount of the non-federal share of the funding necessary to support the regional uniform rate increase for a number of providers located in the Nueces SDA. If HHSC recoups the disallowed federal funding from NCHD, the recouped funding will be in excess of the non-federal share of funds that NCHD would have already provided to finance the program and would not be offset by any participation by NCHD in the regional uniform rate increase payments. Further, such recoupments would be made against other public funds held by NCHD instead of the benefitting providers who received uniform rate increase payments.

To avoid this type of disproportionate harm to governmental entities such as NCHD, NCHD requests that HHSC revise the proposed section 353.1301(j) to allow HHSC to recoup funding from (i) managed care organizations (which can recoup from hospitals through their contract) and (ii) the providers and governmental entities that participated in the program in a capacity other than solely as the governmental entity transferring the IGT to HHSC (*i.e.*, entities that actually received the uniform rate increase payments).

The proposed section 353.1301(j) creates a significant financial risk for NCHD in serving as a potential IGT sponsoring governmental entity for providers located in the Nueces SDA. To prevent a resulting reduction in IGT involvement by NCHD and similarly situated governmental entities, NCHD strongly encourages HHSC to revise proposed section 353.1301(j) in accordance with the language proposed above. In the alternative, NCHD requests that HHSC confirm in the final rule that the phrase "governmental entities that participated in the program" at the proposed section 353.1301(j) does not include governmental entities such as NCHD whose sole involvement in the program is transferring IGTs to HHSC, and are not a payor or service provider.

Thank you once again for the opportunity to provide public comments on the Proposed Rule. Should you wish to discuss this comment further, please contact me at (361) 808-3300 or [jonny.hipp@nchdcc.org](mailto:jonny.hipp@nchdcc.org).

Sincerely,



Jonny F. Hipp, ScD, FACHE  
Administrator/Chief Executive Officer