

Disallowance of Federal Uncompensated Care Payments for Texas Hospitals

Nearly \$30 million in federal payments intended to offset some uncompensated care costs for private hospitals in the Dallas-Fort Worth region are the subject of disagreement between the Centers for Medicare & Medicaid Services and the state of Texas.

In September 2016, CMS notified Texas that it was disallowing \$27 million in federal uncompensated care payments because they constituted “impermissible provider donations.” These payments had already been made to the state in 2015 and disbursed to hospitals.



The state is appealing the disallowance and waiting to hear if the payments are in fact allowable or if hospitals will have to pay back the funds on the state’s behalf.

The basis of the disallowance is the funding mechanisms used for 1115 waiver uncompensated care payments for private hospitals in Texas. However, these funding mechanisms are not new.

The same funding mechanisms were used in the “upper payment limit” program that preceded the state’s implementation of the 1115 waiver. In its waiver application to CMS, the state articulated that the same mechanisms would be used, and CMS approved the waiver with conditions of participation acknowledging the funding mechanisms.



2011

DECEMBER CMS approves Texas’ 1115 waiver that established uncompensated care and delivery system reform incentive program payments.

2014

JUNE CMS notifies Texas it is **deferring** payment of \$74 million in federal uncompensated care payments for hospitals in several parts of the state while it investigates the source of the non-federal share of waiver payments.

2015

JANUARY CMS releases the deferral without explicit acceptance of the financing mechanism that governs the non-federal share of waiver payments; CMS expresses a willingness to work with the state before making a final determination on the allowability of the financing mechanism.

MAY CMS and the state begin discussion on the waiver financing mechanism; CMS agrees that *if* it decides that changes to the mechanism are required, the state will have until September 2017 to make the changes without further risk of payment disallowance.

SEPTEMBER CMS and the state end discussions on the waiver financing mechanism; CMS does not issue a final determination on the allowability of the financing mechanism.

2016

SEPTEMBER CMS notifies the state it is **disallowing** \$27 million in federal uncompensated care payments for private hospitals in the Dallas-Fort Worth area.

OCTOBER The state requests that the disallowance be lifted.

DECEMBER CMS notifies the state that it affirms the disallowance.

2017

FEBRUARY 24 The state files a notice of appeal with the Departmental Appeals Board at the U.S. Department of Health and Human Services to lift the disallowance.

MARCH 8 The state requests that Health and Human Services Secretary Tom Price use his executive authority to lift the disallowance.

JUNE 2 Deadline for the state to file its first brief with the DAB.

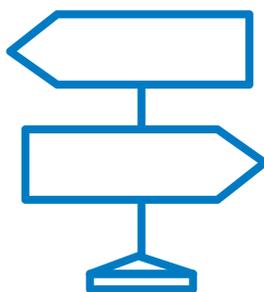
SEPTEMBER DAB decision anticipated on the disallowance.

Texas hospitals support the state's request that **CMS immediately lift the disallowance.**

CMS has **deferred** and **disallowed** federal uncompensated care payments for Texas hospitals. The two terms have different meanings.

Deferral

When federal payment is deferred, CMS indicates that it is **questioning the allowability** of the nonfederal share of payment and needs additional information to resolve the question. Under a deferral, federal payments eventually could be made or they could be disallowed.



Disallowance

When a federal payment is disallowed, CMS indicates that it has determined that the nonfederal share of **payment is not permissible.** A disallowance decision can be appealed, but a final disallowance decision could require the state to repay the federal payments that were already made and deemed impermissible. The disallowance decision also could apply prospectively, meaning that future federal payments are not allowable.



While the disallowance currently only impacts hospitals in the Dallas-Fort Worth area, there is concern that additional payments in other regions of the state will be disallowed if CMS deems the funding mechanisms to be impermissible.

This would jeopardize the entire health care safety net in Texas as private hospitals provide a significant amount of uncompensated care in Texas.

They would be unable to continue this work at the same level if the waiver's financing mechanism is deemed impermissible.