

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop: S2-26-12
Baltimore, Maryland 21244-1850



DEC 20 2018

Charles Greenberg
Director of Hospital Finance and Waiver Programs
Health and Human Services Commission
4900 N. Lamar Boulevard
Austin, Texas 78751

Dear Mr. Greenberg:

On September 21, 2018, the Centers for Medicaid & CHIP Services (CMCS) sent questions to the State of Texas requesting information about how the state is financing the non-federal share of several Medicaid payments. In light of previously expressed CMS concerns regarding the state's financing and the August 7, 2018 decision from the Department of Health and Human Services' Departmental Appeals Board, CMCS has requested this information to ensure the state is financing its Medicaid program consistent with federal requirements and is exercising program oversight necessary for ongoing compliance. Please provide a response within 30 days of receipt of this letter.

On November 16, 2018, the state provided information regarding health care-related taxes in Dallas and Tarrant counties that have replaced impermissible financing. Based on CMCS' review of this information, the Dallas and Tarrant county taxes appear to meet the broad-based and uniformity requirements at section 1903(w) of the Social Security Act (the Act) and implementing regulations at 42 CFR part 433. Further, the use of such funds to finance certain Medicaid payments, as described in the information provided, does not appear to constitute a hold harmless arrangement prohibited by section 1903(w) of the Act and implementing regulations. To the extent CMS discovers at a later date that these financing arrangements do, in fact, violate federal statute and regulation, CMS may take action to enforce compliance.

We appreciate the action taken to replace impermissible arrangements in Dallas and Tarrant counties. We hope that this progress will now allow the State and CMCS to timely address the permissibility of other financing arrangements throughout the state and related state oversight. In its November 16, 2018 response, the state indicated it would respond at a later date to CMS requests regarding these additional concerns. Recently, the state notified CMS that it plans to conduct a state-wide survey to obtain information regarding the financing mechanisms in other local jurisdictions. We understand that the state is initiating this survey during the week of December 10, 2018.

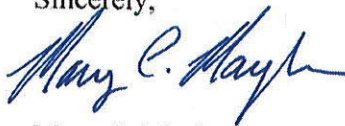
In addition, the state provided CMS an analysis of a proposed structural change that you believe could alleviate any concerns beginning October 1, 2019. CMS is now reviewing the information the state provided and will respond as soon as possible.

Thank you again for the recent information. We look forward to obtaining the remainder of the information previously requested on September 21, 2018, including the state's detailed plan and timeline outlining corrective action for any impermissible financing arrangements that may be currently in use. CMS recognizes that corrective action may require consideration by the Texas legislature, which will convene in January and only meets every two years. Therefore, we are asking that the State submit this information and plan within 30 days of receipt of this letter, which CMS will view as evidence of a good faith effort by the state to resolve these outstanding concerns. Such a good faith effort will be taken into consideration as CMS weighs the need for further compliance action, including but not limited to further deferrals or disallowances in counties where CMS has completed a financial management review (FMR) or initiating new FMRs.

Please be reminded that CMS expects all financing arrangements in Texas to comply with statute and regulations and remains committed to working with the state to ensure compliance.

CMS continues to be available to provide technical assistance to the state as necessary. Please contact Kristin Fan should you have any questions or need assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary C. Mayhew".

Mary C. Mayhew
Deputy Administrator, Director

cc: Bill Brooks, Associate Regional Administrator, Dallas