

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Dallas Regional Office  
1301 Young Street, Suite 833  
Dallas, Texas 75202



## **Division of Medicaid & Children's Health, Region VI**

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September 1, 2016

### **DISALLOWANCE TX/2016/001/MAP**

Ms. Jami Snyder  
State Medicaid Director  
Associate Commissioner for Medicaid / CHIP  
Texas Health and Human Services Commission  
P.O. Box 13247  
Mail Code: H100  
Austin, Texas 78711

Dear Ms. Snyder:

This letter is notice of a disallowance in the amount of \$26,844,551<sup>1</sup> Federal Financial Participation (FFP), as reported on the CMS-64 quarter ending December 31, 2015. The disallowance amount is based on the projected value of in-kind donations to the Dallas and Tarrant County hospital districts by the Dallas County Indigent Care Corporation (DCICC) and the Tarrant County Indigent Care Corporation (TCICC), which are both funded by local private hospitals. The Counties' related Intergovernmental Transfers (IGTs) to the State, to fund Uncompensated Care Pool (UC) payments to participating private hospitals, were principally derived from county funds augmented by these donations and formed a hold harmless arrangement in violation of the Medicaid Statute and regulations.

Section 1903(w) of the Social Security Act (the Act) generally places limitations on the use of provider-related donations and taxes as funding sources for expenditures claimed by states as the basis for FFP. Among these limitations, as set forth in implementing regulations at 42 C.F.R. § 433.54, FFP is not available to the extent that it would be based on the use of such financing sources when there is a "hold harmless arrangement" under which providers (or the provider class) could be effectively repaid for a provider-related tax or donation through any direct or indirect payment, offset, or waiver. A hold harmless arrangement is defined to include circumstances in which an increased Medicaid payment is conditional on the receipt of a donation.

CMS issued State Medicaid Director Letter (SMDL) 14-004 to all states on May 9, 2014 regarding the allowable and unallowable use of provider-related donations, including the related use of certain types of public-private arrangements. This letter discusses situations where governmental entities and private entities enter into agreements or relationships that constitute non-bona fide provider-related donations, in which private entities provide a governmental entity with funds or other consideration and receive in return additional Medicaid payments. Under

these circumstances, there is a hold harmless arrangement in which the contract to provide services is a provider-related donation and the receipt of additional payments is the return of some, or all, of the donation. The letter specified that this type of arrangement is a non-bona fide donation prohibited by statute and regulations.

CMS has identified a similar arrangement in Texas among various local governments, private hospitals, and non-profit organizations that constitutes a non-bona fide donations as described in the May 9, 2014 guidance. In this arrangement, a group of private hospitals indirectly assumed financial responsibilities once held by the local governments and, in exchange, received payments under the Medicaid program. Specifically, the Counties and private hospitals coordinated to create the DCICC and TCICC to fund contracts previously held by the local governments that provide faculty staff within the Counties' medical facilities. The donated services augmented Dallas and Tarrant Counties' funds and the Counties then transferred funds to the state Medicaid agency via IGT. The Medicaid agency used funds derived from the donation-based IGTs, as the non-federal share to draw FFP, and made additional Medicaid payments under the State Plan, and or a section 1115 demonstration waiver, to the same private hospitals that fund TCICC and DCICC. See, Act, Section 1903(w)(6)(A).

Section 1903(w)(1)(A) of the Act and implementing regulations at 42 CFR 433.67(b) require that CMS deduct from a state's quarterly medical assistance expenditures any non-bona fide, provider-related donations received in that quarter by the state or a local unit of government. Accordingly, this letter constitutes your notice of disallowance in the amount \$26,844,551 FFP. Please make a decreasing adjustment on line 10(c) of the next quarterly expenditure report (CMS-64) in the amount of \$26,844,551 FFP for FY2016 and reference TX/2016/001/MAP.

This disallowance is my final decision. Under section 1116(e) of the Social Security Act, the state has the opportunity either to request reconsideration of this disallowance from the Secretary or to appeal this disallowance to the Departmental Appeals Board. This decision shall be the final decision of the Department unless, within 60 calendar days after the State receives this decision, the State delivers or mails (the state should use registered or certified mail to establish the date) a written request of reconsideration to the Secretary or a written notice of appeal to the Departmental Appeals Board.

Written requests for reconsideration should be delivered or mailed to the CMS Associate Regional Administrator at 1301 Young St. Suite 832, Dallas TX 75202 (the state should use registered or certified mail to establish the date). Requests for reconsideration by the Secretary should include: (1) A copy of the disallowance letter; (2) A statement of the amount in dispute; (3) A brief statement of why the disallowance should be reversed or revised, including any information to support the state's position with respect to each issue; (4) additional information regarding factual matters or policy considerations; and (5) a statement of your intent to return or retain the funds. See 42 C.F.R. § 430.42(b)(2) published at 77 Fed. Reg. 31499, 31508 (May 29, 2012). The state should include in its request for reconsideration all of the information it believes is necessary for the Secretary's review of its request. If the State requests reconsideration from the Secretary and receives an unfavorable reconsideration of the disallowance from the Secretary, it may appeal the disallowance to the Departmental Appeals Board within 60 calendar days after the date that the State receives the unfavorable reconsideration. Written requests for appeal should be delivered or mailed to:

U.S. Dept. of Health and Human Services  
Departmental Appeals Board, MS 6127  
Appellate Division  
330 Independence Avenue, S.W.  
Cohen Building, Room G-644  
Washington, D.C. 20201

The state may appeal the disallowance to the DAB within 60 calendar days of the date you received this letter or, if applicable, within 60 calendar days after the date that the State receives the unfavorable reconsideration. If the state chooses to appeal this disallowance, written appeals request must include: (1) a copy of this disallowance decision; (2) a copy of the reconsideration decision, if applicable; (3) a note of its intention to appeal the disallowance; (4) the amount in dispute; and (5) a brief statement of why the disallowance is wrong. In addition, the state should reference Disallowance Number TX/2016/001/MAP in the appeal request. The Board will notify the state of further procedures. Please also send a copy of your appeal to my attention at the following address Mr. Bill Brooks, Associate Regional Administrator; Centers for Medicare & Medicaid Services, Region 6; 1301 Young Street, Room 833; Dallas, Texas 75202.

A notice of appeal may also be submitted to the DAB by mail, by facsimile (fax) if under 10 pages, or electronically using the DAB's electronic filing system (DAB E-File). Submissions are considered made on the date they are postmarked, sent by certified or registered mail, deposited with a commercial mail delivery service, faxed (where permitted), or successfully submitted via DAB E-File. To use DAB E-File to submit your notice of appeal, you or your representative must first become a registered user by clicking "Register" at the bottom of the DAB E-File homepage, <https://dab/efile.hhs.gov/>; entering the information requested on the "Register New Account" form; and clicking the "Register Account" button. Once registered, you or your representative should login to DAB E-File using the e-mail address and password provided during registration; click "File New Appeal" on the menu; click the "Appellate" button; and provide and upload the requested information and documents on the "File New Appeal-Appellate Division" form. Detailed instructions can be found on the DAB E-File homepage.

If the State appeals the disallowance under section 1116(d) of the Act, section 1903(d) of the Act provides you the option of retaining the funds that was previously paid to the State and that is now being disallowed by this notice, pending a final administrative decision. If the final decision upholds the disallowance and you elect to retain the funds during the appeals process, the proper amount of the disallowance plus interest computed pursuant to section 1903(d)(5) of the Act will be offset in a subsequent grant award.

You may exercise your option to retain the disputed funds by notifying me, in writing, no later than 60 days after the date this letter is received. In the absence of notification that the State elects to retain the funds, the Secretary will recover \$26,844,551 FFP pending the final decision of the Departmental Appeals Board.

If you have any questions, please contact Dorothy Ferguson at 214-767-6385 or Jeffrey Branch at 214-767-6449 or their respective email addresses are [Dorothy.ferguson@cms.hhs.gov](mailto:Dorothy.ferguson@cms.hhs.gov) or [Jeffrey.branch@cms.hhs.gov](mailto:Jeffrey.branch@cms.hhs.gov).

Sincerely,



Bill Brooks  
Associate Regional Administrator  
Division of Medicaid and Children's Health

cc via Email: Monica Leo / HHSC  
Charles Greenberg / HHSC

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<sup>i</sup> The basis of the disallowance is the estimated quarterly value of various contracts by DCICC and TCICC and then multiplying that amount by the appropriate FFP @ 57.13% for FFY2016.

Non Profit Entity	Est Value of Contract(s) Donation Amount	Quarterly Equivalent of Donation	FFP at Risk (57.13%)
DCICC	\$142,646,144	\$ 35,661,536	\$ 20,373,436
TCICC	\$ 45,308,000	\$ 11,327,000	\$ 6,471,115
Total	\$187,954,144	\$ 46,988,536	\$ 26,844,551