

May 17, 2021

Victoria Grady  
Director of Provider Finance  
Texas Health and Human Services Commission (HHSC)  
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Austin, TX 78751  
*Submitted by email to [UCTools@hhsc.state.tx.us](mailto:UCTools@hhsc.state.tx.us)*

Dear Ms. Grady:

The Texas Hospital Association, representing more than 450 member hospitals statewide, appreciates the opportunity to comment on the proposed amendment to rule 1 TAC §355.8065 Disproportionate Share Hospital (DSH) Reimbursement Methodology. In 2020, Texas' DSH program distributed \$1.8 billion to approximately 180 Texas hospitals based on care provided to Medicaid enrollees and the uninsured. The fiscal circumstances of hospitals that serve high portions of uninsured and Medicaid-enrolled patients are significantly influenced by these payments, and we believe changes that could recalibrate the distribution of DSH funds warrant careful consideration.

#### **Low Income Utilization Rate Calculation**

The proposed rule would alter the Low Income Utilization Rate (LIUR) calculation to ensure Texas' formula mirrors federal statute, and addresses LIUR fractions exceeding 100%. To date, HHSC has released no modeling to show the effects this change may have on DSH eligibility and payments. Furthermore, the proposed rule does not define all terms included in the LIUR calculation as described in Social Security Act §1923(b)(3), creating confusion about what funds are used in the calculation.

We ask HHSC to delay consideration of the LIUR formula change until public modeling is available and options have been thoroughly vetted in the context of an expert stakeholder workgroup. While we understand the desire to address unusual LIUR outputs and achieve consistency between state and federal regulations, hospitals have reservations about this change absent a complete understanding of its financial effects. Because the recent rescission of Texas' 1115 waiver extension renders the Comprehensive Hospital Increased Reimbursement Program and Uncompensated Care pool uncertain beyond state fiscal year 2022, we further question the need to adopt a DSH formula change with unclear impact at this time.

### **Hospital Class Definitions**

We encourage HHSC to move forward with the proposed changes that would reclassify Dell Seton Medical Center at The University of Texas to be eligible for DSH payments.

### **Recoupment and Redistribution of DSH Overpayments**

Proposed subsections (q) adds reconciliation language for DSH overpayments. It appears the proposed rule text in subsection (q) borrows language from the uncompensated care payment methodology. We are curious whether it is the agency's intent to create a separate reconciliation process that serves the same purpose as the DSH audit, and to use demonstration years instead of DSH program years. We are concerned these processes may be duplicative or not applicable to DSH, and would value the opportunity to discuss the commission's intent in adding this section. At this time, we recommend not adopting the proposed subsection (q) language.

Proposed subsection (r) alters the current method of redistributing recouped funds to hospitals that have the same source of nonfederal share. For DSH years 2011-2017 and 2020 and after, recouped funds would be redistributed to the governmental entity that provided the nonfederal share. It appears this methodology would exclude non-governmental hospitals located in areas with class one public hospitals from redistribution since their local provider participation fund statutes prevent use of those funds for DSH, and thereby they lack a pathway to receive redistributed funds via a governmental entity. Because the financial impact of this change is not clear, at this time we recommend use of the current rule language for these years.

### **Conclusion**

With the exception of hospital class definition changes, we encourage HHSC to delay further modification to the DSH reimbursement methodology until changes are modeled and deliberated in a stakeholder workgroup. Texas hospitals would welcome any opportunity to collaborate with HHSC on future proposed amendments to the DSH reimbursement methodology. We hope a technical workgroup will be part of the agency's plans and are eager to participate.

Kind regards,



Anna Stelter  
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Texas Hospital Association