Texas Hospital Association

Proposed Federal Rule Would Upend Patient Care

Once again, the stability of the Texas hospital industry is in jeopardy, as a proposed federal rule aims to severely limit states' ability to draw down critical federal Medicaid payments. Hospitals across the state rely on payments through state-directed payment programs (SDPs) to provide essential care for Medicaid enrollees and the insured.

The proposed rule – called Medicaid and CHIP Managed Care Access, Finance, and Quality – was issued by the Centers for Medicare & Medicaid Services in early May 2023. The effort is the latest in a series of federal actions seeking to erode states' flexibility, increase oversight and curtail arrangements that help hospitals draw down federal funds and provide much-needed access to care for Texas patients.

THE RULE: HURTS PAYMENTS, HURTS HOSPITALS

Texas' hospital Medicaid payments are financed permissibly, but the proposed rule would restrict Texas from using longstanding CMS-approved methods to shore up access to care.

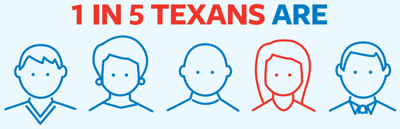
The Details

The proposed rule would grant CMS broad authority to withhold approval of SDPs or retroactively deny already-approved SDPs it believes to be financed with impermissible non-federal dollars. The rule also would require individual hospitals that participate in SDPs to attest in writing they do not participate in any "hold harmless" arrangement (arrangements in which a taxpaying hospital is paid back part or all of their tax). CMS's interpretation of impermissible "hold harmless" arrangements in this rule **oversteps the language of federal statute and regulation** and would require providers to attest they are not engaged in plainly permissible activities.

The Bottom Line: The Rule Is an Overreach and Should Be Withdrawn

CMS should withdraw the financing restrictions in this rule and stop applying a faulty interpretation of federal statute to permissible financing arrangements. **A rule of this kind would accelerate Texas hospital closures**, reduce service lines like OB-GYN, pediatrics, and behavioral health, limit access to care for low-income Texans, and leave the State of Texas holding the bag on an even larger financial Medicaid burden.

IN A STATE WHERE NEARLY 1 IN 5 TEXANS ARE



ENROLLED IN MEDICAID

THE STAKES FOR TEXAS ARE HIGH

MILLION

TEXANS ARE ENROLLED IN MEDICAID

ANOTHER 5.2 MILLION ARE UNINSURED

- State and federal laws require hospitals to provide care for anyone who seeks it, **regardless of their ability to pay.**
- Base Medicaid payments do not cover hospitals' costs of providing care. On average they only reimburse hospitals for **72% of inpatient** and **75% of outpatient costs.**
- Medicaid SDPs in Texas exceed **$6 billion** in fiscal year 2023. These funds are essential to offset Medicaid reimbursements that are below cost.

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THIS PROPOSED RULE WOULD DEVASTATE THE HEALTH CARE SAFETY NET AT THE EXPENSE OF TEXAS' POOREST RESIDENTS, INCLUDING LOW-INCOME PREGNANT WOMEN, CHILDREN AND SENIORS.

CURRENT LAW PROVIDES THE FLEXIBILITY TO FINANCE THE NON-FEDERAL SHARE OF THE SDPs

WITHOUT IT:

- Texas would have a **multi-billion-dollar hole** in its Medicaid program.
- Local taxes would **increase.**
- Rural hospitals would **shutter.**
- Patients would have **fewer options to access** OB-GYN, pediatric and behavioral health services.

A TIMELINE OF OVERREACHES

This rule is not CMS's first attempt to impose financing restrictions that incorrectly interpret and overstep the law. It's the latest in a series of attacks on long-standing methods CMS has permitted states to use to finance their Medicaid programs.

2019 — **CMS PROPOSES AND THEN WITHDRAWS DAMAGING "MFAR" RULE.**

2021 — **CMS DECLINES TO APPROVE TEXAS SDPs BASED ON UNSUPPORTED FINANCING CONCERNS, COSTING HOSPITALS $7 MILLION PER DAY FOR 7 MONTHS.**

2022 — **FEDERAL HHS OIG ANNOUNCES AUDIT OF TEXAS LOCAL PROVIDER PARTICIPATION FUNDS, WHICH COLLECT LOCAL PROVIDER TAXES TO FINANCE SDPs.**

2023 — **CMS PROPOSES RESTRICTIONS ON HOSPITAL SDP FINANCING.**

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