

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Center for Medicaid & CHIP Services

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Financial Management Group

February 27, 2024

Kimberly Sullivan
Medicaid Director State of Louisiana
Department of Health
628 N 4th Street
P.O. Box 91030
Baton Rouge, LA 70821-9030

RE: Louisiana Medicaid State Plan Amendment TN: 23-0033

Dear Director Sullivan:

This letter is being sent as a companion to our approval of Louisiana State Plan amendment (SPA) 23-0033. This SPA authorizes quarterly supplemental payments for certain qualifying public, non-state government owned or operated, small rural hospitals located in Louisiana Department of Health administrative region 3. Supplemental payment for outpatient hospital services is proportional to paid claims for all qualifying facilities from an aggregate pool of \$4,500,000 or limited to the amount available under Louisiana's outpatient hospital upper payment limit demonstration.

As submitted, LA-23-0033 proposed supplemental payments to an additional class of Small Rural Hospitals, superseding the pages originally approved in LA-11-35. While reviewing the original submission, FMG noted that Small Rural Hospitals required an affiliation with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement (LINCCA). In response to CMS' request for additional information (RAI), Louisiana noted that West Carroll Memorial Hospital is a private entity and qualifies for supplemental payments under the LINCCA rural hospital provision approved under LA-11-35. Louisiana removed pages from the LA-23-0033 submission that included LINCCA for West Carroll. LINCCA language is now incidental to review of LA-23-0033.

Section 1903(w) of the Social Security Act (the Act) and its implementing regulations generally place limitations on the use of provider-related donations as funding sources for expenditures claimed by states for federal financial participation (FFP). Federal regulations at 42 Code of Federal Regulations (CFR) 433.52, which implement section 1903(w) of the Act, define a provider related donation as "a donation or other voluntary payment (in cash or in kind) made directly or indirectly to a state or unit of local government by or on behalf of a health care provider, an

entity related to such a health care provider, or an entity providing goods or services to the state for administration of the state's Medicaid plan.”

Regulations at 42 CFR 433.54(a) define a bona fide donation as “a provider-related donation . . . that has no direct or indirect relationship . . . to Medicaid payments made to (1) the health care provider; (2) any related entity providing health care items and services; or (3) other providers furnishing the same class of items or services as the provider or entity.” As set forth at 42 CFR 433.54(b) and (c), this does not include donations that are part of a hold harmless arrangement that directly or indirectly returns some or all of the donation to the provider, the provider class, or any related entity. A hold harmless provision exists if: 1) the unit of government provides for a direct or indirect non-Medicaid payment to those providers or others making, or responsible for, the donation, and the payment amount is positively correlated to the donation; 2) all or any portion of the Medicaid payment to the donor, provider class, or related entity, varies based only on the amount of the donation, including where Medicaid payment is conditional on receipt of the donation; or 3) the unit of government receiving the donation provides for any direct or indirect payment, offset, or waiver such that the provision of that payment, offset, or waiver directly or indirectly guarantees to return any portion of the donation to the provider or other parties responsible for the donation.

Section 1903(w)(1)(A) of the Act states that “notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a state (as defined in paragraph (7)(D)) under subsection (a)(1) for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the state plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the state (or by a unit of local government in the state) during the fiscal year—(i) from provider-related donations (as defined in paragraph (2)(A)), other than - (I) bona fide provider-related donations (as defined in paragraph (2)(B)), and (II) donations described in paragraph (2)(C).” Because this provision indicates that Federal Medicaid payments must be reduced by the sum total of non-bona fide provider-related donations received by the state, state plans that rely on non-bona fide provider-related donations would result in claims for Federal funding that would not be allowable. Supplemental payments supported by such donations would be unallowable because there is no valid source of the non-Federal share.

Louisiana's state plan includes non-federal share funding through Low Income Needy Care Collaboration Agreements (LINCCAs) that appear to involve a hold harmless arrangement under which private entities are making in-kind or monetary donations and being repaid for those donations through the proposed supplemental payments. Because the qualifying criteria in the approved SPA LA-11-35, and brought forward in the original submission of SPA LA-23-0033, specifically require that a privately owned or operated hospital must be affiliated with a state or local governmental entity through a LINCCA as of October 31, 2011, under which the private hospital would undertake certain responsibilities to provide care to individuals without charge, or with reduced charge, there would be a transfer of value from the private hospital to the government entity that appears to be an in-kind donation within the meaning of a donation under section 1903(w) and implementing regulations. Moreover, the supplemental payments appear to be a return to the providers of funding related to that donation, which would result in a hold harmless arrangement because the LINCCA stipulates under the heading OBLIGATIONS OF THE HOSPITALS that the Hospitals will only provide low income

and needy care services for which the Governmental Entity does not have a continuing contractual or statutory obligation, in exchange for a supplemental payment.

State Medicaid Directors Letter (SMDL) #14-004 provided guidance to states concerning allowable and unallowable use of provider-related donations and addressed the use of certain types of public-private arrangements. SMDL #14-004 discusses situations where governmental entities and private entities enter into agreements that constitute non-bona fide provider-related donations, in which private entities provide a governmental entity with consideration and receive in return additional Medicaid payments in the form of a supplemental payment. Government entities are free to enter into agreements with private entities, however such agreements may affect allowability of Medicaid FFP if there is a hold harmless provision or practice. A hold harmless exists if Medicaid payments are conditioned upon the receipt of a donation from a private entity (such as an exchange of goods or services as provided for in LINCCAs) or if there is a guarantee that the private entity will see a return of all or a portion of that donation through a Medicaid payment. Donations that occur under such arrangements are not considered bona fide. Payment methodologies contingent upon the receipt of a non-bona fide donation would be grounds for disapproval of a SPA.

CMS engaged Louisiana on January 22nd to discuss concerns with the language approved in LA-11-35. Louisiana asserted that the LINCCA between West Carroll Memorial Hospital and West Carroll Parish does not violate the provisions of section 1903(w) of the Act or the implementing regulations in Title 42 Part 433 Subpart B of the Code of Federal Regulations. Louisiana agreed to submit documentation supporting that assertion. Please respond to the concerns raised in this companion letter to Louisiana TN 23-0033 within 90 days addressing the LINCCA requirement for West Carroll Memorial Hospital to qualify for a supplemental payment by providing documentation demonstrating that the LINCCA agreement does not involve non-bona fide provider donations. During the 90-day period, CMS will provide any required technical assistance. Failure to adequately address the concerns may result in the initiation of a formal deferral/disallowance process. If you have any additional questions or need further assistance, please contact Monica Neiman via email at: Monica.Neiman@cms.hhs.gov.

Sincerely,

Todd McMillion

Todd McMillion
Director
Division of Reimbursement Review