

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Texas Health and Human Services Commission
Docket No. A-08-17
(TX-2007-011-MAP)
Decision No. 2135

DATE: November 30, 2007

DECISION

The Texas Health and Human Services Commission (Texas) appealed a determination by the Centers for Medicare & Medicaid Services (CMS) disallowing \$1,774,666 that Texas claimed as costs incurred for Early Childhood Intervention developmental rehabilitative services for Quarter III 2007. CMS disallowed the costs on the ground that the costs were not claimed in accordance with Texas's approved Medicaid state plan.

As Texas noted, similar disallowances taken on the same grounds for earlier time periods were the subject of the Board's decisions in Texas Health and Human Services Commission, DAB No. 2097 (2007) and Texas Health and Human Services Commission, DAB No. 2112 (2007). Texas Notice of Appeal at 1. In DAB No. 2097, the Board concluded that the rate Texas paid for the services at issue was not established in accordance with the plain terms of the approved state plan, and, therefore, the Board upheld the disallowances in principle. The Board further concluded, however, that the rate amount CMS used to calculate the disallowances was not an appropriate rate, under the state plan methodology, for the years in question. That amount (based on 1999 costs) was clearly insufficient to reimburse the costs of an efficient and economic provider during the disallowance period, and the state plan called for determining prospective rates each year by applying an inflation factor to increase the base rate or, alternatively, by re-basing the rate. While the method Texas proposed for calculating "rebased" rates was not consistent with the state plan methodology, the Board concluded that the disallowance calculation should, at the very least, take into account the rate amounts projected to each relevant year using the inflation factor prescribed by the state plan. Accordingly, the Board remanded these disallowances to CMS to recalculate the disallowance amounts, pursuant to the Board's decision.

Thereafter, the Board issued DAB No. 2112, a summary decision incorporating the analysis of DAB No. 2097, upholding a subsequent period disallowance in principle, and remanding to CMS to recalculate the disallowance.

Texas requested that a summary decision also be issued in this case based on the analysis in DAB No. 2097. Texas Notice of Appeal at 1. CMS did not object to Texas's request. We therefore have determined that it is appropriate to issue a summary decision.

Conclusion

Based on the analysis in DAB No. 2097, which we incorporate by reference in its entirety, we uphold this disallowance in principle but remand to CMS to recalculate the disallowance amount consistent with the guidance provided in DAB No. 2097. If the parties do not reach a mutually acceptable solution as to how to recalculate the disallowances, Texas may return to the Board within 30 days of receiving a CMS determination of the amount.

_____/s/
Leslie A. Sussan

_____/s/
Constance B. Tobias

_____/s/
Judith A. Ballard
Presiding Board Member