

SECTION I: DATE AND TIMING INFORMATION

1. Preprint Question 4:

- a. Could the state please confirm if the amount provided in response to question 4 includes provisions for non-benefit costs such as margin, administrative load, and/or taxes and fees? If so, could the state please provide the amounts attributed to these non-benefit cost provisions?

State Response (April 21, 2022): The amount provided does include the estimated amounts for risk margin, administration, and taxes.

- b. Please describe why the amount provided in response to question 4 (i.e., \$4.7B) is the same estimate as what was provided in last year's preprint.

State Response (April 21, 2022): At the time of preprint submission, the enrollment period for the CHIRP Program Fiscal Year 2023 had not yet ended. The state could neither provide the list of enrolled hospitals, nor the applicable data used to calculate rate increases and estimated payments. The proposed methodology for FY2023 is what is represented in Attachment C but will be updated when the calculation is complete.

SECTION II: TYPE OF STATE DIRECTED PAYMENT

2. CMS previously communicated the concern that this payment arrangement could create perverse incentives for the plans. For example, the required uniform increases could result in plans negotiating lower base rates with providers subject to the state directed payment. For the SFY 2023 rating period, has the state instituted any new measures to counteract such perverse incentives?

State Response (April 21, 2022): The state has not instituted any new measures to this effect but is prepared to do so.

3. Has the state made any changes to its approach to monitoring that the plans are complying with the contract provisions to pay these uniform increases?

State Response (April 21, 2022): Managed Care Plans are required to submit all claims with the CHIRP increase with a specified indicator for tracking. The plans are aware of the indicator requirement and the state has been communicating with the plans to emphasize the importance of this indicator since the summer of 2021.

4. Preprint Question 8:

- a. For SFY 2023, have there been any changes to the methodology used to calculate the UHRIP and ACIA payment increases?

State Response (April 21, 2022): There have been no changes from the SFY2022 approved methodology.

- b. Please affirm that the payments required under this payment arrangement will only be made for Medicaid services on behalf of Medicaid beneficiaries covered under the Medicaid managed care contract for the SFY 2023 rating period only, and that the

payments will not be made on behalf of individuals who are uninsured, covered for such services by another insurer (e.g. Medicare), nor Medicaid services provided through the state's fee-for-service program.

State Response (April 21, 2022): The state affirms that the payments required under this payment arrangement will **only** be made for Medicaid services on behalf of Medicaid beneficiaries covered under the Medicaid managed care contract for the SFY 2023 rating period **only** and that the payments will not be made on behalf of individuals who are uninsured, covered for such services by another insurer (e.g. Medicare), nor Medicaid services provided through the state fee-for-service program.

5. Preprint Question 19b (Attachment C):

- a. The "Q19b CHIRP Rate Increases" tab in Attachment C shows rate increases per claim by class that are identical to SFY 2022. Further, many tabs in Attachment C refer to "SFY 2022" in their titles. Can the state please confirm that the information submitted in Attachment C on March 1, 2022 is intended to represent the current SFY 2023 renewal preprint? If so, can the state please explain why the rate increases for SFY 2022 and SFY 2023 are expected to be identical?

State Response (April 21, 2022): At the time of preprint submission, the enrollment period for the CHIRP Program Fiscal Year 2023 had not yet ended. The state could neither provide the list of enrolled hospitals, nor the applicable data used to calculate rate increases and estimated payments. Currently, Attachment C is only representative of the methodology and will be updated with SFY 2023 information when that information is available.

- b. Previously, CMS recommended that the state consider implementing monitoring and/or auditing efforts to investigate outliers in CHIRP data that is self-reported to the state by the providers. Can the state please provide an update on the implementation of these efforts?

State Response (April 21, 2022): Submitted Average Commercial data will be analyzed by comparison across total submissions and compared across class/SDA with outliers identified. Outliers that are identified will be further compared to Medicaid billing data to confirm consistency with average commercial payments self-reported by providers. The state will communicate with any providers who are identified as having provided outlier data to confirm self-reported data is correct. Following confirmation of submitted data the state will continue to analyze submitted data on a year over year basis.

SECTION III: PROVIDER CLASS AND ASSESSMENT OF REASONABLENESS

6. Preprint Question 20:

- a. Are there any provider classes new to this preprint submission?

State Response (April 21, 2022): All provider classes are identical to what was approved for CHIRP SFY2022.

7. Preprint Question 21 (Attachment C):

- a. What is the timing for providers to submit enrollment applications to the state for the SFY 2023 rating period?

State Response (April 21, 2022): The due date for application submission was March 29, 2022.

- b. Could the state confirm if the magnitude of the UHRIP and ACIA increases provided in the “Q21 Hospital Rates” tab of Attachment C are the final rate increases that will be paid during the SFY 2023 rating period? If they are not, when will they be available?

As was the case for the SFY 2022 preprint review, CMS will need the state to provide the actual uniform percentage increases for each hospital class and SDA for UHRIP and for each hospital for ACIA being requested under the preprint. The state will also need to provide an updated reimbursement analysis based on these new UHRIP and ACIA uniform percentage increases. This reimbursement analysis should show the impacts of the uniform percentage increases for both UHRIP and ACIA and across all hospitals.

State Response (April 21, 2022): The rates in the submitted pre-print and attachments are representative of SFY2022 rating period. HHSC will calculate final rate increases based on the FY 2023 applications, consistent with the methodology in the pre-print; final rate increase percentages and amounts are anticipated to be available in late May or early June, as the state finalizes details about caseload and utilization projections for the FY 2023 rating period.

- c. For hospitals participating in only UHRIP and not ACIA, how many hospitals does that state anticipate for SFY 2023 would receive payments above the average commercial rate?

State Response (April 21, 2022): Although the enrollment period has closed, calculating the UHRIP and ACIA components is still in progress.

- d. Can the state please confirm that for SFY 2023 rating period, there are no hospital classes/SDAs where the total payments will exceed the ACR?

State Response (April 21, 2022): The state confirms that no total payments for hospital classes/SDAs will exceed the ACR in SFY2023.

- e. It appears as though there may be errors in how the pass-through-payments are addressed in the “IP CHRIP Payment Levels – All” tab as the values between column N and S are inconsistent in some cases. Can the state please verify?

State Response (April 21, 2022): The state sees no discrepancy in formulaic or mathematical structure for the mentioned columns. If CMS believes a discrepancy exists, HHSC would appreciate additional clarification from CMS about the perceived discrepancy, including what the discrepancy is.

8. In SFY 2022, the state had a minimum fee schedule requirement for rural hospital inpatient and outpatient services tied to the state plan rate. Can the state confirm if this minimum fee schedule requirement will still be in effect for SFY 2023?

State Response (April 21, 2022): The state confirms that the minimum fee schedule requirement is still in effect for SFY 2023.

9. The SFY 2022 approval letter indicated, "CMS understands that upon approval of this state directed payment, the state will solicit average commercial rate (ACR) data, as a condition of participation, from the hospitals participating in CHIRP that have not provided this data to the state. As discussed with Texas, should a hospital fail to provide their respective ACR data as a condition of participation in CHIRP, that hospital would no longer be eligible for CHIRP payments and any modifications to the capitation rates as a result of this change would need to go back to the effective date of CHIRP, which is September 1, 2021". Please provide an update on the collection of this ACR data. Have all hospitals participating in CHIRP for SFY 2022 provided their ACR data to the state?

State Response (April 21, 2022): As of April 13, 2022, all but six of the providers have responded with their SFY2022 ACR data. The state is actively communicating with the remaining providers in an effort to secure ACR data as a condition of those providers' participation in CHIRP.

SECTION V: INCORPORATION INTO THE ACTUARIAL RATE CERTIFICATION

10. Will the state include the UHRIP and ACIA portions of the payment in the capitation rates in a manner consistent with prior years? If not, please describe the differences in the methodology this year.

State Response (April 21, 2022): Yes.

SECTION VI: FUNDING FOR THE NON-FEDERAL SHARE

General Comment: The financing of the CHIRP state directed payment appear to be financed by local units of government providing intergovernmental transfers (IGTs), funds for which are largely derived from the taxing authority of these units of government through the Local Provider Participation Fund, or LPPF. The state is attesting that the LPPF is broad-based and uniform. However, it appears that not all hospitals are being taxed under the LPPF, and it also appears that some of the units of government providing IGTs do not receive any state appropriated funds and do not have any taxing authority. The

state has indicated that these units of government will be funding these through public private partnerships.

11. The CHIRP spreadsheet appears to indicate that Coryell County Memorial, Decatur, Fannin County, and Uvalde County Hospital Authorities all do not have taxing authority and do not receive an appropriation. Please indicate where the funds for the IGTs for these entities come from for purposes of this state directed payment.

State Response (April 21, 2022): The Provider Finance Department within HHSC has established a Local Funds Monitoring team that is responsible for collecting information from each entity that provides local funds as the non-federal share of Medicaid payments. This oversight mechanism is a combination of self-reported quarterly data, review of public record data, and analysis of each funding source and related documentation. All local funds are being phased into this oversight process, as described in the proposed rule available [here](#). The state understands and agrees that it is our responsibility to ensure that funds used in the Medicaid program are public funds in accordance with 42 C.F.R. §433.51. The funds transferred to the state are public funds and come from various eligible sources based on the local governmental entity's available funds, such as general appropriations, county or city appropriations, commercial patient revenue where the entity is a service provider, or other available public funds.

12. In "Attachment F – IGT Entities" - several entities are classified as "other" under operational nature. Please define the operational nature for each of these entities as most are not classified as typical IGT-eligible entities (i.e. state, county, city).

State Response (April 21, 2022): HHSC has provided a list for Attachment F – IGT Entities that makes designations of the local governmental entities that provide IGT of public funds for use as the non-federal share consistent across programs. Only units of state or local government are permitted to submit IGT for use as the non-federal share of Medicaid payments. Texas has several classes of local entities that are referred to as Hospital Authorities, Hospital Districts, Local Mental Health Authorities, and others that are generally contiguous with a specific county or city, but are a unique unit of local government; therefore, the county or city designation was not appropriate. Due to the limitation to County, City, or Other, we selected "Other" for these various entity types. These entities have been in place for many decades and, much like a county or city, are units of local government with varying sources of public funds, including taxing authority, state appropriation, county appropriation, etc., depending on their individual enabling statutes. See updated Attachment F with updated formatting to sort correctly.

13. For any entities that may or may not have taxing authorities and do not receive any state appropriated funds, please describe where the funding for those IGTs will come from. We note that in some of the funding information provided under the various proposals, that some of the entities which do not have taxing authority and do not receive payments are funding a substantial IGT (\$20M or more). The state has an obligation, regardless of the IGT being voluntary or compulsory, to ensure that all federal requirements related to program financing are met.

State Response (April 21, 2022): The state affirms understanding of this requirement. The Provider Finance Department within HHSC has established a Local Funds Monitoring team that is responsible for collecting information from each entity that provides local funds as the non-federal share of Medicaid payments. This oversight mechanism is a combination of self-reported quarterly data, review of public record data, and analysis of each funding source and related documentation. All local funds are being phased into this oversight process, as described in the proposed rule available [here](#). The state understands and agrees that it is our responsibility to ensure that funds used in the Medicaid program are public funds in accordance with 42 C.F.R. §433.51. The funds transferred to the state are public funds and come from various eligible sources based on the local governmental entity's available funds, such as general appropriations, county or city appropriations, commercial patient revenue where the entity is a service provider, or other available public funds.

Please see additional information regarding non-taxing public entities above for examples.

14. Please affirm that no payment under this section is dependent on any agreement or arrangement for providers or related entities to donate money or services to a governmental entity.

State Response (April 21, 2022): The state affirms that no payment under this section is dependent on any agreement or arrangement for providers or related entities to donate money or services to a governmental entity.

15. Please confirm that the list of IGT Entities are consistent from the original submission (control name TX_Fee_IPH.OPH.BHI_New_20210901-20220831) to this renewal. Have providers been added or renewed? And please provide any IGT agreements or Memorandums of Understanding (MOU) with the renewal submission.

State Response (April 21, 2022): At the original time of preprint submission, HHSC had not sent suggested IGT amounts to IGT entities. An updated list of IGT entities will be provided at a later date. There is no compulsory IGT requirement and there are no agreements requiring an IGT of any amount from a state or local governmental entity. Due to the voluntary nature of the IGT contribution, local governmental entities complete a Declaration of Intent form notifying HHSC of the funds that are intended to be transferred via IGT.

16. How were the IGTs arranged? Are all of the IGT Entities TX has listed in all Renewals signing an IGT Agreements or did the Texas Legislature earmark those entity's funds for being transferred to the SMA?

State Response (April 21, 2022): There is no compulsory IGT requirement and there are no agreements requiring an IGT of any amount from a state or local governmental entity. Due to the voluntary nature of the IGT contribution, local governmental entities complete a Declaration of Intent form notifying HHSC of the funds that are intended to be transferred via IGT. In limited circumstances, the Texas Legislature appropriates specific public funds to a governmental entity with direction to use such funds in support of the Medicaid program. .

17. In item #12 of the CHIRP application, the language says: “By checking this box, I certify, as the entity that owns the hospital, that no part of any payment made under CHIRP will be used to pay a contingent fee and that the agreement with the hospital does not use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program, including the hospitals' receipt of CHIRP funds.” Please elaborate on what is intended by the inclusion of this statement.

State Response (April 21, 2022): The state has a similar requirement in its Medicaid provider enrollment agreement. Because the state is requiring information about commercial payments and charges for which the state could not obtain the data independently, we included this statement to remind providers of their responsibility under the terms of the Medicaid enrollment agreement related to third party billing entities, as we believe that this is applicable also to an application preparer or the provider in this context.

18. The CHIRP application seems to suggest that the city/county/hospital district can choose which hospitals/types of hospitals can benefit from the IGT/supplemental payments. Item #14 in the list says: “As a sponsoring governmental entity, which class or classes of hospitals do you wish to support through IGTs of public funds? This information will be used to calculate suggested IGT responsibilities.” The form proceeds to list out various types of hospitals classes. Section 1902(a)(2) of the Act says that the state plan must provide “ for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan.” If a government entity limits which providers may benefit from an IGT, how does the state assure that any hospitals that qualify under the CHIRP program will have their underlying payments fully funded as proposed under the CHIRP program?

State Response (April 21, 2022): Texas distributes a suggested list of IGT amounts to governmental entities based on the Medicaid utilization and services already provided in each governmental entity’s jurisdiction. In many of our Service Delivery Areas, several governmental entities may wish to transfer eligible public funds via IGT, and this advance notice of each governmental entity’s intent to fund helps HHSC to apportion the suggestions and confirm that providers receive funding in accordance with their entitlement to such funds. However, the suggestions are non-binding, and local governments may transfer whatever amount they wish at the time that IGT is collected. When IGT is collected, it is pooled for all classes in the service delivery area. Governmental entities do not limit which providers may benefit from an IGT.

19. Similar to the original submission (control name TX_Fee_IPH.OPH.BHI_New_20210901-20220831), CMS notes the following:

As affirmed in response to question 14 [of the SFY 2023 submission], it is the state’s responsibility to ensure that funds used in the Medicaid program are public funds in accordance

with 42 C.F.R. §433.51. The ability of a unit of government to issue bonds is typically defined by the government entity's authorizing statute. We are assuming that this is the case with the hospital districts involved in this arrangement. The statute indicates that CMS "may not restrict States' use of funds where such funds are derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred from or certified by units of government within a State as the non-Federal share of expenditures under this title, regardless of whether the unit of government is also a health care provider, except as provided in section 1902(a)(2), unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share under this section." To the extent that bonds are neither state or local taxes, the state has an obligation to ensure that the transferred funds are not "derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share" as indicated in the statute. Please note, that CMS is researching this matter further and may have additional questions for the state.

State Response (April 21, 2022): The state affirms understanding of this requirement. The Provider Finance Department within HHSC has established a Local Funds Monitoring team that is responsible for collecting information from each entity that provides local funds as the non-federal share of Medicaid payments. This oversight mechanism is a combination of self-reported quarterly data, review of public record data, and analysis of each funding source and related documentation. All local funds are being phased into this oversight process, as described in the proposed rule available [here](#). To the extent that a governmental entity uses bonds or other debt instruments, the oversight provided by the Local Funds Monitoring team will ensure that such instruments are not derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-federal share and that the governmental entity is not improperly utilizing federal funding as the source of the IGT used to fund the non-federal share. HHSC continues to monitor local funds, to ensure the permissibility of local funds. The state understands and agrees that it is our responsibility to ensure that funds used in the Medicaid program are public funds in accordance with 42 C.F.R. §433.51.

- a. CMS has concerns that to the extent that the providers or provider-related organizations are participating in the purchasing of municipal bonds, that such participation could provide the appearance of a provider-related donation, potentially requiring the state to offset the collected value of the donation from the claim for FFP. Further, the notion that bonds can be thought of as loans that investors make to local governments, then the repayment of the bonds to any provider or provider-related organization may provide the appearance of recycling. The state is obligated to ensure these funding mechanisms are consistent with the statute and implementing regulations throughout the operations of such payment programs. Has the state considered how it intends to oversee the sources of financing that will support payments under this proposal to ensure the arrangements do not now and in the future entail non-bona fide provider related donations or recycling of federal funds?

State Response (April 21, 2022): HHSC is not aware of any circumstances in which a provider or provider-related organization has participated in the purchasing of municipal bonds. To the extent that a governmental entity uses bonds or other debt instruments, the oversight provided by the Local Funds Monitoring team will ensure that such instruments are not derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share and that the governmental entity is not improperly utilizing federal funding as the source of the IGT used to fund the non-federal share.

- b. Please affirm the understanding that approval of this funding mechanism by CMS to serve as the non-federal share would not protect the state from financial risk should the arrangements result in non-bona fide provider related donations or a recycling mechanism as our review is predicated on the issued bonds as a normal course of business and not as a means to circumvent federal financing requirements.

State Response (April 21, 2022): HHSC affirms this understanding.

20. CMS continues to harbor serious concerns regarding the financing for the CHIRP, RAPPS, and TIPPS program that are financed by Local Provider Participation Fund health care-related taxes. Specifically, CMS is concerned that this method of financing contains a hold harmless arrangement as laid out at section 1903 (w)(4)(C) of the Act and implementing regulations at 42 CFR § 433.68 (f)(3). CMS has a non-discretionary obligation to reduce the state's medical assistance expenditures by the amount of any health-care related taxes if such health care-related taxes have in effect a hold harmless arrangement. CMS has indicated that Texas could resolve those concerns either by providing the information requested by CMS to show that no such hold harmless arrangements exist or by showing Texas must show that it is acting to end any such arrangements that are in place, including by issuing guidance to its providers that such practices constitute impermissible hold harmless arrangements. Can the state please confirm that its position on this issue has not changed?

State Response (April 21, 2022): The state understands and agrees that it is our responsibility to ensure that funds used in the Medicaid program are public funds in accordance with 42 C.F.R. §433.51. The state continues to affirm that no such hold harmless arrangement exist, as the local governmental entities that implement a Local Provider Participation Fund, do so in accordance with §1903(w)(4) of the Social Security Act and federal regulations found at 42 CFR §433.68 (f). The Local Funds Monitoring team was established to ensure all local funds are derived from permissible sources, including confirming that funds derived from a Local Provider Participation Fund are consistent with a permissible health care related tax in that it is imposed in a broad based and uniform manner, and that the local governmental entity imposing the tax does not hold any taxpayer harmless from such tax.

SECTION VII: QUALITY CRITERIA AND FRAMEWORK FOR ALL PAYMENT ARRANGEMENTS

21. Thank you for providing a Year 2 Evaluation Plan for CHIRP, BHS, TIPPS and RAPPS. We understand from the Evaluation Plan that only BHS baseline data was available at the time of

the SFY 2023 preprint submission. Our understanding from prior conversations with the state in November 2021 was that provider-reported data covering January-June 2021 would be available in February 2022 and full CY 2021 data would be available in May 2022.

- a. Can the state please provide an update as to when preliminary data from Jan-June 2021 will be available for CHIRP, RAPPS and TIPPS?

State Response (April 21, 2022): Rather than submitting the preliminary 6-month data from January to June of 2021, CHIRP, RAPPS and TIPPS providers will be submitting full CY 2021 data to HHSC by the end of May 2022.

- b. And will full CY 2021 data still be available in May 2022?

State Response (April 21, 2022): Full CY 2021 data will be reported by DPP BHS providers in April of 2022, and full CY 2021 data will be reported by CHIRP, TIPPS and RAPPS providers by the end of May 2022. HHSC plans to review the provider-reported data from June to August of 2022. The final Year 1 Evaluation Report will be submitted to CMS no later than February 2023.

- c. We also understood from our November 2021 discussion that for state-level measures using EQRO data covering CY 2021, preliminary data would be ready in August 2022 and final data in October 2022. Is this still the case?

State Response (April 21, 2022): Yes, this is still the case. HHSC is set to receive preliminary data from the EQRO in August 2022 and final data from the EQRO in October 2022. As included in the response above, the final Year 1 Evaluation Report will be published no later than February 2023.

22. Thank you for providing preliminary evaluation performance targets for the BHS program-specific evaluation measures. The evaluation plan indicates that “After the baseline data for all four DPPs, pending CMS approval, are known for the full 12 months of CY 2021, HHSC will establish final evaluation performance targets.” We previously understood that the state would be submitting an addendum to CMS to update the improvement targets once the CY 2021 data is available in summer/fall 2022. Can the state please provide an update on this effort?

State Response (April 21, 2022): Once the baseline data for all four DPPs are evaluated for the full 12-months of CY 2021, HHSC will establish final evaluation performance targets for all DPPs. As included in the responses above, HHSC plans to review the provider-reported data for all DPPs from June to August of 2022, and HHSC is set to receive final data from the EQRO in October 2022. Based on these dates, HHSC will establish evaluation performance targets for all DPPs no later than February 2023 by including them in the final Year 1 Evaluation Report instead of an addendum.