

## **Guidelines for Contracts Relating to the Nursing Facility Minimum Payment Amounts Program**

The Texas Health and Human Services Commission (HHSC) issues this guidance in an attempt to clarify rules governing certain types of contracts related to the Nursing Facility (NF) Minimum Payment Amounts Program (MPA). The MPA<sup>1</sup> was created by HHSC to replace the NF Upper Payment Limit (UPL) supplemental payment program. The purpose of MPA funds is to continue a level of funding for non-state government-owned NFs so that they can more readily provide quality care to Medicaid beneficiaries. While promulgating the adopted rules for the MPA, HHSC was informed that there might be contractors that divert large amounts of money away from this purpose. As a result, HHSC included the following provision:

The Non-state Governmental Entity that owns the nursing facility must certify...[t]hat no part of any payment made under the Minimum Payment Amount program under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds.<sup>2</sup>

This certification is modeled directly from the Certifications of Participation in the Texas Healthcare Transformation and Quality Improvement Program §1115 Waiver.<sup>3</sup> Additionally, such conduct was prohibited in the former NF UPL program.<sup>4</sup>

According to this standard, MPA participants should consider the following questions when entering into a contract:

**1) Is this a consulting contract?** A contract for consulting services is a specific type of contract that differs in character from other contracts for services (e.g., management or operational support). The services provided by the contractor for MPA participants may not be sham services; the services should unequivocally be of a character beyond the offering of advice on the MPA program and maximizing reimbursement.

**2) Is this contract paid through a contingency arrangement?** The compensation for contracted services should be structured in a manner other than contingent payments. In other words, payment for services should not depend on some event relating to the MPA occurring.

**3) Is the contract paying for legal services?** Funds from the MPA cannot be used to pay legal fees accumulated in connection with services related to the MPA.

**4) Is the source of the contractor's compensation MPA funds?** If a contract is styled such that the source of compensation is the MPA funds themselves, there could be a violation of the certification provided by the participating governmental entity. If the answer to any of questions 1-3 is yes, the payment cannot be made from MPA funds.

Any governmental entity concerned about a contract signed in connection with the MPA should read the Texas Administrative Code and this guidance to determine for itself the risk in moving forward with such an agreement.

Note: As always, HHSC reserves the right to amend its administrative rules to account for changes in policy.

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<sup>1</sup> 1 TAC §353.608

<sup>2</sup> 1 TAC §353.608(e)(2)(C)(iii)

<sup>3</sup> <http://www.hhsc.state.tx.us/rad/hospital-svcs/downloads/1115-hosp-cert.pdf>

<sup>4</sup> 1 TAC §355.314(d)(1)(C)