

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Texas Health and Human Services Commission  
DATE: August 30, 2007  
Docket No. A-07-125 (TX-2007-008-MAP)  
Decision No. 2112

DECISION

The Texas Health and Human Services Commission (Texas) appealed a determination by the Centers for Medicare & Medicaid Services (CMS) disallowing \$2,201,657 that Texas claimed as costs incurred for Early Childhood Intervention developmental rehabilitative services for Quarter II 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, three similar disallowances taken on the same grounds for earlier time periods were the subject of the Board's July 5, 2007 decision in Texas Health and Human Services Commission, DAB No. 2097 (2007). In that decision, 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.

Texas requested that this appeal be consolidated with the prior cases and "be made subject to the same Board Decision and remand since the basis for this disallowance and the appeal are the same as the earlier cases." Texas Notice of Appeal at 1. CMS did not object to Texas's request. We have determined that it is appropriate to issue a summary decision based on the analysis in DAB No. 2097.

### 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