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Basundhara Rayachaudhuri
Waiver Coordinator, Policy Development Support
Texas Health and Human Services Commission
P.O. Box 13247
Mail Code H-600
Austin, TX 78711-3247
Submitted via email to TX_Medicaid_Waivers@hhsc.state.tx.us

Dear Ms. Rayachaudhuri:

On behalf of our more than 470 member hospitals, Texas Hospital Association appreciates the opportunity to comment on the forthcoming application for extension of Texas' Medicaid 1115 Waiver. The waiver is an indispensable piece of Texas' health care safety net, and we appreciate the Texas Health and Human Services Commission's dedication to ensuring it remains in place predictably into the future.

The waiver has been essential for hospitals' ability to weather crisis this year. Throughout the COVID-19 pandemic Texas hospitals rose to meet challenging circumstances, ensuring hundreds of thousands of seriously ill Texans received the hospital care they needed regardless of insurance status or ability to pay. During severe COVID-19 surges, high patient volume and acuity coupled with the pandemic's disproportionate impact on low-income Texans worsened the strain Texas hospitals already bear from uncompensated costs. Without the stability afforded by the waiver, hospitals might not have been able to withstand the extreme financial stress of the pandemic. While we are thankful to be emerging from the pandemic, we know this crisis is not the last Texas will face. The waiver has been critical to ensure the strength of Texas' health care safety net both in crisis and in calm for all 29 million Texans.

As Texas prepares to apply for an extension of the current waiver, hospitals urge the state to approach its waiver extension request and negotiations with the following goals:

- 1. *Secure a favorable budget neutrality determination.***
- 2. *Sustain a strong hospital uncompensated care pool.***
- 3. *Reinforce the behavioral health safety net.***
- 4. *Recognize the waiver as a building block to comprehensive health care coverage.***

Goal 1: Secure a Favorable Budget Neutrality Determination.

The budget neutrality determinations in any future waiver extension must be equal to or better than the figures approved by the Centers for Medicare and Medicaid Services in January 2021.

In the January extension, Texas sought and received the necessary budget neutrality room to sustain waiver financed payment pools, and to operate other delivery system and provider payment incentive programs aimed at bringing hospitals, physicians, and other providers closer to covering their actual costs of treating Medicaid-enrolled and uninsured patients.

According to HHSC's March 2021 [budget neutrality summary](#), the January-approved waiver extension would allow for more than \$11 billion per year on average above base expenditures, while creating over \$10 billion in taxpayer savings over the life of the waiver. This includes approximately \$5.9 billion in savings created under the 10-year waiver extension period and another \$5 billion in savings rolled over from demonstration years 5-9. Hospitals encourage Texas to seek a budget neutrality determination at least as favorable as the January-approved figures, under identical or similar terms that preserve and leverage savings under the waiver.

Anything short of the previously determined budget neutrality room could hinder the state's ability to transition the Delivery System Reform Incentive Payment program, scheduled to terminate Sept. 30, 2021. In accordance with the state's DSRIP transition plan, HHSC has designed and separately proposed for CMS approval a series of state-directed payment programs to sustain key DSRIP priority areas. These payment programs will provide Medicaid payment enhancements for safety net providers that serve Medicaid enrollees, including hospitals, certain physician groups, rural health clinics and behavioral health providers. These programs also require reporting on quality metrics as a condition of participation to advance the state's Medicaid quality strategy. Currently, the state plans to operate the directed payment programs for one year under existing budget neutrality room, with no financial certainty beyond the first program year.

Although the directed payment programs, if approved, will operate under separate authority of 42 CFR 438.6(c), the amount of total financing available for the programs and the length of time that funding is approved depends on the budget neutrality agreement reached in this waiver extension. A budget neutrality reconsideration that reduces funds available for these programs would hamper them just as they are launching and create further instability for providers navigating the complex transition away from DSRIP. Texas needs a budget neutrality determination that maximizes every federal dollar available for its safety net, with not less than five years between rebasing exercises in order to maintain consistent, predictable funding in the waiver pools and directed payments.

2. Sustain a Strong Hospital Uncompensated Care Pool.

Texas needs continued funding for the existing hospital uncompensated care pool.

According to pre-pandemic estimates, approximately 5 million of Texas' 29 million residents are uninsured. The hospital uncompensated care pool under the waiver, sized at nearly \$3.9 billion per year, helps defray some of the unreimbursed charity care costs hospitals incur when caring for the uninsured. This funding also helps offset unreimbursed charity care costs for public ground ambulance providers, certain physician practice groups and public dental providers.

If Texas expanded Medicaid, the need for a large uncompensated care pool would not diminish. According to a September report by Texas A&M University, [1.27 million uninsured Texans](#) could enroll in coverage if Texas expanded Medicaid eligibility to include working-age adults earning less than 138% of the federal poverty level. However, even if 100% of newly eligible individuals enrolled, nearly 4 million Texans would remain uninsured and continue to rely primarily on indigent care services. This includes an estimated [1.6 million individuals](#), or 34% of Texas' uninsured population, who are noncitizens and would

not qualify for Medicaid or subsidized marketplace insurance unless they are lawfully present and meet applicable qualifying conditions.

With or without expanded Medicaid eligibility, millions of uninsured Texans will continue to seek hospital care. Safety net providers bound by the Emergency Medical Treatment and Labor Act will continue to provide that care regardless of patients' ability to pay. Any scenario that compromises the existing uncompensated care pool would hurt these providers and patients' access to care. In fact, even after base Medicaid payments, Medicare and other insurance, uncompensated care payments and supplemental payments were applied, Texas hospitals still incurred [\\$4.6 billion in uncompensated care](#) in 2020 alone. Hospitals encourage the state to prioritize long-term maintenance of a robust uncompensated care pool in its waiver extension resubmission.

3. Reinforce the Behavioral Health Safety Net

Urgent action is needed to preserve access to safety net mental health and substance use services.

Community mental health services are vital components of the health care safety net. More than 250,000 Texans currently rely on mental health and substance use disorder services funded under the state's current waiver. The waiver affords patients access to community-based behavioral health treatment before a condition worsens in severity, reducing the need for routine care to be provided in clinically inappropriate care settings like hospital emergency departments. This also helps reduce readmissions and helps keep patients on track toward their treatment goals.

Without an extension of the current waiver, local mental health and substance use providers face an imminent and significant funding loss. When DSRIP expires Sept. 30, more than \$300 million per year in federal funds will be lost from the behavioral health safety net. A replacement strategy to reinforce the behavioral health safety net is urgently needed.

The January-approved waiver extension contained two financing strategies to ensure a cohesive transition away from DSRIP: 1) the public health providers – charity care pool, estimated at \$500 million per year for the first two years and financed by certified public expenditures, and 2) the directed payment program for behavioral health services, estimated at \$166 million per year, to provide enhanced payments based on services delivered to Medicaid beneficiaries. Hospitals strongly urge the state to expedite a solution to activate the PHP-CCP and DPP-BHS and preserve all funds previously approved to do so. If waiver financing for community behavioral health care were to abruptly end at the end of September, patients would lose critical access and hospitals could see sharp increases in demand for psychiatric care.

4. Recognize the Waiver as a Building Block to Comprehensive Health Care Coverage

In addition to extending the waiver, chart a path to enroll more Texans in a comprehensive health coverage option and reduce the number of uninsured individuals.

For more than a decade, hospitals have advocated for the state to build upon its waiver and pursue a coverage solution to reduce the state's persistently high number of uninsured, either through Medicaid expansion or subsidies for enrollment in the private marketplace. Comprehensive coverage ensures low-

wage working Texans and their families have access to primary, preventive and specialty care, as well as chronic disease management services. With comprehensive coverage, Texans can be healthier and more productive, which in turn supports the state economy.

Texas' health care safety net needs coverage expansion **and** the waiver to work together. While the waiver creates mechanisms to pay providers closer to their actual cost for care delivered to Medicaid enrollees and the uninsured, the waiver extension application is an excellent opportunity to address gaps in affordable coverage for Texans currently ineligible for Medicaid. If the state's waiver falls short on options for covering the remaining uninsured, Texas leaves behind a chance to improve health outcomes, contain costs by ensuring hospital care is used appropriately and stabilize the state's health care system over the long term.

The January-approved waiver extension provided predictability and resources needed to sustain providers delivering care to Medicaid clients and the uninsured. Even under a robust coverage expansion, the vital importance of the waiver would not diminish. Texas hospitals strongly support HHSC's request to seek CMS approval to extend the waiver under all terms previously approved. Equaling or improving on the previous budget neutrality determination is key to ensuring enough resources are available to support all providers that comprise Texas' safety net, including hospitals, physicians, behavioral health clinics, local health departments, ambulance providers, and nursing facilities. We also support the state considering how to create a path toward coverage expansion that gives more Texans the opportunity to access affordable, comprehensive health insurance.

With the current existing DSRIP payment pools intact through Sept. 30, 2021 and the existing UC pool intact through Sept. 30, 2022, the waiver extension rescission presents fiscal cliffs that position the state for imminent, severe funding loss if not addressed. We appreciate HHSC's urgency in considering a path that preserves all previously agreed-to funding pools and budget neutrality amounts, creates financial certainty for hospitals and protects the state's health care infrastructure long-term. Thank you for your ongoing commitment to securing a strong waiver extension for all Texans.

Sincerely,



Ted Shaw
President/CEO
Texas Hospital Association