

Aug. 25, 2021

The Honorable Xavier Becerra  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
200 Independence Avenue, S.W., Room 445-G  
Washington, DC 20201

Daniel Tsai  
Deputy Administrator and Director of the Center for  
Medicaid and CHIP Services  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Secretary Becerra, Administrator Brooks-LaSure, and Deputy Administrator Tsai:

On behalf of our more than 470 member hospitals, the Texas Hospital Association appreciates the opportunity to comment on the application to extend the Texas Healthcare Transformation and Quality Improvement Program 1115 Demonstration Waiver. The waiver is an indispensable piece of Texas' health care safety net, and we appreciate our state and federal partners' dedication to ensure it remains in place predictably into the future. Hospitals support Texas' request to extend the waiver for 10 years under the same terms and conditions the Centers for Medicare and Medicaid Services approved in January 2021.

The waiver is essential to hospitals' ability to weather crisis. As the COVID-19 pandemic carries on into another major statewide surge, Texas hospitals and the entire health care infrastructure again rise to meet challenging circumstances. Hundreds of thousands of seriously ill Texans continue to receive lifesaving care, regardless of their insurance status or ability to pay. The waiver makes this and other essential care possible. During severe surges, high patient volume and acuity coupled with the pandemic's disproportionate impact on low-income Texans exacerbate the immense strain Texas hospitals already bear from uncompensated costs. Without the stability afforded by the waiver, hospitals' ability to withstand the financial stress of the pandemic is severely compromised. Undoubtedly, this pandemic will not be the last emergency Texas faces. Texas needs a strong health care safety net both in crisis and calm for all 29 million of its residents.

Texas hospitals urge CMS to work with the state to reapprove its waiver extension and achieve the following outcomes:

1. *Grant an equivalent or better 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: Grant an Equivalent or Better Budget Neutrality Determination.**

*The budget neutrality determinations in any waiver extension must be equal to or better than the figures CMS approved 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 the [budget neutrality summary](#) enclosed in Texas' application, 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 CMS to honor a budget neutrality determination that is at least equal to the January-approved figures, under 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. Originally scheduled to terminate Sept. 30, 2021, CMS now has offered Texas a one-year, \$2.49 billion extension of DSRIP. A decision is pending as of these written comments. When DSRIP eventually terminates, a waiver extension must afford Texas the budgetary room to execute its approved DSRIP transition plan with minimal disruption to the safety net.

Per Texas' DSRIP transition plan, the Texas Health and Human Services Commission designed and separately proposed for CMS approval a series of state-directed payment programs to sustain key DSRIP priority areas. These payment programs would provide 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. CMS has offered Texas two options to secure future approval of its DPPs.

Although the DPPs, 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 is determined by the waiver extension budget neutrality agreement. A budget neutrality reconsideration that reduces funds available for these programs would create further instability for providers navigating the complex transition away from DSRIP. Texas needs a budget neutrality determination that affords the state budgetary room to maintain consistent, predictable funding in the waiver pools and directed payments, with not less than five years between rebasing exercises.

## **Goal 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 costs](#) in 2020 alone. Hospitals encourage CMS to prioritize long-term maintenance of a robust uncompensated care pool in Texas' waiver extension resubmission.

### **Goal 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 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.

When DSRIP expires, local mental health and substance use providers face a significant funding loss. More than \$300 million per year in federal funds will be lost from the behavioral health safety net unless a replacement strategy is integrated into a waiver extension. If waiver financing for community behavioral health care were to decrease at the end of the current waiver, patients would lose critical access and hospitals could see sharp increases in demand for psychiatric care.

The waiver extension application includes a new charity care pool for public health providers, estimated at \$500 million per year for the first two years and financed by certified public expenditures. This new charity care pool would help offset unreimbursed costs community mental health centers and local health departments incur caring for people with serious mental illness and substance use disorders without any form of third-party payment. Texas also proposed earlier this year a directed payment program for behavioral health services, estimated at \$166 million per year, which as proposed would have provided enhanced payments based on services delivered to Medicaid beneficiaries. We strongly urge CMS to work with Texas to activate and approve this program, preserving all funds previously approved to sustain it.

### **Goal 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, THA has 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



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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 waiver would remain vitally important. Texas hospitals strongly support HHSC's request 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.

As of these comments, Texas' current waiver will be extended as enjoined by the court, with an offer pending for Texas to continue one year of DSRIP and pursue options for approval of DPPs. Hospitals appreciate CMS'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 favorable consideration of Texas' waiver extension request and ongoing commitment to protecting our safety net.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Shaw".

Ted Shaw  
President/CEO  
Texas Hospital Association