

**To: Centers for Medicare & Medicaid Services
Center for Medicaid & CHIP Services**

Anne Marie Costello, Acting Deputy Administrator and Director
Angela D. Garner, Director, Division of System Reform Demonstrations
cc: Diona Kristian, Project Officer
Ford Blunt, State Lead, Medicaid and CHIP Operations Group

Date: December 28, 2021

Re: Exemption of Texas Medicaid from the requirements for public notice and comment in the application for a five-year extension of Texas' section 1115 demonstration

From:

Children's Defense Fund-Texas
Every Texan (*formerly Center for Public Policy Priorities*)
Texans Care for Children

Our organizations appreciate the opportunity to register our serious concern over, and opposition to the exemption of Texas from required public notice and comment related to the state's application for a five-year extension of Texas' section 1115 demonstration, entitled "Texas Healthcare Transformation and Quality Improvement Program (THTQIP)" (project number 11-W002786) submitted to the Centers for Medicare and Medicaid Services (CMS) on November 30, 2020.

Texas has relied on its waiver funding to address significant gaps in care that result in large part from the state's failure to expand coverage. Lack of coverage has become even more devastating for low-income Texans given the COVID-19 pandemic. Instead of addressing the imperative to expand coverage, the state is proposing to continue its waiver, unchanged, for another five years. Moreover it has done so by requesting a renewal a year in advance of when the renewal would be due, and without following the statutory and regulatory rules requiring public comment. Without stating any reason, CMS has exempted the state from following these important rules (see December 15, 2020 letter from Angela Garner). As sub-regulatory guidance issued by CMS makes clear, even so-called "fast track" waivers must include a public comment period and, in any event, that guidance notes that waiver renewals that include complex policy issues, including an extension of a uncompensated care pool, will not be treated as "fast track." (See, <https://www.medicaid.gov/federal-policy-guidance/downloads/cib07242015-fast-track.pdf> and <https://www.medicaid.gov/federal-policy-guidance/downloads/CIB07242015-Fast-Track.pdf>)

We seek a reversal of CMS' determination that its consideration of Texas' waiver renewal may proceed without the benefit of public input. As it has done in other circumstances when public comment rules have not been observed, CMS should direct Texas to comply with the federal public notice and comment transparency requirements. There is no legal basis to exempt Texas from these requirements. Not only is stakeholder input required, but it will enable CMS and the State to ensure that the waiver meets the needs of low-income and uninsured Texans and the hospitals that serve them.

As advocates for access to comprehensive health care for all Texans, we have long understood and supported the critical role that Texas' 1115 Transformation waiver has played since its payments launched in October 2012. While our waiver has never provided comprehensive health coverage to Texas' many uninsured adults, the Delivery System Reform Incentive Payment (DSRIP) projects across our state have delivered invaluable access to services for uninsured adults, including notable projects for mental health care, maternal and infant health, chronic disease care management, and preventive

care. We share the concern of the communities that have benefitted from these DSRIP innovations that many Texans will be harmed if those programs simply disappear as scheduled for October 2021.

We further recognize that the Uncompensated Care (UC) pool payments have been critical to paying for free care provided to Texas' uninsured. In the early years of the waiver, the UC payments also allowed Texas Medicaid to gain broad participation by hospitals of all types by ensuring many Texas hospitals could achieve rates on par with Medicare (a portion of that UC function has now been replaced by UHRIP directed payment, which is itself proposed for future replacement by a successor payment program, CHIRP).

We understand the need for timely action to protect Texas' health care safety-net providers, particularly as they respond to a the current COVID-19 surge that is seriously taxing capacity. We want to make clear that we support the vital funding to keep our hospitals whole; the objection our organizations raise today is to the lack of a public notice and comment process. We are fully supportive of building on the DSRIP investment but, as proposed, the waiver extension would fail to do that; under the proposed renewal DSRIP would end without the state taking any steps to build on that investment and address the extraordinary needs of low-income and uninsured Texans.

To illustrate the impact, in June 2020 Texas Medicaid covered 3.1 million children in income-based coverage and another 163,000 children with disabilities, but merely 151,000 parents, and no adults without dependent children (apart from fully disabled or seniors in poverty). Texas has the largest number of uninsured individuals and the highest uninsured rate of any state in the country. The current request for a five-year waiver extension—with no changes to the current waiver design—creates no policy changes to correct the waiver's inability to extend the tested innovations and coverage to uninsured adults, and the elimination of a public comment process leaves Texans no opportunity to weigh in on changes that could better serve all Texans and the goals of the Medicaid program. While Texas may argue that public notice is not needed because the extension request proposes no changes, the fact is that the absence of changes is, indeed, the great concern for our organizations.

Notwithstanding the valuable contributions of Texas' 1115 waiver, Texans need and deserve more. Medicaid offers tools to both keep hospitals whole and dramatically reduce Texas' worst-in-the-nation uninsured population. As you know, the U.S. Census estimates that 5.2 million Texans were uninsured in 2019, and the Kaiser Family Foundation has estimated that among those were 1.5 million uninsured adults who could have been covered under a Medicaid expansion.

Large as those numbers are, they reflect pre-COVID-19 Public Health Emergency data, and do not account for the massive unemployment related to the pandemic: as of December 19, 2020, 4 million Texans have filed for unemployment since mid-March. While many did not have health insurance while working, the loss of income and the lack of an affordable coverage option for the newly unemployed will deepen the uninsured crisis in Texas. (<https://www.kff.org/policy-watch/how-has-the-pandemic-affected-health-coverage-in-the-u-s/>; <http://files.kff.org/attachment/fact-sheet-medicaid-expansion-TX>). Extension of our current Texas 1115 waiver with no changes offers no policy response to this challenge.

In addition, Texas, like much of the nation, faces a crisis of fragility in our primary health care network due to the COVID-19 pandemic. This requested waiver extension provides no significant response to the fragile condition of the doctors, clinics, and health centers who are the front line for care for over 4 million Texans who rely on Medicaid. The 1115 waiver UC pool overwhelmingly benefits hospitals, with only modest allocations for primary care and behavioral health, and with only limited benefit for Texas'

struggling rural hospitals, which face even greater threats to survival in the current pandemic. Even the set of new directed payments proposed by the state in the DSRIP Transition Plan would do little to change that the UC pool overwhelmingly benefits hospitals, again, because no comprehensive Medicaid health care coverage is available for adults below the federal poverty income level.

Texas' low-income uninsured adults will benefit to a greater degree from comprehensive health coverage than from an unevenly distributed patchwork of funding for hospitals that care for the uninsured. An overwhelming body of research supports that coverage, rather than only direct payments to hospitals for emergency and acute care, better serves the goals of the Medicaid program under federal law. Extensive studies show that comprehensive health coverage for low-income adults in other states has greatly improved access to preventive care, treatments for behavioral health, and medications for chronic conditions, just to name a few. Health practices and centers have been able to expand their capacity to serve more patients and extend their services to include dental and mental health services. This translates into more adults reporting they have a personal doctor, fewer adults skipping medications because they can't afford it, and more health providers serving their patients before an illness gets worse or more costly to treat. Importantly, it also begins to address longstanding racial and ethnic disparities. Texans deserve these benefits as well.

<http://files.kff.org/attachment/Report-The-Effects-of-Medicaid-Expansion-under-the-ACA-Updated-Findings-from-a-Literature-Review.pdf>

These are just some of the critical issues CMS ought to consider as it reviews Texas' waiver renewal request and ensures that its federal waiver investments promote the objectives of the Medicaid program. In summation, we respectfully request that you revoke the December 15, 2020 determination that Texas' waiver renewal request is "complete" and direct Texas to proceed with public comment as required by the federal public notice and transparency rules.

Sincerely,

Every Texan, Anne Dunkelberg, Associate Director; dunkelberg@everytexan.org

Texans Care for Children, Stephanie Rubin, CEO; srubin@txchildren.org

Children's Defense Fund-Texas, Patrick Bresette, Executive Director; pbresette@childrensdefense.org