DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

August 13, 2021

Stephanie Stephens
State Medicaid Director
Texas Health and Human Services Commission
4900 Lamar Boulevard
MC: H100
P.O. Box 13247
Austin, Texas 78751

Dear Ms. Stephens:

Thank you for your commitment to the safety net and to providers that serve individuals and families enrolled in Texas' Medicaid program. I appreciate our ongoing conversations about this issue. .

As outlined in the special terms and conditions (STC) of the Texas Healthcare Transformation and Quality Improvement Program (THTQIP) section 1115(a) demonstration, Texas' DSRIP program ($2.49B this year) is set to expire on September 30, 2021. Texas has also proposed new and expanded state directed payments (SDPs) through its managed care plans of $3.2B per year, to begin on September 1, 2021. These SDPs are in addition to the $3.7B per year of SDPs currently in place and subject to reapproval. In total, Texas' proposed and existing SDPs would total approximately $7B annually, or almost a quarter of Texas' $28.5B in annual Medicaid expenditures through managed care.

CMS is committed to working with states to support safety net providers and to ensure that safety net financing and reimbursement approaches advance measurement and accountability for improving health equity and quality. We are also committed to following all applicable federal statutory and regulatory requirements.

As part of its standard review and oversight of the state Medicaid program, CMS has been reviewing and engaging in ongoing conversations with Texas Medicaid staff on the Texas proposals for SDPs for the rating period to begin September 1, 2021. These proposals include both new SDPs and SDPs that the state is currently making and which must be renewed by September 1, subject to CMS approval, as authorized in Medicaid managed care regulations in 42 CFR 438.6(c). At this time, CMS cannot approve Texas's proposed SDPs in their current form because we are unable to establish that the proposed payments meet all applicable federal statutory and regulatory requirements under the Social Security Act (the Act) and implementing regulations. In order to permit further consideration of approval for these payments Texas must work with CMS to make the modifications explained in the attached Appendix. Among other issues set out in the Appendix, we are concerned that:

1) Including amounts in Managed Care Organization (MCO) capitation rates to cover the costs of the proposed new and expanded SDPs would result in managed care capitation rates not being actuarially sound in accordance with section 1903(m)(2)(A)(iii) of the Act;
2) The provider payments under these SDPs are not adequately tied to quality and services delivered within the contract year in accordance with 42 C.F.R. § 438.6(c)(2)(ii)(A) and (C);
3) The state does not have a permissible source of the non-federal share for amounts paid to MCOs to cover these higher SDPs in accordance with section 1903(w) of the Act and the implementing regulations in 42 C.F.R. part 433, subpart B.

CMS is willing to work with the state to find an approval path for your SDP proposals beginning with the modification options discussed in the attached Appendix. CMS is willing to meet with the state by phone or other means, consistent with the schedule described in the Special Terms and Conditions in the THTQIP section 1115(a) demonstration.

We recognize the importance of and share Texas's commitment to maintaining a sustainable approach to safety net hospital reimbursement. Texas has indicated that the new SDPs are intended to support safety net providers currently participating in the Texas DSRIP program, authorized under the THTQIP section 1115(a) demonstration through September 30, 2021. We recognize Texas's concern about reduced payments to safety net providers that may follow from the expiration of the DSRIP program.

To address near-term stability for safety net providers while CMS and Texas continue to work toward a more sustainable, equitable, and high quality safety net, CMS is willing to approve an amendment to the THTQIP demonstration that would extend the DSRIP program for one year (through September 30, 2022), according to the terms outlined below. Although this extension is intended to facilitate cooperation between CMS and Texas in maintaining the safety-net, it is not a part of the January demonstration project extension approval and is not subject to any conditions established in that approval.

Subject to the state's submission of an amendment request consistent with the special terms and conditions of the THTQIP demonstration, CMS is willing to approve a DSRIP extension for one year, until September 30, 2022, in an amount not to exceed the currently approved amount for the demonstration year ending September 30, 2021. Consistent with monitoring requirements for section 1115 demonstrations and our collective goal of advancing equity in the safety net, authority for the fully approved DSRIP amount would be contingent on Texas reporting on 5 to 10 metrics related to health disparities and health equity, to be agreed upon by CMS and the state. These metrics would establish a baseline for measuring health disparities in the safety net for the purposes of making future improvements around equity. CMS would propose a set of metrics, and CMS and Texas would include those metrics in the demonstration STCs that would govern the one-year extension of the DSRIP program. The metrics would include reasonable requirements for providers, managed care plans, and/or the state to track race, ethnicity, and other information about beneficiaries served, for the purposes of measuring health disparities. Reporting of metrics would be required within the demonstration year. Twenty percent of the aggregate annual DSRIP payments would be contingent on the timely and complete reporting of these metrics. Approval of the amendment would be subject to the standard federal review process, and CMS would work with Texas to reach a decision on approval in a timely manner.

In addition, we share an interest in finding a path to long-term sustainability for the safety net. During the extension year, CMS is committed to working together in good faith with Texas to transition fully away from the DSRIP program to payments that support and advance a sustainable, high quality, equitable health safety net. This could include using a range of approaches, including approvable SDPs and other mechanisms. Such an approach will be financed jointly with federal Medicaid funds and non-federal funds that meet all federal statutory and regulatory requirements.

If Texas is interested in pursuing one of the SDP options described in the appendix, and in submitting an amendment to extend the DSRIP program as described above, for one year, CMS is available to provide technical assistance. CMS remains committed to working with Texas to ensure a high quality, sustainable health safety net.

If you have questions, please contact me or Judith Cash at (410) 786-9686.

Sincerely,

[redacted]

Daniel Tsai
Deputy Administrator and Director

APPENDIX
Options to Approve the Texas State Directed Payments

Option #1 – CMS approves the quality incentive payment program (QIPP) for SFY 2022 as currently submitted and consistent with the payment amounts approved in QIPP for SFY 2021. Texas will revise the comprehensive hospital increase reimbursement program (CHIRP) for SFY 2022 to reflect only the uniform hospital rate increase program (UHRIP) payment amounts that were approved in UHRIP for SFY 2021. The state will withdraw the Texas incentives for physicians and professional services (TIPPS), rural access to primary and preventative services (RAPPS), and behavioral health services directed payment program (BHS) preprints for SFY 2022.

This option is available for SFY 2022 only. The state's SDPs are evaluated every year and CMS remains concerned about issues that are broadly outlined under Option 2. Accordingly, this option does not bind CMS to conditions of approval for the state's SDPs for SFY 2023.

Option #2 – The state modifies all five (5) state directed payment preprints currently under CMS review for SFY 2022 to be consistent with statutory and regulatory requirements. The state must submit new proposals to describe how it will address the following issues across all five (5) of the state directed payment preprints:

1. Addressing Aggregate Funding Amounts – Texas would need to demonstrate that all payment amounts are reasonable and appropriate, and that the resulting capitation payments are actuarially sound in accordance with section 1903(m)(2)(A)(iii) of the Act and 42 C.F.R. § 438.6(c)(2)(i). CMS does not consider the current aggregate funding amounts (with total proposed SDP payments amounting to almost 25% of aggregate managed care spending) to be reasonable and appropriate, and CMS is concerned that the resulting capitation rates are not actuarially sound.
2. Linking Payments to Current Utilization – Texas would need to address the reconciliation thresholds across each preprint and ensure that payments are made only for current utilization or performance measured during the rating period (rather than historical utilization or performance) in accordance with 42 C.F.R. § 438.6(c)(2)(ii)(A).
3. Addressing Concerns Related to Quality Improvement – Texas would need to ensure that any payments are based only on performance linked to Medicaid managed care enrollees (not Medicaid FFS), and performance-based payments must ensure that providers are achieving year over year improvement42 C.F.R. § 438.6(c)(2)(ii)(C).
4. Addressing Concerns Related to the Non-Federal Share – Texas would need to affirm and document compliance with section 1903(w) of the Act and the implementing regulations in 42 C.F.R. part 433, subpart B, related to permissible sources of the non-federal share.
5. Addressing Concerns Related to the State's Evaluation Plan – Texas would need to refine the evaluation plan for each preprint to ensure that the effect of each state directed payment absent other programmatic changes or other state directed payments can be appropriately evaluated in accordance with 42 C.F.R. § 438.6(c)(2)(ii)(D). The state would need to provide consistent baseline data to demonstrate year over year changes.