



August 29, 2023

Ms. Angela Garner  
Centers for Medicare and Medicaid Services  
Center for Medicaid and CHIP Services  
Division of State Demonstrations and Waivers  
7500 Security Boulevard  
Mail Stop S2-25-26  
Baltimore, MD 21244-1850

RE: Texas 1115 Quality Improvement and Transformation Waiver – 2<sup>nd</sup> Resizing of the Uncompensated Care Pool

Dear Ms. Garner:

Thank you for your willingness to collaborate with the Texas Health and Human Services Commission (HHSC) related to the methodology that will be used for the 2<sup>nd</sup> Resizing of the Uncompensated Care program expenditure authorization (UC pool) that is required by the Texas 1115 Waiver Special Terms and Conditions (STC) 41(d). The purpose of this letter is to seek approval of a proposed methodology, accompanied by the template that will be used by HHSC, to conduct the resizing exercise required by STC 41(d).

### Background

On May 1, 2023, the Texas Health and Human Services Commission (HHSC) submitted Amendment 23 for the 1115 Waiver related to a modification to STC 41(d) with a proposed effective date of December 31, 2023. The Centers for Medicare and Medicaid Services (CMS) acknowledged completeness of Amendment 23 and conducted a public comment period from May 16<sup>th</sup> through June 15<sup>th</sup>, 2023. During the state and federal comment periods, there was unanimous support for the amendment. CMS has engaged proactively with HHSC to understand the request and find a solution.

CMS and HHSC discussed on several monthly monitoring calls, as well as separate calls specifically related to the proposed Amendment 23, that HHSC believed it was necessary to clarify that the Public Health Emergency (PHE) related to COVID-19 should not impact the data utilized for the resizing exercise. The PHE expired on

Ms. Angela Garner  
August 29, 2023  
Page 2

May 11, 2023, and Texas has been working diligently with CMS to assess the impacts of transitioning from the COVID-19 PHE and to ensure necessary adjustments are in place to mitigate any ongoing impact of COVID-19 on Medicaid program operations. Specifically, Texas wanted to ensure that the resizing exercise would not rely on any data from 2020-2024 because of the ongoing impact of COVID-19 and the requirement that HHSC maintain continuous coverage for Medicaid beneficiaries.

At CMS' request, HHSC furnished to CMS documentation that Texas Medicaid providers are engaged in long-term financial planning and need a clear understanding of the data that will be used for the 2<sup>nd</sup> resizing.

#### Recommended Methodology

To avoid any potential influence of the PHE or PHE-related policies on the data used for the resizing described in STC 41(d), HHSC recommends that CMS approve a methodology that utilizes exclusively data, as applicable, from the 2025 S-10s (for hospitals that file an S-10), the Demonstration Year 16 Disproportionate Share Hospital and Uncompensated Care program tool (TxHUC), and the 2025 DSH Audit. The 2025 DSH Audit data will not be available until at least two years after the end of the program period, so HHSC recommends that the 2<sup>nd</sup> resizing use, for purposes of an interim calculation of the resized UC pool, 2025 Medicaid data based upon Medicaid claims and encounters, plus any supplemental payments for hospital services made in 2025 in accordance with the Texas Medicaid State Plan (Disproportionate Share Hospital payments, Hospital Augmented Reimbursement Program, and Graduate Medical Education reimbursement program).

FY 2025 claim and encounter data that will be available for use when the resizing exercise will take place is substantially similar in quality to the as-filed cost report data that will be used from the 2025 S-10s to determine cost. HHSC establishes the Medicaid claim and encounter payment data and provides that data to the external auditor of the DSH/UC programs, and there is typically very minor adjustment to that data through the audit and reconciliation process.

HHSC and CMS have agreed already in the STCs that if there are updates to the charity care cost data derived from the S-10 as it is finalized by CMS, the pool size can be readjusted retrospectively. HHSC similarly would recommend that the as-queried FY 2025 payment data be utilized for the resizing exercise, and the pool

Ms. Angela Garner  
August 29, 2023  
Page 3

size be retroactively adjusted to account for the updated data following the external auditor's completion of the Medicaid DSH audit. Ninety days following the submission of the 2025 DSH Audit Report, HHSC will recalculate the pool size using the audited Medicaid claim and encounter data, plus any supplemental payments for hospital services made in accordance with the Texas Medicaid State Plan as described above.

For ease of reference, HHSC is attaching the recommended FY27 UC Resizing Template that reflects the methodology described here and identifies in detail the appropriate sources of the data for each appropriate column. The template is not populated at this time because the data necessary to populate it is not available; however, the formulas that will perform the calculations of the resizing are embedded within the template.

#### Contingent Request to Withdraw Waiver Amendment 23 and Request for Technical Correction

In the interest of transparency for the public, CMS and HHSC discussed the importance of memorializing the methodology approved by CMS. Specifically, on August 28, 2023, we discussed that if CMS approves the methodology described in this letter and illustrated in the attached template, the proposed Amendment 23 will be unnecessary, as the approved methodology will be in alignment with the modifications described in the proposed Amendment 23 for STC 41(d). However, to ensure the public awareness of the approved methodology, CMS offered to post their approval letter on Medicaid.gov as part of HHSC's 1115 Waiver administrative record. HHSC appreciates CMS' offer to post the approval letter on Medicaid.gov and to incorporate the approval in the administrative record. Additionally, HHSC requested, and CMS agreed, that a technical correction at the next available opportunity will be incorporated into the 1115 Waiver to reflect that this methodology was approved by CMS on the date that the approval was issued to HHSC.

HHSC requests, contingent upon the approval of the methodology and template described in this letter, that the proposed Amendment 23 be considered withdrawn by HHSC.

#### Conclusion

Ms. Angela Garner  
August 29, 2023  
Page 4

HHSC requests that CMS approve the recommended methodology and template as soon as practical. The importance of stability for the Medicaid program and predictability for the Medicaid providers that form our safety net cannot be overstated. We are grateful for CMS' continued support of our providers and look forward to receiving your favorable response to our request.

Sincerely,

Emily Zalkovsky

State Medicaid Director

Attachments

cc: Mr. Trey Wood, HHSC Chief Financial Officer  
Ms. Victoria Grady, Director of Provider Finance  
Mr. Eli Greenfield, CMS  
Ms. Diona Kristian, CMS  
Mr. Paul Boben, CMS  
Ms. Lisa Marunycz, CMS  
Ms. Jamie John, CMS