



September 7, 2021

Dan Tsai
Deputy Administrator and Director
Center for Medicaid & CHIP Services (CMCS)
7500 Security Blvd
Baltimore, MD 21244

Dear Mr. Tsai:

Over the past fiscal year, the Texas Health and Human Services Commission (HHSC) has worked diligently to implement the 1115 Texas Healthcare Transformation Quality Improvement Program Waiver approved by the Centers for Medicare and Medicaid Services (CMS) in January 2021 (Waiver). The Waiver transitions from the Delivery System Reform Incentive Payment (DSRIP) program to new State Directed Payments (SDPs) and includes the necessary financing framework to provide long-term stability for the state's critical healthcare system.

Given the start of state fiscal year 2022 on September 1, 2021, the ongoing COVID-19 public health emergency, and CMS' communications that it will not approve the new proposed SDPs at this time, HHSC will work with CMS to maintain existing payment programs on a temporary basis and achieve agreement on a long-term solution that aligns with the Special Terms and Conditions (STCs) of the Waiver. These are not mutually exclusive options. HHSC and CMS can act to continue funding through existing programs (1 and 2 below), while also reaching an enduring agreement on the pending SDPs (3 below). HHSC's acceptance of the temporary solutions is conditioned on CMS continuing to meet with Texas to work toward final approval of the pending SDPs.

1. Texas Accepts CMS' Offer to Extend DSRIP

Texas accepts CMS' offer and will submit a Waiver amendment to extend DSRIP in the amount of \$2.49 billion, which is the DSRIP funding amount for the demonstration year (DY) ending September 30, 2021. Because CMS has not approved Texas' proposed SDPs at this time, Texas agrees that a one-year extension of DSRIP would be beneficial as the state currently faces another surge in

COVID-19, which threatens the stability of our safety net and the quality improvements that DSRIP has achieved. While DSRIP funds will not reach providers immediately, HHSC appreciates CMS' desire to provide financial support to Texas providers. Texas will agree to use already accrued savings to afford this opportunity, though this will limit the amount of roll-over savings that would otherwise be available to Texas for future innovations.

Based on communications between HHSC and CMS, we understand the following¹:

- HHSC will submit an amendment to the Waiver STCs requesting a DSRIP extension with an implementation date that is fewer than 120 days from the submission.
- CMS has indicated the public notice guidance in the 1994 federal register (59 Fed Reg 49249, September 27, 1994) applies to this Waiver amendment. After CMS receives the amendment application and determines it is complete and meets federal regulatory requirements, CMS will initiate a 30-day federal public comment period.
- Regardless of the date of CMS approval of the Waiver amendment, DSRIP funding will be available upon CMS approval of the amendment for performance within DY 11. Prior to approval and relying on CMS correspondence, the state will begin communications with DSRIP participating providers, amend program rules, and modify systems for DSRIP performance requirements in DY 11.
- HHSC will make DSRIP payments for the extension under current programmatic rules which will provide for payments in July 2022, January 2023, July 2023, and January 2024. This is the current payment schedule CMS has stated is permissible.
- HHSC and CMS will continue to work together to agree on necessary flexibilities for demonstrating DSRIP achievement and determining payment due to the COVID-19 public health emergency.
- HHSC will propose health equity measures to be included in the Waiver amendment.
- HHSC will continue to comply with STC 53, Sources of Non-Federal Share.

¹ HHSC submitted process questions to CMS on August 23, 2021, and CMS responded on August 26, 2021; HHSC submitted questions on health equity requirements on August 26, 2021, and CMS responded on August 31, 2021. HHSC and CMS also discussed the DSRIP extension option on calls on August 25 and 27, 2021.

2. Texas Accepts CMS' Offer to Approve the Quality Incentive Payment Program and Temporarily Renew the Uniform Hospital Rate Increase Program

HHSC will submit a pre-print to continue the Uniform Hospital Rate Increase Program (UHRIP) based on the reimbursement rate increases for each class as they existed in State Fiscal Year (SFY) 2021 and requests immediate approval of the pending pre-print for the Quality Incentive Payment Program (QIPP) as proposed for SFY 2022. This temporary solution will allow providers to continue receiving these SDPs during the COVID-19 public health emergency while HHSC and CMS continue their work, as outlined in the STCs, toward final approval of the four other pending pre-prints (Comprehensive Hospital Increased Reimbursement Program (CHIRP), Texas Incentives for Physicians and Professional Services (TIPPS), Directed-Payment Program for Behavioral Health Services (DPP for BHS), and Rural Access to Primary and Preventive Services (RAPPS)).

Based on communications between HHSC and CMS, we understand the following:

- Texas will be able to partially mitigate the harm to certain Medicaid beneficiaries and providers by implementing UHRIP and QIPP.
- CMS will grant approval of the pending QIPP application retroactive to September 1, 2021. The estimated program size will be \$1,100,000,000.
- CMS will grant approval of UHRIP shortly after the pre-print is submitted retroactive to September 1, 2021. The estimated program size will be \$3,325,410,017.
- With this temporary solution, no SDPs will be immediately in place for physicians, local mental health authorities, or rural health clinics, despite the fact that some enrolled program participants are not participants in either DSRIP, UHRIP, or QIPP.
- Many hospital providers would be individually negatively impacted by a lack of immediate approval of CHIRP.

3. Texas Accepts CMS' Offer to Continue Collaboration Pursuant to STCs to Achieve Approval of All Pending Programs

To avoid future harm to Medicaid beneficiaries and achieve long-term stability for Texas' healthcare system consistent with the Waiver's STCs (29-34), CMS will continue meeting with Texas to work collaboratively toward final approval of the pending SDPs that had a proposed effective date of September 1, 2021. This is a condition for HHSC to agree to the temporary solutions for maintaining existing payment programs (as described in 1 and 2 above).

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In March 2021, Texas submitted pre-prints for the four new SDPs, each with a September 1, 2021 effective date: CHIRP, TIPPS, DPP for BHS, and RAPPS. At the same time, Texas also submitted a pre-print to continue QIPP with improvements effective September 1, 2021. CMS sent and HHSC responded to two or three rounds of questions for each of the five programs from April through July 2021.

On August 20, 2021, CMS provided Texas a list identifying 19 areas of modification or information required across the five proposed SDPs; some of the requests were for information or agreement on matters that exceed CMS' statutory authority. On calls with CMS held August 20 and August 24, HHSC attempted to gather additional information from CMS regarding its requests and to suggest possible resolutions. On August 25, 2021, HHSC responded in writing to CMS, providing requested explanations and additional information, asking clarifying questions, and proposing potential modifications when possible. On August 26, 2021, August 30, 2021, and September 1, 2021, CMS and HHSC participated in calls to continue to address identified issues. At this time, HHSC awaits resolution on HHSC responses to questions and issues raised by CMS.

Texas understands the issues common to QIPP and the other programs are not counter to federal regulation or prohibitory to CMS approval, as evidenced by CMS' willingness to approve QIPP. Texas requests that CMS more clearly differentiate when matters raised by CMS are driven by an effort to strengthen a program submission as compared to a violation of regulation. HHSC's experience is that CMS has approved improving and advancing programs over time. Consistent with this approach, Texas requests that appropriate consideration be given to Texas' offer to compromise regarding the reconciliation thresholds for TIPPS, DPP for BHS, and RAPPS. Texas also reiterates its expectation that the quality requirements, targets, and evaluation of the programs will evolve as renewal is pursued in subsequent years, as has been Texas' practice with UHRIP and QIPP since initial approval in 2017.

If our understanding of CMS' regulatory authority to approve the matters described above is correct, the only remaining issues are related to the reasonableness of the underlying CHIRP provider reimbursement rates, where Texas has offered a compromise, and concerns regarding the non-federal share sources for the programs. With respect to the non-federal share, Texas has provided CMS affirmations, reports, and documented plans in response to CMS' August 20, 2021 request for modifications. Texas has reiterated its compliance with 1903(w) of the Act and 42 CFR 433.68, which prohibit the state or other units of government imposing a provider tax from providing "for any direct or indirect payment, offset, or waiver such that the provision of that payment, offset, or waiver directly or indirectly guarantees to hold taxpayers harmless for all or any portion of the tax

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amount.” However, Texas does not believe CMS can withhold approval of the SDPs in exchange for Texas insisting that private entities furnish attestations or information that are beyond the scope of either Texas or CMS’ statutory authority to require or consider.

Texas respectfully requests that CMS respond to these pending requests or provide any follow-up questions on the information we’ve provided with all due haste, and specifically within five days. Per STC 34, HHSC commits to continuing to meet with CMS every two business days and providing written responses within five days.

Next Steps

Texas expects that CMS’ final approval of the pending SDPs, as contemplated and outlined in the STCs, can be achieved quickly. This mutually-beneficial process to adhere to both the spirit and terms of the Waiver will provide stability for Texas from 2022 through 2030 and ensure sustainability of the Texas Medicaid managed care program for the over 4 million beneficiaries served.

Sincerely,

Stephanie Stephens
Texas State Medicaid Director