



Significant Medicaid Funding at Stake Without Federal Approval of Waiver Renewal and Directed Payment Programs

Texas' safety net stands to lose at least \$11 billion annually if the Centers for Medicare & Medicaid Services (CMS) and Texas do not come to agreement regarding five proposed directed payment programs (DPPs) and renewal of the State's section 1115 Medicaid demonstration waiver. Texas filed suit in the Eastern District of Texas following CMS' withdrawal of the State's waiver renewal in April. Relevant to both the litigation and DPP negotiations, CMS is treating the January waiver approval and related terms as in effect. Key rulings and developments are set out below.

August 12, 2021 - The Eastern District issued an order in response to Texas' TRO motion, instructing CMS to (1) either approve Texas' five proposed DPPs or (2) engage in the meet and confer process outlined in the January waiver terms. This includes CMS and HHSC meeting every two business days.

August 13, 2021 - In response to TRO order, CMS offered HHSC two options for moving directed payments forward: (1) renewal of the two existing programs - QIPP and UHRIP (Option 1) or (2) resubmit new applications for and continue discussions on the five proposed DPPs (Option 2). Under either option, CMS offered to consider a one year extension of the expiring DSRIP program.

August 16, 2021 - HHSC wrote to CMS asking for clarification of options offered.

August 20, 2021 - CMS responded to Texas' request for information regarding Options 1 and 2, including questions and proposed modifications to the five DPPs addressed under Option 2.

August 25, 2021 - HHSC responded to CMS with an offer to address several of the concerns raised under Option 2.

August 30, 2021 - Close of federal comment period on Texas' new section 1115 waiver application.

August 31, 2021 - Expiration of Texas' current DPPs (UHRIP and QIPP).

August 31, 2021 - Texas AG files amended complaint with Eastern District of Texas adding new counts specific to approval of the five proposed DPPs.

September 7, 2021 - HHSC sent a letter to CMS proposing that Texas accepts (1) CMS' offer to extend DSRIP; (2) CMS' offer to approve UHRIP and QIPP; and (3) CMS' offer to continue collaboration pursuant to STCs to achieve approval of all pending DPPs. HHSC in effect, is proposing to accept the DSRIP extension, Option 1 and effectively Option 2, by conditioning their acceptance on CMS agreeing to continue collaboration to achieve approval of all pending DPPs. HHSC requested a response from CMS within 5 days (i.e. by September 12).

September 10, 2021 - CMS responded to HHSC with additional information and questions related to the five DPPs at issue under Option 2

September 13, 2021 - CMS and DOJ responded to Texas' amended complaint.

September 15, 2021 - CMS and HHSC continue to engage in dialogue regarding CMS' concerns, with HHSC responding to CMS' September 10 responses. HHSC also submitted five new preprints for the five DPPs.

September 24, 2021 - CMS and HHSC continue to engage in dialogue regarding CMS' concerns, with CMS responding to HHSC's latest responses.

September 29, 2021 - CMS and HHSC continue to engage in dialogue regarding CMS' concerns, with HHSC responding to CMS' September 24 responses. HHSC also submitted five new preprints for the five DPPs.

In fiscal year 2021, the Texas health care safety net relied on approximately \$11 billion per year in Medicaid supplemental payment programs authorized through the state's 1115 waiver DPPs. CMS and Texas must work together on an 1115 waiver extension and a DPP solution that will provide both immediate support and long-term stability to the safety net. Without a solution, Texas' safety net stands to lose \$11 billion, if not more, going forward.

County officials can help by writing CMS and asking for approval of Texas 1115 Waiver extension and related DPP proposals. For more information contact TEHP at TEHP@TEHP.org