

# 1115 Waiver Update



Where are we in current 1115 waiver?



1115 Waiver Extension Reapplication



DSRIP Transition to Directed Payment Programs (DPPs) including recent CMS action



# CMS approved a 10-year extension of Texas' current 1115 waiver on January 15, 2021.

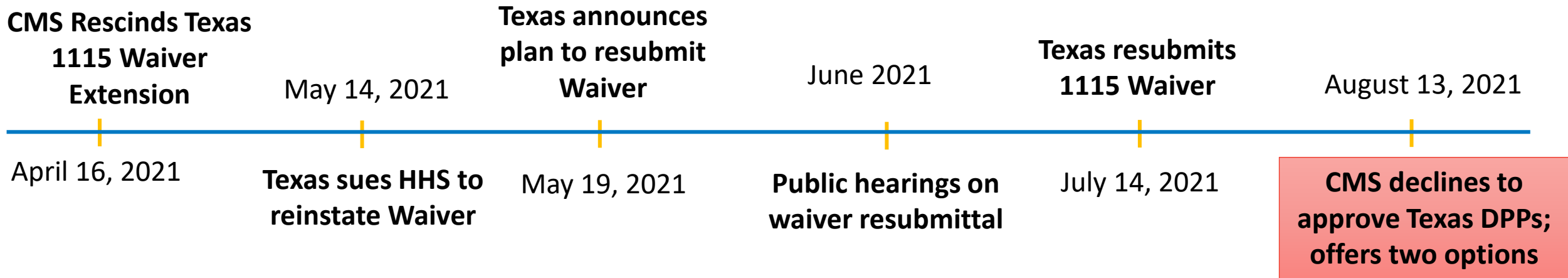
New extension set budgetary terms for:

- Transitioning DSRIP into new state directed payment programs (DPPs) valued at \$7.0 billion per year
  - *DPPs are subject to approval outside of waiver*
- New charity care pool for community mental health & public health providers (PHP-CCP) valued at \$500 million per year
- \$3.9 billion per year for payments for uncompensated care
- Average \$11.4 billion per year above base expenditures
- ***Saves an estimated \$10 billion for taxpayers over the life of the waiver.***

Source: Texas Health & Human Services Commission



# After CMS rescinded Texas' waiver extension due to lack of federal comment period, Texas reapplied under identical terms.



# DSRIP Transition to Directed Payment Programs in FY 2022

## *What did Texas propose?*

| Requested Program   | Benefitting                       | Estimated Size (annual) |
|---|-----------------------------------|-------------------------|
| Comprehensive Hospital Increased Reimbursement Program (CHIRP)    | Hospitals                         | \$5.02 billion          |
| Quality Incentive Payment Program (QIPP)                          | Nursing facilities                | \$1.1 billion           |
| Texas Incentives for Physicians and Professional Services (TIPPS) | Physician groups                  | \$600 million           |
| Rural Access to Primary and Preventive Services (RAPPS)           | Rural health clinics              | \$18.7 million          |
| DPP for Behavioral Health Services (DPP-BHS)                      | Community mental health centers   | \$166 million           |
| Ambulance Average Commercial Reimbursement Program (A-ACR)        | Public ground ambulance providers | \$150 million           |
| <b>TOTAL</b>  |                                   | <b>\$7.0 billion</b>    |

*\*DPPs operate under separate statutory authority from the waiver, but pool sizes are tied to the waiver's budget neutrality upper limit. DPPs are subject to annual CMS approval.*

# On Aug. 13, 2021 CMS declined to approve proposed DPPs

## *Instead, CMS offered two options:*

1. **Reapprove a one-year, \$2.49 billion extension of DSRIP** through Sep. 30, 2022 contingent upon adding 5-10 new health equity measures with 20% of DSRIP payments tied to these measures.

**Renew existing directed payments (QIPP, UHRIP) for one year at SFY 2021 funding levels.** Withdraw new directed payment programs (TIPPS, RAPPS, BHS);

**OR**

2. **Submit new proposals for all five directed payment programs (CHIRP, TIPPS, RAPPS, BHS, QIPP) addressing several issues CMS raised in denial letter.**
  - Aggregate size of programs
  - Quality improvement and evaluation protocols
  - Method of finance



# What happened next?

- Texas accepted CMS's offer to continue negotiating the proposed DPPs with CMS.
- A federal judge issued a preliminary injunction stating the January waiver extension remains in effect. Per the waiver extension, CMS and Texas have met every 2 business days since August to continue negotiating the DPPs.
- Initially, CMS named 19 concerns across the 5 DPPs.
- All but one concern is now resolved and two DPPs were approved: BHS and QIPP.
- CHIRP, TIPPS, and RAPPS remain pending before CMS

**Where negotiations are stuck:** *Local Provider Participation Funds (LPPFs), a provider taxing mechanism Texas uses to generate the nonfederal share of Medicaid supplemental payments. CHIRP, TIPPS, and RAPPS are all financed by LPPF.*



# CMS and Texas dispute whether Texas' nonfederal Medicaid funds are permissible

| CMS Position  | Texas Position   |
|---|--|
| <p>CMS believes there are LPPF arrangements that violate the federal prohibition against hold-harmless agreements due to all providers receiving their tax back in the form of a Medicaid payment.</p> <ul style="list-style-type: none"><li>• “Hold harmless” = state or governmental entity imposing a tax provides a direct or indirect guarantee that taxpayer will receive back their tax amount</li></ul> <p>Federal matching funds are not permitted where a hold harmless arrangement exists.</p> <p>CMS is withholding approvals unless Texas provides attestations from all participating hospitals that they do not participate in arrangements involving the redistribution of Medicaid payments.</p> | <p>Supplemental payments are tied to Medicaid utilization. They are not correlated to the tax amount. Texas cannot guarantee any payment will meet or exceed tax paid.</p> <p>Texas has no knowledge that any private providers have entered into agreements to redistribute Medicaid funds.</p> <p>HHSC has no legal authority to regulate LPPFs or agreements between private entities. The hold-harmless statute does not apply to private agreements.</p> <p>Texas objects to the attestation CMS requests because it objects to CMS coercing Texas into seeking unauthorized information.</p> <p>Texas believes CMS has no statutory or regulatory basis to withhold approvals.</p> |