

January 29, 2020

Seema Verma, MPH
Administrator, Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

RE: Healthy Texas Women 1115 Medicaid Demonstration Approval, Restricting Beneficiaries' Freedom of Choice of Provider

Administrator Verma:

The undersigned organizations express our opposition regarding the approval of the Healthy Texas Women (HTW) Section 1115 Demonstration, upending the longstanding freedom of choice of provider (FOC) provision in the Medicaid Act. While we support the expansion of Medicaid coverage of family planning services and supplies, approval of the HTW Section 1115 Demonstration program, with restrictions on freedom of choice of provider, is not the proper way to achieve this goal. This approval will do nothing to expand access to family planning care and will only grant federal dollars and imprimatur to a discriminatory and failed Texas program.

The undersigned organizations represent a variety of stakeholders with significant expertise in the Medicaid and family planning spaces. We are comprised of specialized family planning providers, consumer advocacy groups, research organizations, and organizations dedicated to advancing quality healthcare access through Medicaid.

Importantly, Medicaid plays a major role in ensuring access to family planning and other primary health care services for women and men. Medicaid coverage of family planning services and supplies, in particular, helps women's health, lives, educational success, and economic empowerment.

The approval of the HTW demonstration is problematic and deeply-flawed for the reasons set forth below. We strongly urge CMS to withdraw approval of the 1115 demonstration immediately.

Demonstration programs should improve beneficiary health and access to care.

CMS asserts that the continuation of the HTW program will improve beneficiary health and access to care. However, the HTW Program has been devastating, with data showing decreased access to comprehensive reproductive health care and a higher birth rate. Specifically:

- Nearly [45,000 fewer women](#) were able to access care through the program five years after Texas revamped its program to exclude many qualified reproductive health providers;
- There was a [41% decline](#) over four years in the number of women receiving contraceptive care through the program; and

- There was a substantial [increase in Medicaid-supported births](#) among women in counties with Planned Parenthood clinic sites (in other words, counties where clinics lost funding because they were excluded from the HTW program).

While we are supportive of the listed interventions (such as screening and treatment for postpartum depression, hypertension, diabetes, and cholesterol, and immunizations) to improve maternal health outcomes in the state of Texas, we also know that steps taken to improve pregnancy outcomes should not begin when a woman becomes pregnant. States that have limited access to family planning providers and reproductive health services, including abortion, tend to also have [higher rates](#) of maternal death and severe morbidity. In fact, Texas has one of the highest rates of maternal death in the country, and the state's exclusion of abortion providers, including Planned Parenthood, from HTW and slashing of family planning funding in an effort to "defund" abortion providers has resulted in a [significant reduction](#) in family planning clinics. The [remaining clinics were unable](#) to meet the needs of their community and many had to make decisions to reduce their hours of operation and cut back on providing some of the services they had once offered.

HTW lacks a legitimate experimental purpose.

Section 1115 of the Social Security Act intends for states to propose innovative experiments that further the objectives of the Medicaid Act. The HTW restricts access to care for beneficiaries, with no legitimate experimental purpose.

Notably, Texas has already been operating a state-funded program that prohibits beneficiaries from accessing family planning services from otherwise-qualified family planning providers that offer or "promote" abortion services, or are affiliated with providers that do so. And the data is clear: access to care has been jeopardized and women and teens have experienced worse health outcomes, affecting their independence and economic well-being. There is simply no reason for CMS to have approved HTW on the basis that it serves a legitimate experiment, as CMS already has the data necessary to show that HTW does not increase access to care or improve beneficiary health.

The harm of the HTW program and restriction on FOC is well-established, and therefore, the demonstration does not satisfy the criteria for an 1115 waiver. We strongly urge CMS to reevaluate their criteria for 1115 demonstration approval, and return to the original intent to encourage and approve innovative experiments that furnish meaningful coverage to people with low incomes.

Restricting the Longstanding Freedom of Choice of Provider Protection in Medicaid

As noted in tens of thousands of comments for other 1115 demonstrations and more than 18,000 comments in response to the HTW demonstration, the purpose of Medicaid is to enable states to furnish medical assistance to individuals with low incomes who are unable to meet the costs of medical care. For Medicaid coverage to be meaningful, beneficiaries must be afforded the longstanding protections guaranteed by the Medicaid Act, including the ability to access the family planning care they need from providers of their preference.

It is also important to remember that for more than five decades, federal law has recognized the importance of timely access to family planning services and supplies. To ensure that women and teens are able to access critical family planning services in a timely fashion, Section 1396a(a)(23) of the Medicaid Act ensures that Medicaid patients can receive medical services “from any institution, agency, community pharmacy, or person, qualified to perform the service or services . . . who undertakes to provide . . . such services.” Importantly, the Medicaid Act guarantees special protection for FOC of provider in connection with family planning services, even explicitly ensuring that patients enrolled in managed care plans can continue to access family planning services from the provider of their choice.

The freedom of choice provision has long been upheld as the cornerstone for family planning access. HTW runs directly counter to this principle and has resulted in decreased access to timely care for beneficiaries. As such, we strongly urge CMS to withdraw the approved HTW demonstration and ensure that all Medicaid beneficiaries are able to exercise their right to choose their provider.

Conclusion

The approval of the HTW demonstration, restricting beneficiaries’ freedom of choice of provider, will limit access to family planning services and do nothing to improve health outcomes in the state of Texas. Moreover, this approval sets a dangerous precedent for other states to put ideology ahead of patient needs and access. Instead of harming beneficiary health and limiting access to family planning services, CMS should approve 1115 demonstrations that would improve the health and lives of Texas women and teens and meaningfully meet their unique health needs.

As such, we strongly urge CMS to withdraw the approval of the HTW demonstration.

Respectfully,

American College of Obstetricians and Gynecologists
Center for Reproductive Rights
Guttmacher Institute
Jacobs Institute of Women's Health
Medical Students for Choice
NARAL Pro-Choice America
National Abortion Federation
National Council of Jewish Women
National Family Planning & Reproductive Health Association
National Health Law Program
National Institute for Reproductive Health (NIRH)
National Partnership for Women & Families
National Women’s Law Center
Planned Parenthood Federation of America

Power to Decide
Reproductive Health Access Project