National
Family Planning
& Reproductive Health Association

January 15, 2021

VIA ELECTRONIC SUBMISSION

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244-8016

Re: "Healthy Texas Women Plus" 1115(a) Medicaid Demonstration Amendment

Dear Administrator Verma:

The National Family Planning & Reproductive Health Association (NFPRHA) appreciates the opportunity to provide comments on the Healthy Texas Women Plus (HTW-Plus) §1115 demonstration amendment. For the reasons outlined below, which expand upon the enclosed comments in opposition to the original HTW demonstration application, we urge the Centers for Medicare & Medicaid Services (CMS) to reject the HTW Plus amendment as proposed and to continue working with Texas to address stakeholder concerns about the HTW demonstration.

NFPRHA is a non-partisan, non-profit membership association. Its mission is to advance and elevate the importance of family planning in the nation's health care system and promote and support the work of family planning providers and administrators, especially in the safety net. NFPRHA membership includes more than 1,000 members that operate or fund more than 3,500 health centers that deliver high-quality family planning education and preventive care to millions of people every year in the United States. NFPRHA represents the broad spectrum of publicly funded family planning providers including state and local health departments, hospitals, family planning councils, federally qualified health centers, Planned Parenthood affiliates, and other private non-profit agencies. As a leading expert in publicly funded family planning, NFPRHA conducts and participates in research; provides educational subject matter expertise to policymakers, health care providers, and the public; and offers its members capacity-building support aimed at maximizing their effectiveness and financial sustainability as providers of essential health care.

NFPRHA strongly supports efforts to increase access to family planning and sexual health services and understands the importance of extending postpartum care longer after delivery as a way to address the maternal mortality crisis in this country. However,

we remain troubled by Texas' ongoing efforts to exclude qualified providers from its Medicaid program and to impose administrative hurdles that undermine the demonstration's stated goals of increasing access to and utilization of family planning and other preventive services. Additionally, we have concerns about Texas's ability to effectively use Medicaid resources to support the delivery of HTW Plus services.

Free Choice of Provider

In its original Healthy Texas Women demonstration application, Texas sought to waive the longstanding federal "freedom of choice" protection - 42 U.S.C. § 1396a(a)(23) - for the purpose of excluding providers who perform or promote abortions or affiliate with providers who do so. In its approval letter and supporting expenditure authorities issued on January 22, 2020, CMS granted Texas's request to waive Section 1902(a)(23) "to the extent necessary to enable the state to limit freedom of choice of provider in accordance with state law." NFPRHA continues to maintain that CMS' decision to approve that application was wrongly decided, as it has no experimental value and is not likely to promote the objectives of the Medicaid Act.

Section 1396a(a)(23) 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."[1] The statute includes a general exception for patients enrolled in certain Medicaid managed care plans. However, recognizing the value of family planning services and supplies and the importance of specialized, trusted providers and patient choice in receiving family planning services, Congress explicitly protected the right of managed care enrollees to receive family planning services from any qualified Medicaid provider, even if the provider is outside of their plan's provider network.[2]

As CMS has recognized previously, Texas cannot use § 1115 to avoid these protections, as excluding providers for reasons unrelated to their qualifications does not further the objectives of the Medicaid Act.[3] In addition, the state has already demonstrated that excluding qualified providers from the family planning network severely reduces low-income women's access to family planning and other preventive services. Between 2011 and 2015—pre- and post-provider exclusion in Texas—access to qualified, trusted family planning providers was severely curtailed. "By excluding numerous safety-net health centers and relying primarily on private doctors, the state developed a provider network incapable of serving high volumes of family planning clients. In turn, the state reported a nearly 15% decrease in enrollees statewide over the four-year period."[4]

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[1] *Id*. § 1396a(a)(23).
[2] *Id*. §§ 1396a(a)(23)(B), 1396n(b).
[3] *See* Letter from Cindy Mann, Dir., Ctr. for Medicaid & CHIP Servs., Ctrs. for Medicare & Medicaid Servs., to Billy Millwee, Deputy Exec. Comm'r, Tex. Health & Human Servs. Comm'n (Dec. 12, 2011).
[4] Kinsey Hasstedt and Adam Sonfield, *At It Again: Texas Continues to Undercut Access to Reproductive Health*, HEALTH AFFAIRS BLOG (July 18, 2017) (citing Tex. Health & Human Servs. Comm'n, *Final Report of the Former Texas Women's Health Program: Fiscal Year 2015 Savings and Performance* (2017), https://hhs.texas.gov/reports/2017/03/former-texas-womens-health-program-fiscal-year-2015-savings-performance). *See also* Tex. Health & Human Servs. Comm'n, *Final Report of the Former Texas Women's Health Program: Fiscal Year 2015 Savings and Performance* 4-5 (2017) (reporting that, as of 2015, the median number of clients served annually per provider in the network was only 12).

Further, by 2016, "26% [of] Texas women who the state reported as enrolled in the program had in fact never received health care services from a participating provider, up from only 10% in 2011."[5] This dramatic decrease in access to services occurred despite the addition of "thousands more private practices and clinicians" by the state, as these providers on average serve significantly fewer patients than family planning health centers.[6]

Similarly, Texas' own data show a precipitous decline in utilization of contraception among women enrolled in the program. Between 2011 and 2015, claims or prescriptions filed for all contraceptive methods dropped 41%, including dramatic decreases in enrollees obtaining injectable contraceptives, oral contraceptives, condoms, and the contraceptive patch and ring.[7]

For all of these reasons, NFPRHA has major concerns about building onto a program with such significant barriers to access. NFPRHA urges CMS to reinstate the freedom of choice protections in HTW, and direct Texas to swiftly address network adequacy in the program.

Network Adequacy for HTW-Plus

The successful delivery of the HTW Plus services outlined in the current amendment is contingent upon Texas recruiting and enrolling specialty providers into the HTW program. Texas's requirement that HTW providers complete an annual certification attesting that they do not perform or promote abortions or affiliate with providers who do so will unnecessarily limit the participation of specialty providers in HTW Plus. Many specialty providers are unaware of or put off by HTW's requirement that all participating providers—even those whose services (i.e., mental health, substance use, cardiology) are in no way affiliated with abortion services—complete the annual certification.

Additionally, to ensure program effectiveness, Texas would need to provide clear guidance about how to find an eligible HTW Plus provider to both HTW clients seeking to obtain enhanced services and HTW providers seeking to make referrals for enhanced services. Thus far, in response to stakeholder questions about how to direct HTW clients to specialty providers, Texas noted that the lack of case management in HTW meant that providers and clients would simply have to call around to find a provider. Texas also noted that it had no plans to modify its HTW provider lookup to assist providers and clients in identifying specialty providers.

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[5] Kinsey Hasstedt and Adam Sonfield, *At It Again: Texas Continues to Undercut Access to Reproductive Health*, HEALTH AFFAIRS BLOG, (July 18, 2017) (citing analysis included in Letter from Stacey Pogue, Senior Policy Analyst, Ctr. for Pub. Policy Priorities, to Jami Snyder, Assoc. Comm'r, Medicaid & CHIP Servs., Tex. Health & Human Servs. Comm'n (June 12, 2017), https://forabettertexas.org/images/CPPP_comments_on_HTW_draft_waiver_application.pdf).

[6] *Id*.

[7] Tex. Health & Human Servs. Comm'n, *Final Report of the Former Texas Women's Health Program: Fiscal Year 2015 Savings and Performance* 8 (2017) (reporting 32% decrease in claims for injection methods, 47% decrease for oral contraceptives, and 59% decrease for condoms), https://hhs.texas.gov/reports/2017/03/former-texas-womens-health-program-fiscal-year-2015-savings-performance.

NFPRHA asserts that Texas has not sufficiently described its efforts to ensure network adequacy nor established its ability to ensure the availability of adequate resources for implementation and monitoring of the demonstration. For these reasons, NFPRHA urges CMS to reject the HTW Plus amendment as proposed.

Effectively Increasing Access to and Utilization of Postpartum Care Services

Based on the concerns outlined above, NFPRHA asserts that Texas is unlikely to achieve the demonstration's goals of increasing access to and utilization of HTW Plus services—and that the postpartum care services included in the HTW Plus amendment are not best suited for the limited nature of Texas's family planning demonstration waiver. NFPRHA also shares the concerns of other stakeholders that the state's approach to add a limited postpartum benefit package to its HTW plan does not go nearly far enough to reduce maternal mortality and morbidity in Texas, especially for Black women who are more than twice as likely to experience pregnancy-related death than non-Hispanic White women. A much more effective strategy would be for Texas to extend Medicaid postpartum coverage from 60 days to one year postpartum. This follows the recommendations of more than 60 national organizations support extending Medicaid postpartum coverage to 12 months, including the American Medical Association, the American College of Obstetricians and Gynecologists (ACOG), the American Academy of Family Physicians, March of Dimes, and the Society for Maternal-Fetal Medicine, as well as the recommendations of the Texas Maternal Mortality Review Committee (MMRC).

Conclusion

Ensuring increased access to postpartum care as a tool to decrease maternal mortality is a laudable goal. However, building on a fundamentally flawed foundation is not a sound way to achieve that goal. For this reason and all of the reasons above, NFPRHA strongly urges CMS to reject this waiver amendment and swiftly restore the freedom of choice protections in the Healthy Texas Waiver program.

Thank you for the opportunity to comment on this important issue. If you have further questions, please contact Mindy McGrath, NFPRHA's Senior Director, Advocacy & Communications, at mmcgrath@nfprha.org.

Sincerely,

Clare M. Coleman

Clare Coleman
President & CEO