

**JAN 22 2020**

Stephanie Muth
Associate Commissioner
Medicaid/CHIP
Medical and Social Services Division
Texas Health and Human Services Commission
4900 Lamar Boulevard
Austin, TX 78751

Dear Ms. Muth:

Under section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services may approve any experimental, pilot, or demonstration project that, in the judgment of the Secretary, is likely to assist in promoting the objectives of certain Act programs including Medicaid. Congress enacted section 1115 of the Act to ensure that federal requirements did not “stand in the way of experimental projects designed to test out new ideas and ways of dealing with the problems of public welfare recipients.” S. Rep. No. 87-1589, at 19 (1962), *as reprinted in* 1962 U.S.C.C.A.N. 1943, 1961. As relevant here, section 1115(a)(2) of the Act allows the Secretary to provide federal financial participation for demonstration costs that would not otherwise be considered as federally matchable expenditures under section 1903 of the Act, to the extent and for the period prescribed by the Secretary.

For the reasons discussed below, the Centers for Medicare & Medicaid Services (CMS) is approving Texas’ June 30, 2017, request for a section 1115 demonstration project, entitled “Healthy Texas Women” (Project Number: 11-W-00326/6). Approval is granted under the authority of section 1115(a) of the Act, and is based on the determination that the expenditure authority granted therein is likely to assist with promoting the objectives of title XIX of the Act by providing access to high-quality family planning services that produce positive health outcomes for individuals. This approval is contingent upon the state’s compliance with the demonstration evaluation and monitoring requirements described in special term and condition (STC) Section IX. Evaluation of the Demonstration. As noted in the document, CMS reserves the right to withdraw demonstration authority if the state fails to comply with these requirements.

This approval is effective January 22, 2020, through December 31, 2024, upon which date, unless extended or otherwise amended, all authorities granted to operate this demonstration will expire. The federal financial participation under section 1115(a)(2) approved in this letter state will begin no sooner than January 22, 2020. The state may deviate from Medicaid requirements only to the extent those requirements have been listed as not applicable to expenditures or individuals covered by expenditure authority.

Objectives of the Medicaid Program

As noted above, the Secretary may approve a demonstration project under section 1115 of the Act if, in his judgment, the project is likely to assist in promoting the objectives of title XIX.

The purposes of Medicaid include an authorization of appropriation of funds to “enabl[e] each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care.” Act § 1901.

Section 1115 demonstration projects also provide an opportunity for states to test policies that ensure the fiscal sustainability of the Medicaid program, better “enabling each [s]tate, as far as practicable under the conditions in such [s]tate” to furnish medical assistance, Act § 1901, while making it more practicable for states to furnish medical assistance to a broader range of persons in need. For instance, measures designed to improve health and wellness may reduce the volume of services consumed, as healthier, more engaged beneficiaries tend to consume fewer medical services and are generally less costly to cover. Such measures may enable states to stretch their resources further and enhance their ability to provide medical assistance to a broader range of persons in need, including by expanding the services and populations they cover, as is being done under this demonstration, which could reduce Medicaid expenditures associated with Medicaid coverage of pregnant women and newborns by reducing unwanted pregnancies. By the same token, such measures may also preserve states’ ability to continue to provide the optional services and coverage they already have in place.

As discussed more fully below, under this demonstration, the objectives of Medicaid are promoted by providing coverage of family planning services to low income women who would not otherwise have such coverage. Also as discussed below, while the choice of providers of family planning services would be more limited under this demonstration than under the Medicaid state plan were these individuals covered by the state plan, this limitation is necessary in order to comply with a Texas state law prohibiting the use of state taxpayer money to contract with “entities that perform or promote elective abortions or affiliate with entities that perform or promote elective abortions.” Tex. Hum. Res. Code § 32.024(c-1). While this state law is pre-empted by Federal law for women covered under the state plan, it would not be in the case of coverage under a discretionary demonstration project the state is seeking approval of here. Texas has concluded that in order to provide the family planning services at issue in this demonstration, state law demands certain restrictions on provider choice. We have determined that the restrictions on freedom of choice for family planning providers promotes the objectives of Medicaid by providing family planning and related services to women who would otherwise not have such coverage.

Background on Medicaid Coverage in Texas

CMS originally approved Texas' Medicaid Family Planning Demonstration in 2006, authorizing federal funding to help the state defray the costs of covering family planning services for uninsured women. The Texas Family Planning Demonstration program entitled, “Texas Women's Health Waiver,” extended eligibility for family planning services to uninsured women (defined as not having creditable coverage), ages 18 to 44 with family income at or below 185 percent of the federal poverty level (FPL) who are not otherwise eligible for Medicaid, Children’s Health Insurance Program (CHIP), or Medicare. At that time, CMS determined that it

would promote the objectives of Medicaid to provide coverage of family planning services to women who would not otherwise have such coverage.

Specifically, at the time of approval in 2006, the demonstration was expected to reduce the number of unintended pregnancies, premature deliveries, low-birth weight infants, and closely spaced pregnancies for those women whose poverty limits their access to health services. This, in turn, impacts costs that are incurred for the lifetime care of infants born with a disability due to their premature or very low birth weight status. Moreover, it was projected that improving the spacing of births among this population would result in reductions in the overall number of births supported by Medicaid funding. During the initial 5-year period of the demonstration, it provided coverage of family planning services to approximately 292,680 women ages 18 through 44 who would otherwise not have had access to such coverage. The demonstration increased access, reduced Medicaid expenditures, and increased health screenings. During the period 2007 through 2011, the overall adjusted base year birth rate¹ was approximately 12 percent and the overall Women's Health Program birth rate was approximately 4 percent. Due to family planning services provided during this time period, Texas saved approximately \$213.9 million. Decreasing Medicaid-funded births translates into cost savings at both the state and federal levels as Medicaid covers not only costs associated with prenatal care, delivery, and postpartum care for the mother up to 198 percent of the FPL, but also covers, in most cases, first year medical costs for infant care for the first year. In addition to reducing expenditures for Medicaid-paid births, over 292,680 women benefited from health screenings and family planning services they may not have been able to access if the Women's Health Program were not available. As one example, approximately 36 percent of women participating in the program were screened for a sexually transmitted disease in calendar year 2010.

Participants in the Women's Health Program also had a very similar rate of rates of premature deliveries as compared to a comparison group², and for the most recent year, the Women's Health program had a rate of 12.7 percent, which was lower than the comparison group, which had a rate of 14 percent. The rates of low birth weight deliveries among Women's Health Program participants is the same as the comparison group, with less than 9 percent of Women's Health Program and comparison group births being low birth weight or very low birth rate. A greater percentage of Women's Health Program participants, when compared to the comparison group, had births spaced between 24 and 59 months. Most notably, Women's Health Program participants versus the comparison group had nearly half the rate of subsequent births that occurred less than 24 months after the previous birth.

The Texas family planning demonstration approved in 2006 was up for extension in 2011. Texas submitted a request to extend the demonstration, but included a revision to the demonstration design under which the state would restrict beneficiary choice of qualified family planning providers available to women covered under the state's Medicaid state plan in order to conform to the Texas state law discussed above. In 2011, CMS notified Texas that it would not renew the

¹ The base year birth rate is the 2003 birth rate for women likely to be eligible for Women's Health Program (i.e., family income at or below 185 percent of FPL and ineligible for Medicaid except for pregnancy).

² The comparison group used in the analysis was all women enrolled in the Medicaid Pregnant Women's program who had a baby during the same time period that was analyzed for each Women's Health Program demonstration year.

demonstration with the restrictions on freedom of choice in place. CMS explained in its December 12, 2011 letter to Texas that the restrictions under state law were inconsistent with language in section 1902(a)(23) of the Act in which Congress specifically prohibited restrictions on “the choice of the qualified person from which the individual may receive services under section 1905(a)(4)(C) [family planning services].” This language specifically limited authority to restrict freedom of choice that would otherwise exist under section 1915(b)(1) of the Act, or under a Medicaid managed care contract, with respect to choice of providers of family planning services. Notably, this language did not restrict authority to waive or otherwise restrict freedom of choice for family planning services under section 1115 of the Act. CMS thus could have approved the state’s requested extension with the restrictions on choice of qualified family planning services providers requested by the state by identifying the foregoing language in section 1902(a)(23) as “non-applicable” under a demonstration providing coverage to non-state plan eligible individuals under the expenditure authority in section 1115(a)(2). Nonetheless, CMS in 2011 made a policy decision not to approve Texas’ demonstration extension request.

To mitigate impact of the termination of the program on the women it served, CMS agreed to temporarily extend the expenditure authority through the end of 2012, to allow Texas time to transition to a fully state-funded program. On January 1, 2013, Texas Women’s Health Program was established as a fully state-funded program. The Texas Women’s Health Program provided eligible women access to family planning exams, related health screenings, and contraception as it had when it was the 1115 demonstration, the Women’s Health Program, and the state program also retained the same program objectives.

In accordance with CMS’ disapproval of the extension, we worked with the state to phase-out the demonstration through December 31, 2012. Since January 1, 2013, Texas has been operating its family planning program, with this provider restriction, with state-only funding. Following the change in administrations in 2017, Texas requested approval of a new 5-year section 1115 demonstration under which the relevant freedom of choice language in section 1902(a)(23) would be identified as not applicable, and thus it would be permissible for the state to implement the restrictions on freedom of choice of family planning service providers required by state law. For the reasons discussed above, CMS believes that it would promote the objectives of Medicaid to provide the coverage of family planning services at issue even with the restrictions on freedom of choice required by Texas state law in place.

Extent and Scope of the Demonstration

With approval of this demonstration, Texas will, no sooner than January 22, 2020, extend eligibility under this demonstration project for family planning services, to women ages 18 through 44 with family income at or below 200 percent of the FPL who are not otherwise eligible for Medicaid or the Children’s Health Insurance Program (CHIP), or enrolled in other creditable health insurance coverage that provides family planning services.

Determination that the demonstration project is likely to assist in promoting Medicaid's objectives

As discussed above, in CMS' 2011 determination not to approve a demonstration extension incorporating restrictions on freedom of choice, CMS gave deference to the fact that Congress specifically singled out freedom of choice for family planning services in section 1902(a)(23), and that therefore applying such restrictions even outside the circumstances actually covered by section 1902(a)(23) could not promote the objectives of Medicaid. As discussed above, this language did not impose restrictions on our authority to restrict freedom of choice under a section 1115 demonstration. For the reasons discussed below, we have determined that the proposed demonstration project, as a whole, is likely to promote Medicaid objectives even with these restrictions on freedom of choice in place, by extending coverage of Medicaid-funded family planning services to uninsured women.

The demonstration promotes beneficiary health

The Healthy Texas Women demonstration furthers the goals of Title XIX of the Act by increasing access to women's health, family planning, and preventive care services for women who lack insurance coverage through the provision of a unique benefit package to women who would not otherwise be eligible for family planning and preventive services under Medicaid. Additionally, the Healthy Texas Women demonstration is designed to improve health outcomes for the Medicaid population by providing preconception and interconception care to women who would be eligible for Medicaid coverage if they were pregnant, with the goal of improving birth outcomes and supporting women in achieving optimal birth spacing. The Healthy Texas Women demonstration will increase access to family planning services to avert unintended pregnancies. In addition to providing core family planning services, the Healthy Texas Women demonstration will offer preconception care and other related preventive services that positively impact the health and wellbeing of the enrolled women and contribute to better birth outcomes. Preventive services will include screening and treatment for hypertension, diabetes, and high cholesterol. Women with these chronic conditions are at increased risk for a variety of complications for both themselves and their babies. The Healthy Texas Women demonstration also will include breast and cervical cancer screening and diagnostic services to ensure women in Texas are receiving the care they need to detect cancer early. The Healthy Texas Women demonstration will provide screenings and limited pharmaceutical treatment for postpartum depression. To prevent gaps in coverage and improve interconception health, eligible women whose Medicaid for pregnant women coverage period is ending will be automatically enrolled into the Healthy Texas Women demonstration. This continuity of care is especially important when considering postpartum depression may have an onset up to one year after a woman's pregnancy ends.

The state recognizes that maintaining an adequate provider network is critical to the program, and the state has taken efforts to ensure network adequacy. Over the past 5 years, through program outreach efforts, the Texas women's health provider base has increased by 250 percent as noted in the state's application on page 49.

The demonstration will furnish medical assistance in a manner that improves the sustainability of the safety net

CMS has determined that Healthy Texas Women is likely to promote the objective of furnishing medical assistance because it provides coverage beyond what Texas is required to provide in the state plan. Under Healthy Texas Women, the state provides medical assistance to populations whose coverage is not mandated in statute, as well as benefits, including screening and treatment for postpartum depression, which are not mandated in statute.

The Healthy Texas Women demonstration may impact overall coverage levels as individuals avail themselves of the unique benefit package not otherwise eligible as family planning or preventative care under Medicaid. This demonstration will increase low-income women's access to cost-effective family planning services, preventing unwanted pregnancies and the associated costs to Medicaid. The demonstration also allows the state to provide screenings for cholesterol, diabetes, and high blood pressure. The program will also screen and provide treatment for postpartum depression, provide immunizations, and provide breast and cervical cancer screening and diagnostic services. These preventive services are expected to improve the health of the women in the demonstration and may lead to Medicaid program savings, to the extent women become Medicaid-eligible during or after their pregnancy.

By incentivizing preventive care, as described above, Healthy Texas Women is also designed to lead to higher quality care at a sustainable cost. Promoting improved health and wellness ultimately helps to keep health care costs at sustainable levels. To the extent that the demonstration helps beneficiaries achieve improved health, this further advances the objectives of the Medicaid program by helping Texas stretch its limited Medicaid resources, ensure the long-term fiscal sustainability of the program, and ensure that the health care safety net is available to those Texas residents who need it most. Therefore, the Secretary has determined that the Healthy Texas Women section 1115 demonstration is likely to assist in promoting the objectives of the Medicaid program.

While CMS and the state are testing the effectiveness of provider requirements, the program is designed to make services accessible in order to support achievable health outcomes. Texas has taken steps to include adequate beneficiary protections to ensure that the demonstration's requirements are consistent with the statutory requirement in section 1902(a)(30)(A) of the Act. The state will submit to CMS an implementation plan which will outline how the state intends to identify a data-driven process to review access to care.

The monitoring and evaluation sections of the STCs align those sections with CMS' current approach to monitoring and evaluation for section 1115 demonstrations and specify that CMS has the authority to require the state to submit a corrective action plan if monitoring or evaluation data indicate that demonstration features are not likely to assist in promoting the objectives of Medicaid. The STCs further specify that any such state corrective action plan could include a temporary suspension of implementation of demonstration programs, in circumstances where data indicate substantial, sustained directional change, inconsistent with state targets (such as substantial, sustained trends indicating difficulty accessing services). CMS would further have the ability to suspend implementation of the demonstration should corrective actions not

effectively resolve these concerns in a timely manner. These updates will better aid the state in measuring and tracking the demonstration's impact on Texans affected by it, and give CMS additional tools to protect beneficiaries if necessary. As described in the STCs, if monitoring or evaluation data indicates that demonstration features are not likely to assist in promoting the objectives of Medicaid, CMS reserves the right to require the state to submit a corrective action plan to CMS for approval. Further, CMS reserves the right to withdraw expenditure authorities at any time it determines that continuing the expenditure authorities would no longer be in the beneficiaries' interest or promote the objectives of Medicaid.

Consideration of Public Comments

To increase the transparency of demonstration projects, section 1115(d)(1) and (2) of the Act direct the Secretary to issue regulations providing for two periods of public comment on a state's application for a section 1115 project that would result in an impact on eligibility, enrollment, benefits, cost-sharing, or financing. The first comment period occurs at the state level before submission of the section 1115 application and the second occurs at the federal level after the application is received by the Secretary.

Section 1115(d)(2)(A) and (C) of the Act further specify that comment periods should be "sufficient to ensure a meaningful level of public input," but the statute imposes no additional requirement on the states or the Secretary to address those comments, as might otherwise be required under a general rulemaking. Accordingly, the implementing regulations issued in 2012 provide that CMS will review and consider all comments received by the deadline, but will not provide written responses to public comments.³

CMS received 18,422 comments during the federal comment period on the Healthy Texas Women demonstration. Although CMS is not legally required to provide written responses to comments, CMS is addressing some of the central issues raised by the comments and summarizing CMS' analysis of those issues for the benefit of stakeholders. After carefully reviewing the public comments submitted, CMS has concluded that Healthy Texas Women is likely to promote the objectives of Medicaid.

General comments

The majority of the comments CMS received opposed the demonstration as a whole. Many of those comments expressed general concerns that the demonstration will negatively impact beneficiaries' ability to access family planning preventive services and reproductive healthcare. While CMS shares the commenters' concern that everyone who needs Medicaid and meets programmatic eligibility criteria should have access to it, this demonstration would not "negatively impact" any Medicaid beneficiary's current ability to access family planning preventive services and reproductive health care. This is because all women eligible for Medicaid under the state plan would continue to get the unrestricted choice of providers of family planning service provided for in section 1902(a)(23) of the Act, and the non-state plan

³ 42 CFR § 431.416(d)(2); see also Medicaid Program; Review and Approval Process for Section 1115 Demonstrations; Application, Review, and Reporting Process for Waivers for State Innovation; Final Rules, 77 Fed. Reg. 11678, 11685 (Feb. 27, 2012) (final rule).

eligible individuals who would get coverage under this demonstration are already subject to the restrictions on freedom of choice that would be in place under this demonstration.

More generally, these comments reflect a misunderstanding of the nature of a demonstration project. It is not necessary for a state to show in advance that a proposed demonstration will in fact achieve particular outcomes; the purpose of a demonstration is to test hypotheses and develop data that may inform future decision-making. As HHS previously explained, demonstrations can “influence policy making at the [s]tate and Federal level, by testing new approaches that can be models for programmatic changes nationwide or in other [s]tates.” 77 Fed. Reg. at 11680. Regardless of the degree to which Texas’s demonstration project succeeds in achieving the desired results, the information it yields will provide policymakers real-world data on the efficacy of such policies. That in itself promotes the objectives of the Medicaid statute.

Comments addressing individual demonstration features

Provider Limitation

The vast majority of comments received oppose the provider restrictions required in order to conform to the Texas state law, which calls for the exclusion of providers who perform or promote abortions or affiliate with providers who do so. Commenters contended that the provider limitation is not legally permissible, does not demonstrate experimental value, and is not likely to promote the objectives of Medicaid. CMS disagrees with commenters’ assertions. As discussed above, CMS considered this feature of the demonstration in the context of the whole demonstration and determined that the demonstration promotes the objectives of Medicaid by increasing access to coverage for beneficiaries who are otherwise ineligible for Medicaid and increasing programmatic fiscal sustainability. We recognize that individuals eligible for services under the demonstration may not be able to access their preferred provider; however, as noted above, none of the beneficiaries in this demonstration have access to all preferred providers under the current state-funded program, and overall the demonstration provides thousands of individuals with access to family planning providers they would not otherwise have. CMS will require the state to rigorously monitor and evaluate beneficiary eligibility and access to services, including whether the provider limitation creates an undue burden on beneficiaries. Texas previously offered family planning services with similar provider restrictions through a fully state-funded program and did not evaluate impacts on access to care to the extent required by this demonstration extension approval. Therefore, CMS believes that the features of this demonstration are worth testing to determine whether there is a more effective way to furnish medical assistance. As with all demonstrations, CMS reserves the right to withdraw its authority if it is determined that the provider limitation negatively impacts health outcomes.

Citizenship and Immigration Status Verification

Of the comments received on eligibility status verification, most comments were opposed to this requirement. Commenters were concerned that additional verification requirements for citizenship and immigration status will create unnecessary administrative hurdles for applicants that will delay or completely prevent access to coverage. Also, commenters believe this

requirement is in direct conflict with the demonstration goal of increasing access to family planning services. CMS has carefully considered these comments, and is retaining this eligibility status requirement under the Healthy Texas Women demonstration. The state has agreed to provide potentially eligible women with a reasonable opportunity to present the state with evidence indicating a satisfactory immigration status, in accordance with section 1137(d) of the Act.

Eligibility Renewal

A few commenters mentioned concerns that requiring beneficiaries to complete renewal applications every 12 months, rather than use the renewal process described in 42 CFR 435.916, creates unnecessary administrative burden, which would subsequently result in coverage losses. CMS will be monitoring the states transition to alignment with systems and processes with other insurance affordability programs per the terms of this demonstration.

Minor Consent

Some comments argued that the demonstration should not authorize the requirement for parents and legal guardians of a minor from age 15 to 17 to apply, renew, and report changes on a beneficiary's behalf because it will diminish the confidentiality of minor beneficiaries seeking services. After further consideration, Texas is not including this provision in the Healthy Texas Women demonstration and the demonstration will only cover those age 18 or over.

Pre-MAGI Eligibility

Some commenters were concerned that waiving requirements for modified adjusted gross income (MAGI) methodology would not meet the objectives of Medicaid, is not legally permissible, and does not present an experimental purpose. CMS is not including this provision in the Healthy Texas Women demonstration.

Other Information

CMS's approval of this demonstration is conditioned upon compliance with the enclosed list of waiver and expenditure authorities and the STCs defining the nature, character and extent of anticipated federal involvement in the project. The award is subject to our receiving your written acknowledgement of the award and acceptance of these STCs within 30 days of the date of this letter.

Your CMS project officer for this demonstration is Ms. Lorraine Nawara, who can be contacted to answer any questions concerning the implementation of this demonstration at 410-786-4252 or at Lorraine.Nawara1@cms.hhs.gov. Official communications regarding program matters and correspondence concerning the demonstration should be submitted to her at the following address:

Centers for Medicare & Medicaid Services
Center for Medicaid and CHIP Services
Mail Stop: S2-25-26
7500 Security Boulevard
Baltimore, MD 21244-1850

Official communications regarding this demonstration should be sent simultaneously to Ms. Nawara and to Mr. Bill Brooks, Director, Division of Medicaid Field Operations South in our Dallas office. Mr. Brooks' contact information is as follows:

Centers for Medicare & Medicaid Services
1301 Young St.
Room 900
Dallas, TX 75202
Telephone: (214) 767- 4461
E-mail: Bill.Brooks@cms.hhs.gov

If you have any questions regarding this approval, please contact Mrs. Judith Cash, Director, State Demonstrations Group, Center for Medicaid and CHIP Services at (410) 786-9686.

Sincerely,

A large black rectangular redaction box covers the signature area.

Seema Verma ✓

cc: Bill Brooks, Director, Division of Medicaid Field Operations South