Medicaid & Legislative Update for 2017

Michelle Apodaca, Haynes and Boone, LLP
John Berta, Texas Hospital Association
Topic Areas

- Texas Politics
- State Budget
- Interim Charges & Preparing for 85th Legislature
- Medicaid 1115 Waiver
- Other HHSC Initiatives
2016 Election Cycle & State Impacts

- Presidential (Clinton v. Trump)
- Texas Senate (20/11 Republican Majority)
- Texas House (99/51 Republican Majority)
- State Impact -
  - More conservative Texas Legislature
  - Senate v. House dynamics
  - No spending of Rainy Day funds
  - Trauma fund (DRP) in jeopardy with no replacement
  - Potential rate cuts
  - No Medicaid/Coverage Expansion -
    - Jeopardizes 1115 Waiver
Republican State Leadership

- Governor Greg Abbott
- Lt. Governor Dan Patrick
- Speaker Joe Straus
- Attorney General Paxton

Major changes in the Legislature as will:
- House Committee Chairmen shuffle
- Legislature, particularly Senate, more conservative
- Retirements and tough re-election bids for Straus and his lieutenants
State Budget – FY 2018-2019 – Drop in Federal Rate

Cost to Provide $100.00 in Texas Medicaid Payments

<table>
<thead>
<tr>
<th>Year</th>
<th>Texas</th>
<th>Feds</th>
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<tbody>
<tr>
<td>FY2013</td>
<td>$40.70</td>
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<tr>
<td>FY2014</td>
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<td>FY2017</td>
<td>$43.82</td>
<td>$56.18</td>
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</table>
Oil and gas downturn hurts Texas sales tax revenue

DAILY GPI / NGI THE WEEKLY GAS MARKET REPORT / NATURAL GAS PRICES / DRILLING
Effect of Texas Energy Patch Woes Spreading

Texas sales tax revenue down, comptroller reports
Straus laid out a host of tough issues lawmakers must consider as they begin discussing the next budget:

- Plunging oil prices slowing revenues and the economy,
- A foster system in crisis that courts may require Texas to fix,
- A potentially costly ruling in long-winding school finance suit and
- The need for a long-term solution to fund health care for retiring teachers.

(And he didn’t even mention some other potentially costly legal battles).
State Dynamics: Major Issues

- Energy Tax Revenues: Impact on Rainy Day Fund
- HHS spending outpacing all other
- Financing Public Education
- *Refusal* to accept Medicaid expansion funding
- *Medicaid funding shortfall* for balance of current biennium (est. $2-2.5 B)
- $800M for state Psychiatric hospitals
- Child Protective Services (CPS)
- Infrastructure Needs
Planning for 85th Legislative Session – Healthcare Providers

- Rate Cuts
- Interim Charges
- More pay for performance and quality initiatives
- HHSC Initiatives & Transformation of the whole Enterprise
- Trauma Fund
- Waiver Renewal & Supplemental Funds
Hospital Funding Concerns

- **No Long-Term Funding Methodology for Safety Net Hospitals** – The 2017 Texas Legislature must reconsider the issue, given absence of a sustainable funding source
  - 2015 Legislature provided $299M for *safety net* hospitals; $213M for state trauma centers; and $80M for rural hospitals
  - 2013 Legislature provided “one-time” allocation of $300M for Disproportionate Share Hospital (DSH) eligible hospitals
  - Recent state legislatures have not supported any tax/revenue bills (ex., hospital bed tax; quality assurance fee)
Local Provider Participation Fund

- Local Provider Option - New
- Bowie
- McLennan
- Bell
- Beaumont
- Gregg
- Hays
- Rusk
- Brazos
Hospital reimbursement methodologies (supplemental payments, Medicaid safety-net and trauma add-ons, and reimbursement methodologies for rural and children's hospitals). Monitor the extension of the Texas Healthcare Transformation and Quality Improvement 1115 waiver.

Study the state's trauma system.

Historical growth of the Texas Medicaid program (factors affecting caseload and cost trends, effectiveness and identify savings of initiatives for fraud and abuse, reduce costs, and improve the quality).

Review the HHSC's Medicaid managed care organizations policies and procedures including a review of quality initiatives, contract management and Vendor Drug Program drug formularies. Determine what mechanisms or policies could be modified or strengthened to encourage increased participation or retention of health care providers in the Medicaid managed care system.
Transparency and adequacy of health care networks, and consumer protection legislation regarding disputes over out-of-network services.

Penalty calculations under Texas's prompt payment laws.

Explore opportunities to expand and improve the delivery of healthcare and identify methods to increase awareness by provider groups, including institutions of higher education, and payers of telemedicine activities being reimbursed in Texas.

Improving birth outcomes - Study barriers pregnant women face enrolling in services and receiving regular prenatal care. Identify factors, including substance abuse, associated with preterm birth and review services available for mothers postpartum.
Senate Interim Charges - Highlights

- **Impact of the Section 1115 Waiver** - Explore other mechanisms and make recommendations to control costs and increase quality and efficiency in the Medicaid program, including the pursuit of a block grant or a Section 1332 Medicaid State Innovation Waiver for the existing Medicaid program.

- **Driver Responsibility Program** and make recommendations for alternative methods of achieving the program's objectives.

- **Improve quality and oversight in long-term care settings**, including nursing homes and ICF/HCS programs. Monitor the implementation of legislation related to the revocation of nursing home licenses for repeated serious violations.

- **Study and make recommendations to address the state's ongoing need for inpatient forensic capacity**, including the impact of expanding community inpatient psychiatric beds.

- Examine the **cause of action known as "wrongful birth."** The study should examine 1) its history in Texas, 2) its effect on the practice of medicine and 3) its effect on children with disabilities and their families. Examine related measures proposed or passed in other states.
• Straus laid out a host of tough issues lawmakers must consider as they begin discussing the next budget:
  • Plunging oil prices **slowing revenues and the economy**,  
  • a foster system **in crisis** that courts may require Texas to fix,  
  • a potentially costly ruling in long-winding school finance suit and  
  • the **need for a long-term solution** to fund health care for retiring teachers.  
  • (And he didn’t even mention **some other potentially costly legal battles**).
State Budget – FY 2016-2017

- Total Budget: $209.4 billion AF/$106.6 billion GR
  - (3.6% AF increase over FY 14-15)
- Total Article II – HHS Budget: $77.2 billion AF/$33.4 billion GR ($2.4 billion AF increase over FY 14-15)
  - Does NOT include:
    - Cost growth costs
    - PCP payment increase
- Tax Cuts:
  - $3.8 billion in tax cuts
  - Property tax reduction
Medicaid 1115 Waiver
Medicaid Transformation Waiver Extension

What’s at Stake?

- **UC Funding**
  - $17.6 billion between 2011 and 2016
  - Offset some of the costs of providing care to uninsured and Medicaid patients

- **DSRIP Projects and Funding**
  - 1,491 active projects
    - Increasing access to primary care, behavioral health services, specialty care
    - Improving chronic disease management
    - Reducing unnecessary use of hospital ER
    - Promoting better health outcomes
    - Integrating behavioral health and physical health care
  - $11.4 billion in earned payments between 2011 and 2016

- **Statewide Medicaid Managed Care** - $8.65 B in savings
Medicaid Waiver – Overview

- Managed care expansion – FY2017 = 92% MCO
- Allows statewide Medicaid managed care services (STAR, STAR+PLUS, and Children’s Medicaid Dental Services) while preserving historical UPL funding.
- Develop and maintain a coordinated care delivery system
- Improve health outcomes while containing costs
- Protect and leverage federal match dollars to improve the healthcare infrastructure
- Transition to quality-based payment systems across managed care and hospitals
Medicaid Waiver - Overview

Section 1115 of the Social Security Act gives the Secretary of Health and Human Services authority to approve experimental, pilot, or demonstration projects that promote the objectives of the Medicaid and CHIP programs.

<table>
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<th>Expire/Begin</th>
<th>Approval Date</th>
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<tr>
<td>Texas 10/1/2011</td>
<td>CMS – 12/12/2011</td>
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<td>California 1/1/2016</td>
<td>CMS – 12/30/2015</td>
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<td>Tennessee 6/30/2016</td>
<td>6/30/2016 – 2 Month</td>
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<tr>
<td>Texas 12/31/2017</td>
<td>TBD</td>
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Medicaid Transformation Waiver Extension

Extension Timeline

- Current five-year waiver expires Sept. 30, 2016
- Request was for another 5-year term
- No major changes to managed care, DSRIP or UC terms and conditions
- CMS Granted 15-month extension!
Waiver Timeline

Current Waiver Expires 9/30/2016

15 Month Extension

20 Month Negotiation Period

Current Method of Finance Expires 8/31/2017
Waiver Renewal – Agreements

- As part of the 15 month extension, CMS required Texas to agree that:
  - CMS and Texas will work over the next 15 months on an agreement to reform the state’s UC pool and DSRIP.
  - If, at the end of calendar year (CY) 2017, CMS and the state have not come to an agreement that is consistent with CMS’ UC pool principles and a DSRIP that supports Texas’ commitment to managed care:
    - DSRIP will not be renewed except as a phasedown starting at the end of CY 2017. The phase down would begin at 25 percent in 2018, and phase down by an additional 25 percentage points each year afterwards.
    - UC will not be renewed except at a reduced level consistent with CMS’ principles for uncompensated care.
Waiver Components

- Uncompensated Care (UC) Pool:
  - Replaces UPL
  - Covers Medicaid shortfall and costs of care provided to individuals who have no third party insurance coverage.

- Creates 20 Regional Healthcare Partnerships (RHPs)

- Delivery system Reform Incentive Payment (DSRIP) Pool
  - New incentive program to support coordinated care and quality improvements through the RHPs.
  - Goals: transform delivery systems to improve care for individuals (including access, quality and health outcomes), improve health for the population and lower costs through efficiencies and improvements.
  - Targets Medicaid recipients and low income uninsured individuals
## Waiver Extension UC and DSRIP

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<tr>
<th></th>
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<td>$3,534,000,000</td>
<td>$3,348,000,000</td>
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<td>$3,100,000,000</td>
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<td>DSRIP</td>
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<tr>
<td>% UC</td>
<td>88%</td>
<td>63%</td>
<td>57%</td>
<td>54%</td>
<td>50%</td>
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<tr>
<td>% DSRIP</td>
<td>12%</td>
<td>37%</td>
<td>43%</td>
<td>46%</td>
<td>50%</td>
<td>50%</td>
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MEDICAID DEMONSTRATION WAIVERS

Approval Process Raises Cost Concerns and Lacks Transparency
GAO Recommendations

1. Update the agency’s written budget neutrality policy to reflect actual criteria and processes used to develop and approve demonstration spending limits, and ensure the policy is readily available to state Medicaid directors and others; and

2. Reconsider adjustments and costs used in setting the spending limits for the Arizona and Texas demonstrations, and make appropriate adjustments to spending limits for the remaining years of each demonstration.
Waiver Spending

Medicaid Capitation Waiver Spending


—WOW —WW
### Sample Per Member Per Month Amounts

<table>
<thead>
<tr>
<th></th>
<th>Under Age 1</th>
<th>Ages 1-5</th>
<th>Ages 6-14</th>
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<tr>
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<td>134.13</td>
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<td>175.87</td>
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<td>631.16</td>
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<td>248.07</td>
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<td>148.69</td>
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<td>El Paso First - El Paso</td>
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<td>163.87</td>
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Waiver Spending

Medicaid Capitation Waiver Spending


Savings
UC
DSRIP
NAIP

—WOW —WW
CMS Initiatives

Response: address all portions of the graph:
- Top line, tighten inflation; disallow older costs
- Bottom line, tighten Medicaid managed care rules
- Gap – tighten rules around measurement and allowance supplemental payments
Waiver Spending

Control Spending – Lower WOW
1. Lower inflation (CA) 6.2% down to <4.0%
2. Cost Sharing
   1. Phase out savings
   2. Projects > 5 Years – savings phased down
      1. YR 6 = -10%
      2. YR 7 = -20%
      3. YR 13 = -75%
Waiver Spending

Medicaid Capitation Waiver Spending


—WOW —WW

Savings UC DSRIP

New WOW
Managed Care Rules

- Actuarial Soundness Requirements
- Rate Development Standards and Rate Certification Requirements
- Medical Loss Ratio
- Delivery System Reform
  - In-Lieu-of-Services
  - Capitation Payments for Enrollees with a Short-Term Stay in an Institution for Mental Disease
- Incentive Arrangements
- Withhold Arrangements
- Delivery System Reform and Provider Payment Initiatives
# Sample Per Member Per Month Amounts

<table>
<thead>
<tr>
<th>Monthly Adjusted Premium Rate</th>
<th>Under Age 1</th>
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**Actuarial Soundness**

1903(m) of the Social Security Act requires that capitation rates paid to managed care organization be actuarially sound in order for a State to receive FFP on the capitation payment.

438.4(b)(5): Payments from any rate cell must not cross-subsidize or be cross-subsidized by payments for any other rate cell.
Supplemental Funding @ Risk

- CMS interpretations of federal regulations pertaining to the use of certain types of public/private arrangements such as Low-Income and Needy Care Collaboration Agreements, Collaborative Endeavor Agreements and Public-Private Partnerships.
- New federal managed care regulations limiting the use of IGT Responsibility Agreements.
- Statutory reductions in future DSH allocations under the Affordable Care Act
- CMS UC pool principles
- CMS’ position regarding “pay-to-play” arrangements
Method of Finance

- CMS Deferral – 18 months ago
- Public/Private Affiliation Agreements Reviewed
- THHSC met with CMS over the summer
- CMS notifies Texas current arrangements are good thru August 2017
- THHSC to continue to “draw out” CMS on August 2017 position
DSRIP

1,451 active DSRIP projects

- 298 providers – hospitals (public and private), physician groups, community mental health centers and local health departments

- Major project focuses:
  - Over 25% - behavioral healthcare
  - 20% - access to primary care
  - 18% - chronic care management and helping patients with complex needs navigate the healthcare system
  - 9% - access to specialty care
  - 8% - health promotion and disease prevention.

- Over $7.1 billion earned through January 2016
HHSC Future DSRIP Principles

- Further incentivize transformation
- Maintain program flexibility
- Integrate with Texas Medicaid managed care quality strategies
- Streamline and lesson administrative burden
- Improve project-level evaluation
- Support the healthcare safety net for Medicaid and low income uninsured Texans
# Supplemental Funding – DSH

## Table 4: National ACA DSH Reductions and Amendments

<table>
<thead>
<tr>
<th>FFY</th>
<th>Original ACA Reductions ($ millions)</th>
<th>Revised per Medicare Access and CHIP Reauthorization Act of 2015 ($ millions)</th>
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<td>2014</td>
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<tr>
<td>2015</td>
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<td>2016</td>
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<td>2019</td>
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<tr>
<td>2020</td>
<td>$4,000</td>
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<tr>
<td>2021</td>
<td>Each state's 2021 allotment is equal to its 2020 allotment increased by % change in CPI for FFY 2020</td>
<td>$5,000</td>
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<tr>
<td>2022</td>
<td>Each state's 2022 allotment is equal to its 2021 allotment increased by % change in CPI for FFY 2021</td>
<td>$6,000</td>
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<tr>
<td>2023</td>
<td>Revert to methodology in place prior to reductions</td>
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<tr>
<td>2024</td>
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<td>2025</td>
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<td>$8,000</td>
</tr>
<tr>
<td>2026</td>
<td>Revert to methodology in place prior to reductions</td>
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UC Pool Evaluation

- Estimate what Texas’ UC burden would be in FFY 2017
  - If Texas Medicaid rates fully funded the Medicaid shortfall
  - If Texas opted to expand Medicaid as allowed under the ACA.

  - Shortfall = ~$2.4B
  - Expansion = 1/3 of Uninsured
Other HHSC Initiatives
Medicaid Managed Care Client Enrollment

- Further incentivize transformation
- As of April 2015:
  - 3,976,027 clients are enrolled in Texas Medicaid
  - 3,408,877 members are enrolled in:
    - STAR – 2,800,660
    - STAR Health – 30,818
    - STAR+PLUS – 577,399
  - 405,000 members are enrolled in Children’s Health Insurance Program (CHIP)
Texas Managed Care Programs

- STAR (State of Texas Access Reform)
  - Pregnant women without disabilities and children
  - Provides acute care services
- STAR+PLUS
  - Persons with disabilities and “dual eligibles” (eligible for both Medicare & Medicaid)
  - Integrates acute & Long-Term Services and Supports (LTSS)
- STAR HEALTH
  - Medical, dental, vision, behavioral services for children in foster care
- Dental Maintenance Organizations
  - Provides dental care for children in Medicaid/CHIP
- NorthSTAR
  - Behavioral health services to STAR clients and non-Medicaid eligible residents in Dallas services delivery area.
Texas Managed Care Timeline

- STAR+PLUS available statewide on September 1, 2014
- Individuals receiving intellectual and developmental disabilities (IDD) waiver services began receiving acute care services through STAR+PLUS on September 1, 2014
- Nursing facility services carved into STAR+PLUS on March 1, 2015
- The Medicare-Medicaid Dual Eligible Integrated Care Project (Dual Demonstration) began enrolling individuals on March 1, 2015
- Behavioral health integrated on September 1, 2014
- Community First Choice (CFC) in June 2015
- STAR Kids in November 2016
- IDD pilot in 2016
Network Access Improvement Program “NAIP”

- Public Hospitals and health-related institutions
- Existing Medicaid managed care structure
- Costs incorporated into MCO capitation rate
- MCOs develop and implement provider incentive programs with hospitals and HRIs
- Project examples: bonus fund incentives for access to PCPs; expansion of hours/services; targeted specialty recruitment; telehealth/telemedicine; chronic condition-specific focus; pregnancy and childbirth; behavioral health integration; medication management; integrated service delivery for primary and acute care services.
Quality Incentive Payment Program – Delayed

• The Texas Legislature directed HHSC to base payments through the QIPP upon improvements in quality and innovation in the provision of nursing facility services:
  • Culture change
  • Small house models
  • Staffing enhancements
  • Improved quality of care and life for nursing facility resident
Medicaid Provider Reenrollment

• Providers that enrolled before January 1, 2013, must re-enroll by March 24, 2016 or September 25, 2016.

• Long process – up to 6 weeks months complete – factor in wait on TMHP/HHSC.

• Stop and start process.

• [Link](http://www.tmhp.com/Pages/Topics/Reenrollment.aspx)
85th Legislature 2016-2017

Important Dates

9/30/2016 – Current Waiver Expires
11/8/2016 – November Election
1/10/2017 – 85th Texas Legislature Begins
5/29/2017 – 85th Texas Legislature Ends Regular Session
Thru 8/31/2017 – No Deferral of Private Hospital Payments
Questions and Contact

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