

Congress of the United States

Washington, DC 20515

September 29, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave, S.W.
Washington, D.C. 20201

The Honorable Daniel Tsai
Deputy Administrator and Director
Center for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave., S.W.
Washington, D.C. 20201

Dear Secretary Becerra, Administrator Brooks-LaSure, and Deputy Administrator and Director Tsai:

We write to express our significant concern with recent proposed changes to Medicaid financing and the impact they may have on Texans that rely on our state's Medicaid program. The Texas Medicaid program is a vital safety net for elderly and disabled adults, pregnant women, and millions of children in the Lone Star state. In fact, and as of June 2023, the Kaiser Family Foundation (KFF) reported 5.8 million Texans were enrolled in Medicaid, including 3 out of every 8 children in the state¹. As such, the stakes around funding are clearly high, and regulatory unpredictability in Medicaid is a concern we take seriously.

This year, CMS has issued materials that call into question statutory language governing longstanding methods states use to fund the non-federal share of Medicaid payments. These materials include the Informational Bulletin entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments" (the "Bulletin") and the recently-proposed rules for Medicaid and Children's Health Insurance Program Managed Care Finance that were published on April 27, 2023, to be codified at 42 CFR § 438.6(c)(2)(ii)(G) and (H) (the "Proposed Rule").²³

We are concerned that CMS' recently proposed changes directly contradict the understanding upon which Texas and other states have relied for years to operate their Medicaid programs. As Judge Kernodle in the United States Eastern District Court for the Eastern District of Texas, Tyler Division, recently stated in his ruling enjoining CMS from using this unsupported interpretation: "CMS 'may not rewrite clear statutory terms to suit its own sense of how the statute should operate.'"⁴

¹ KFF/Medicaid in Texas/June, 2023/<https://files.kff.org/attachment/fact-sheet-medicaid-state-TX>

² CMS/Bulletin/February, 2023/<https://www.medicaid.gov/sites/default/files/2023-02/cib021723.pdf>

³ CMS/Rule/April, 2023/<https://www.federalregister.gov/documents/2023/05/03/2023-08961/medicaid-program-medicaid-and-childrens-health-insurance-program-chip-managed-care-access-finance>

⁴ State of Texas/Ruling/June, 2023/<https://law.justia.com/cases/federal/district-courts/texas/txedce/6:2023cv00161/221363/31>

We also urge you to consider the pronounced impact these changes would have on the ability of Texas to care for its' most vulnerable citizens. For example, should CMS adopt the Proposed Rule, Texas will likely lose its \$6 billion hospital state directed payment program (SDP) and its \$756 million physician SDP. Such a drastic funding loss will jeopardize care delivery across our state.

Finally, we are concerned that CMS' proposal to use the agency's Departmental Appeals Board (DAB) process to rule on denials of pre-prints, which are usually submitted annually, would provide the agency with broad authority to deny states an impartial and fair review of SDPs. If approved, this proposal would permit the agency unlimited leverage over states that are seeking approval of SDPs. The DAB has also had trouble in the past adjudicating cases in a timely manner, due to an overwhelming number of hearing requests and a backlog of appeals. We are confident that adding SDP appeals to DAB jurisdiction will only further exacerbate this issue. In summary, if this proposed change is adopted, CMS would have the ability to delay any final decision on pre-prints, leaving states scrambling on how to fund Medicaid, and more importantly, leaving people without access to lifesaving care.

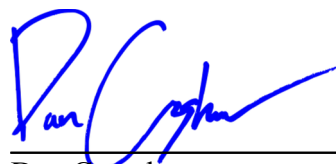
As you know, consistent, predictable, and adequate funding is necessary to ensure that a large portion of Texas residents – mainly women, children, the elderly and disabled – have access to the care they need. The uncertainty created by this rulemaking will likely cause healthcare providers to limit the number of Medicaid patients they serve, or worse, withdraw from the program altogether.

We ask that you continue to engage with stakeholders, state leadership, and Members of Congress who share your goal of ensuring transparency in the Medicaid program.

Sincerely,



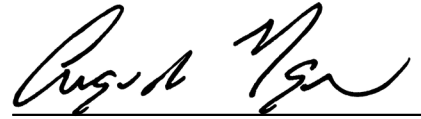
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Member of Congress



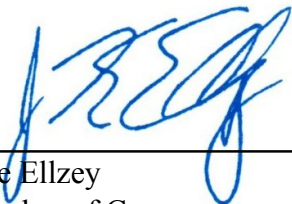
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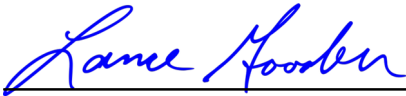
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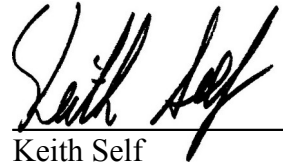
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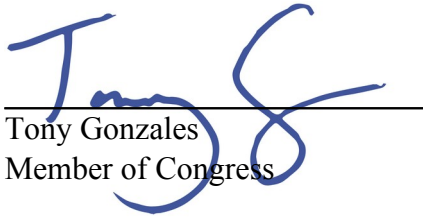
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