

1-1 By: Kolkhorst S.C.R. No. 31  
 1-2 (In the Senate - Filed March 12, 2021; April 1, 2021, read  
 1-3 first time and referred to Committee on Health & Human Services;  
 1-4 May 14, 2021, reported favorably by the following vote: Yeas 9,  
 1-5 Nays 0; May 14, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 SENATE CONCURRENT RESOLUTION

1-18 WHEREAS, Plaintiffs Dorena Coleman, Curtis Jackson, and  
 1-19 Federico Perez, individually, (collectively referred to as  
 1-20 "Plaintiffs"), filed suit on August 13, 2020, against the Texas  
 1-21 Health and Human Services Commission, including employees in their  
 1-22 official capacities ("HHSC"), and sought relief both on Plaintiffs'  
 1-23 own behalf and on behalf of a class of similarly situated  
 1-24 individuals ("Medicaid HCV Class"), and filed a motion for class  
 1-25 certification on August 14, 2020; and

1-26 WHEREAS, Plaintiffs alleged HHSC's Prior Authorization  
 1-27 Criteria and Policy's use of fibrosis score as criterion for direct  
 1-28 action antiviral drug (DAA) coverage violated Title XIX of the  
 1-29 Social Security Act:

1-30 (a) By discriminating among similarly situated Medicaid  
 1-31 recipients on the basis of categorical restrictions that are not  
 1-32 based upon prevailing clinical standards, as prohibited by 42  
 1-33 U.S.C. § 1396a(a)(10)(B)(i) and (ii) and 42 C.F.R. § 440.240;

1-34 (b) By denying qualified Medicaid participants the  
 1-35 provision of necessary medical assistance and treatment coverage  
 1-36 with "reasonable promptness," as required by 42 U.S.C.  
 1-37 § 1396a(a)(8);

1-38 (c) By excluding qualified Medicaid recipients from  
 1-39 medically necessary treatment coverage as required by 42 U.S.C.  
 1-40 § 1396a(a)(10)(A); and

1-41 WHEREAS, Defendants denied the allegations of the Lawsuit,  
 1-42 denied all allegations of wrongdoing and liability, and denied any  
 1-43 causation of harm or damage to the Medicaid HCV Class; and

1-44 WHEREAS, The parties mediated this matter on December 1,  
 1-45 2020, with the Honorable Patrick Keel as mediator, and thereafter  
 1-46 successfully reached an agreement in principle on December 17,  
 1-47 2020; and

1-48 WHEREAS, The Parties have now agreed to a full settlement on  
 1-49 the following terms:

1-50 (a) HHSC will modify its Medicaid prior authorization (PA)  
 1-51 criteria to treat chronic Hepatitis C clients who have METAVIR  
 1-52 fibrosis scores of F2-F4 with Direct Acting Antiviral (DAA)  
 1-53 treatment by March 1, 2021;

1-54 (b) Between March 1, 2021, and September 1, 2021, Medicaid  
 1-55 enrollees with severe extrahepatic effects of chronic Hepatitis C  
 1-56 who have fibrosis scores other than F2-F4 will be approved for DAA  
 1-57 treatment on a case-by-case basis by the HHSC Chief Medical  
 1-58 Director or an MCO Medical Director, if they are assigned to an MCO;

1-59 (c) As of September 1, 2021, HHSC will remove all METAVIR  
 1-60 fibrosis score, drug screening, and specialist prescription PA  
 1-61 criteria requirements for DAA treatment for chronic Hepatitis C

2-1 clients, if the legislature approves the funding for HHSC's  
2-2 Exceptional Item (EI); HHSC agrees that, for the period September  
2-3 1, 2021, through August 31, 2023, HHSC will not reinstate these  
2-4 criteria; and

2-5 WHEREAS, This Agreement is expressly conditioned upon  
2-6 approval by the Office of the Attorney General of Texas, the  
2-7 Governor of Texas, and the Texas Legislature; and

2-8 WHEREAS, This Agreement is expressly conditioned upon  
2-9 enactment by the Texas Legislature of the EI requested by HHSC; and

2-10 WHEREAS, Section 111.003(b), Texas Civil Practice and  
2-11 Remedies Code, requires a state agency to obtain legislative  
2-12 approval of a settlement agreement that "commits this state to a  
2-13 course of action that in reasonable probability will entail a  
2-14 continuing increased expenditure of state funds over subsequent  
2-15 state fiscal bienniums"; therefore, the Settlement Agreement is  
2-16 expressly conditioned upon the legislature approving and  
2-17 appropriating the agreed upon settlement amount; now, therefore, be  
2-18 it

2-19 RESOLVED, That the 87th Legislature of the State of Texas  
2-20 hereby approve the proposed Settlement Agreement.

2-21

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