TOPIC: HEALTH CARE ACCESS AND MEDICAID

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Introduction

Texas faces difficult decisions in the months and years to come.

But bold leaders will seize this is an opportunity for Texas to embrace reforms that reduce spending and decrease dependency in Medicaid. Even before the COVID-19 pandemic, Texas was on an unsustainable trajectory in its Medicaid program. Twenty years ago, Texas spent 23 percent of its state budget on Medicaid.[1] Today, Texas spends 31 percent of its state budget on Medicaid.[2]

Without proactive reform, Texas will fall behind. But leaders can make a difference. Policy matters. And good choices are out there.

Start unlocking the handcuffs on Texas Medicaid in recent federal legislation

Texas has been handcuffed by the federal government in protecting its budget during the COVID-19 pandemic under the Families First Coronavirus Response Act (FFCRA). Although Texas is receiving an additional 6.2 percent in funding for the traditional population on Medicaid, Texas is prohibited from making any changes in the program, **nor can it remove anyone--even ineligible individuals--from Medicaid**.[3]

This provision must be changed to give states a fighting chance, and Congress needs to hear from states about their budget concerns. State legislators can reach out to their congressional delegation to urge the removal of federal handcuffs that limit states from controlling their Medicaid programs.

But if the federal government fails to fix this problem, Texas should start unlocking the handcuffs itself or at least mitigate the fiscal damage.

First, although Texas has accepted the federal funds and expensive restrictions thus far, it is not too late to change course. The text of the law makes the FMAP increase explicitly conditional on states accepting these handcuffs. In other words, Texas can forego this raw deal and uncuff itself by notifying the Centers for Medicare and Medicaid Services (CMS) that the state will proceed with scheduled, annual redeterminations and remove enrollees who are ineligible. Other states are actively considering this option.

Second, if this is politically untenable, Texas should give ineligible individuals an opportunity to voluntarily disenroll more easily. While the FFCRA bars Texas from removing ineligible individuals unless they voluntarily remove themselves, the Department of Health and Human Services (DHHS) can make that process much easier. As DHHS continues its annual redeterminations, it should send mailers to those found to be ineligible. In the mailing, DHHS should give them a choice: respond if they wish to remain on the program temporarily for as long as the FFCRA's restrictions are in place or take no further action and they will be voluntarily disenrolled.

Third, and at the very least, it is absolutely essential that DHHS continue conducting annual Medicaid redeterminations, even as enrollees found to be ineligible cannot be removed. This will ensure timely removal when it is allowed. DHHS should also prepare to review every enrollee not already found to be ineligible as soon as the provision is lifted. Effective oversight in the legislature can ensure these actions.

Enhance welfare and unemployment program integrity

Huge amounts of wasteful and fraudulent payments can be prevented by incorporating automatic and regular data cross-checks with available government data on household income and wage records, death records,

incarceration records, DMV data, lottery winnings, and out-of-state EBT card spending. States with data cross-checks have been able to save hundreds of millions for the truly needy.[4]

Texas legislators should require the state to submit the following waivers:

- *End automatic renewals and pre-populated forms*: Current regulations strain state administration of Medicaid by requiring states to proactively renew eligibility for able-bodied adults on Medicaid. Some renewal forms are even required to be pre-populated on behalf of enrollees.[5] This facilitates fraud by making it easy to commit and difficult to detect. Texas should ask to waive these requirements.[6]

- *Implement fraud lock-outs*: Currently, Medicaid recipients who fail to report changes in their income or other household changes in a timely manner have limited or no penalties and likely will not even be disenrolled when the failure to report is discovered. Kentucky requested through an 1115 waiver permission to unenroll individuals who, "fail to report changes in circumstance in the required reporting period," and then implement a lockout period of six months.[7] This change ensures that anyone who commits fraud by failing to report changes that could make them ineligible is off the program, at least for a period of time.

- *More frequent eligibility redeterminations:* Improper payments are primarily driven by eligibility errors, in part because an Obama-era regulation restricts states from redetermining Medicaid eligibility more often than once every 12 months.[8] Increasing eligibility redeterminations from annually to quarterly or, at least, semi-annually, will save money as ineligible enrollees are removed more quickly.[9] Several states have already requested to waive the rule limiting redeterminations to an annual process.[10] Considering reports that reviews find that about 30 percent of enrollees are ineligible upon redetermination, more frequent reviews could save about $125-250 million in state dollars per year.[11] While FFCRA restrictions make this impossible to implement currently, nothing prohibits Texas from filing a waiver, getting approval, and putting this process in place in order to be prepared for when the COVID-19 public health emergency lifts and the restrictions expire.

Work requirements for able-bodied adults on Medicaid

Texas cannot afford to wait much longer to reform Medicaid to get able-bodied enrollees back to work. And because individuals can comply with a work requirement even in weaker economies through training and volunteering, the requirement is flexible enough to meet this moment.

Since the Trump administration notified states that they would accept requests for Medicaid work requirements, at least 18 states have requested some form of work requirement through an 1115 waiver request, with eight already approved. Prior to a court pausing the requirement in Arkansas, the results of that state's work requirement in Medicaid were promising. Nearly 138,000 people left the program, 87 percent of whom left with increased incomes or for reasons other than failure to comply with the requirement.[12]

Institute periodic time limits in Medicaid

Lifetime limits have been effective in Texas' cash welfare program. That program limits how long certain able-bodied adult populations may stay enrolled in the program.[13] These time limits lead to more employment, higher wages, and less dependency.[14]

Texas should take a similar approach in their Medicaid programs for able-bodied, working-age adults to help reduce dependency and costs in the state and increase access to private health care coverage.

To do so, Texas should apply for a waiver from regulations which currently prevent the imposition of a periodic time limit of 24 consecutive months for able-bodied adults ages 18 to 64.[15] By limiting the time limit to able-bodied adults, states can focus more resources on seniors and individuals with disabilities and decrease enrollment as more able-bodied adults get into jobs with private coverage.

Eliminate the abuse of "presumptive eligibility" determinations in hospitals

Right now, if an individual in Texas goes into a hospital and answers a few questions about income, hospitals can deem the individual presumptively eligible for Medicaid. Even if the person lied about their income or is found to be ineligible for some other reason later, Texas is on the hook to pay for that person's treatment.

This opens the door to massive amounts of waste and fraud.[16] States can protect taxpayers and the vulnerable by returning to the regulatory structure that was in place before 2014 and limit presumptive eligibility to children and pregnant women.[17] Thankfully, some states have already taken the lead, including Utah, Illinois, and Maine, which have requested the authority to return hospital presumptive eligibility to those limited populations. This is a good policy, and lawmakers in Texas should follow their lead.[18-19-20-21]

Conclusion

Thank you very much for the opportunity to provide this written testimony. In this moment of reinvention, I look forward to working together to find opportunities to reduce spending in welfare programs as more Texans get back to work.

References

[1] Nicholas Horton, "The Medicaid pac-man: How Medicaid is consuming state budgets," Foundation for Government Accountability (2019), https://thefga.org/research/medicaid-pac-man/

[2] Ibid.

[3] Sec. 6008 of the Families First Coronavirus Response Act; Public Law No: 116-127.

[4] Foundation for Government Accountability, "Unemployment Insurance Program Integrity", Foundation for Government Accountability (2020), https://thefga.org/wp-content/uploads/2020/01/Unemployment-Insurance-Program-Integrity-one-pager.pdf.

[5] 42 C.F.R. 435.916(a)

[6] 42 C.F.R. 435.916(a)

[7] Centers for Medicare and Medicaid Services, "Letter approving Kentucky's 1115 waiver request," United States Department of Health and Human Services (2018), https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ky/ky-health-ca.pdf.

[8] Centers for Medicare and Medicaid Services, "Medicaid program: Eligibility changes under the Affordable Care Act of 2010," Federal Register 77(57): 17,144-217 (2012), https://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6560.pdf.

[9] Victoria Eardley and Jonathan Ingram, "How the Trump administration can crack down on Medicaid fraud," Foundation for Government Accountability (2018), https://thefga.org/research/medicaid-fraud-reform-trump-administration.

[10] Centers for Medicare and Medicaid Services, "Medicaid program: Eligibility changes under the Affordable Care Act of 2010," Federal Register 77(57): 17,144-217 (2012), https://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6560.pdf.

[11] Authors' calculation based on other states saving 1 to 2 percent of total Medicaid spending with more frequent eligibility checks

[12] Nicholas Horton and Jonathan Bain, "The truth about Arkansas' Medicaid work requirement reporting requirements," Foundation for Government Accountability (2019), https://thefga.org/research/arkansas-medicaid-work-requirement-facts/.

[13] 42 U.S.C. 608(7)

[14] Nic Horton and Jonathan Ingram, "Work Requirements are Working for Kansas Families: How Welfare Reform Increases Incomes and Improves Lives," Foundation for Government Accountability (2017), https://thefga.org/wp-content/uploads/2017/07/Work-Requirements-are-Working-for-Kansas-Families.pdf.

[15] 42 U.S.C. 1902(a)(17), 42 U.S.C. 1902(a)(10)(A), and 42 CFR 435

[16] Sec. 1902. (47)(b) https://www.ssa.gov/OP_Home/ssact/title19/1902.htm.

[17] 42 U.S.C. 1396a(a)(47)(B)

[18] Utah Division of Medicaid and Health Financing, "1115 Primary Care Network Waiver," Utah Department of Health (2017), https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ut/ut-primary-care-network-pa3.pdf.

[19] Illinois Department of Healthcare and Family Services, "Illinois Continuity of Care & Administrative Simplification 1115 Waiver" (2019), https://www.illinois.gov/hfs/SiteCollectionDocuments/11272019Section1115DemonstrationContinuityofCareandAdministrativeSimplificationupdated.pdf.
[20] Georgia Department of Community, "Georgia 'Pathways to Coverage' Section 1115 Demonstration Waiver Application (2019), georgia_pathways_1115_waiver_application_final_12.23.2019_vf.pdf
[21] Department of Health and Human Services State of Maine, "1115 Waiver Application" (2019), https://www.maine.gov/dhhs/oms/documents/Draft_MaineCare_1115_application.pdf