

Fact Sheet: the Texas 1115 Waiver Renewal/Texas Coverage Gap Conversation

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- [Texas' Medicaid 1115 waiver](#) was based on California's "Bridge to Reform" Waiver. The goal of the Texas waiver was to build health system capacity and to support innovations so that when more Texans gained health coverage in 2014 through both Medicaid Expansion and the new private insurance Marketplace, the health care system would be more efficient and better able to absorb new, formerly uninsured patients.
- Texas submitted its waiver request July 13, 2011 assuming that Texas would adopt Medicaid Expansion for adults and would also have newly-insured residents just above the poverty line insured in the new marketplace. The Texas waiver was approved December 12, 2011—six months before the Supreme Court ruling effectively made the Medicaid Expansion optional for states. **Federal Medicaid officials' approval of Texas' waiver was also based on the assumption that Medicaid Expansion would be in all 50 states.**
- The 2012 Supreme Court ruling was very specific and targeted. It said that the expansion of Medicaid to adults was such a novel and fundamental change to the Medicaid program that **states ought not be at risk of losing their entire Medicaid funding** if they failed to implement the provision. It did not repeal any provisions of the Affordable Care Act (ACA), and it did not diminish federal authority to enforce Medicaid law.
 - In Texas, the Health and Human Services Commission (HHSC) reports Medicaid paid \$25.1 billion in medical and long term care bills in 2014 (the most recent year with complete numbers). The 1115 waiver and hospital supplemental payments --**both funded with local dollars**, not state budget funds -- added another \$6-7 billion.
 - Texas' 1115 waiver budget for the 5-year period initially approved (2012-2016) totals \$29 billion, of which about \$17 billion are the federal funds gained by Texas over 5 years.
 - (the \$12 billion in matching funds are mostly from **local governments**, with a modest state general revenue contribution)
 - Texas' waiver expires 9/30/2016, and we will submit our renewal request 9/30/2015.
- The \$17 billion number above for Texas' 1115 waiver is divided between two pools: Uncompensated Care (UC), and Delivery System Reform Incentive Pool (DSRIP).
 - The UC pool is the part that is similar to Florida's Low-income Pool, **and is the part of Texas' waiver most likely to be affected in the renewal process by the new guidelines from Centers for Medicare & Medicaid Services (CMS).**
 - The UC pool makes up 54 percent of the waiver funds in 2015, and will be 50 percent in 2016.
 - Texas' waiver does not provide coverage to any uninsured individuals. It is not, and was never conceived of as an alternative to coverage for Texas' working poor adults.

- **Connecting the Dots:**

- **The entire waiver is not at risk.** A portion of the UC half is what's at risk. *(There may be some reduction or phase-down of DSRIP required in the extension period, but that was always assumed. CMS has been clear that this pool was intended to build capacity, not to provide an ongoing funding stream for health care operations.)*
- Comparing the waiver renewal guidelines (which might reduce a portion of a \$4 billion annual federal payment) to the Supreme Court's 2012 rejection of imposing the "death penalty" of losing the whole \$30+ billion annual Texas Medicaid budget may be an **overstatement**. ("The Supreme Court ruled that the Constitution prohibits the federal government from threatening to withhold billions in Medicaid funding from States that do not accept Obamacare's massive expansion of an already broken and bloated Medicaid program. Chief Justice Roberts called this lawless threat 'a gun to the head.' The Supreme Court made it very clear that the Constitution does not allow the federal government to use these coercive tactics against the States.")
- Florida has not filed suit yet, so it remains to be seen what the specific legal arguments **would be**. ("I commend Governor Rick Scott's decision to take legal action to protect these important constitutional principles. Texas will support Florida in its litigation against the federal government. Medicaid expansion is wrong for Texas. Florida's approach should be determined by Floridians, not coerced by federal bureaucrats.")
- Texas HHSC estimates Medicaid Expansion or an Alternative Waiver coverage expansion (e.g., Arkansas, Indiana) would net \$6 billion each year in federal funds for Texas. ***Finding a conservative coverage solution like other states have done would bring Texas the annual \$6 billion or more without a time limit, and would allow Texas to negotiate the largest possible waiver extension for the longest possible period.***
- Texas has accounted for a quarter of U.S. hospital closures since 2010, though we account for just 8.5 percent of the US population. Urban hospitals have been buffered some from the fiscal damage of not getting new Medicaid revenues (intended to offset Medicare inflation controls), but few rural hospitals have gained enough from the 1115 to be protected. ***Again, a coverage solution for Texas would provide needed revenues to all our hospitals, and retain the largest possible waiver for the longest possible period.***

- Background on the Texas 1115 Transformation Waiver can be found here:

<http://www.hhsc.state.tx.us/1115-Waiver-Overview.shtml>

For more information or to request an interview, please contact Oliver Bernstein at bernstein@cphp.org or 512.823.2875.

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