

Status Update: State Actions to Improve Access to COVID-19 Testing and Treatment—Governor Abbott, HHSC and TDI

Texas Actions Taken, and Actions Still Needed

By Melissa McChesney, Stacey Pogue and Anne Dunkelberg

NOTE: CPPP gratefully acknowledges the collaboration of Texans Care for Children and the Children's Defense Fund Texas in compiling these best practices. On March 26, 2020, over 50 state organizations signed on to a letter requesting action from the Governor. Read the letter [here](#).

If we are serious about saving lives in this pandemic, we must ensure that every Texan is able to **access testing and treatment, without fear of economic costs**. In support of that goal, CPPP submitted a memorandum of recommended policy changes to **Governor Abbott, the Texas Health and Human Services Commission and the Texas Department of Insurance**.

This document updates the status of those recommendations as of April 20, 2020. Text from the original memo is in black, updates since the March 23 submission are in blue font, and the most urgent remaining priorities are in red.

Updated Background

TESTING: On March 18, 2020, the President signed the [Families First Coronavirus Response Act](#), (HR 6201), into law, which established important requirements for **both public and private insurance** providers to give access to testing for COVID-19 and testing-related services, without out-of-pocket costs. For the uninsured, it included optional 100% federal Medicaid funding to test the uninsured, plus another \$1 billion in public health disaster for testing for the uninsured. On March 27, 2020, the U.S. House of Representatives passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which made an *additional* \$100 billion funding allocation to support COVID-19 testing and treatment costs for hospitals.

INCREASED FEDERAL MATCH: The Families First Coronavirus Response Act provides an automatic 6.2 percentage point increase in federal matching funds for Medicaid enrollees (other than ACA expansion adults) **to every state** through the end of the quarter in which the federal emergency ends, and looking back to 1/1/2020. States must meet Medicaid Maintenance of Effort (MOE) provisions included in the FFCRA in order to keep the additional federal funds.

The federal MOE requires Texas Medicaid (*during the emergency period*) to:

- (1) Refrain from cutting Medicaid eligibility standards OR imposing enrollment procedures that are more restrictive;
- (2) Keep all Medicaid enrollees covered who were on the rolls as of March 18, 2020 (the date of enactment) or who newly enroll during the public health emergency; and
- (3) Cover, without cost-sharing, testing services and treatment for COVID-19 in “regular” Medicaid, including vaccines, specialized equipment, and therapies.

(There is a 4th provision about not raising premiums, but Texas has no premiums in Medicaid.)

Without this MOE, there is no protection for Medicaid coverage in states. States will be under pressure to cut state spending to balance budgets, and Medicaid coverage cuts would be a likely target in Texas. And of course, preventing Medicaid cuts and easing pressure on state budgets in a time of disaster is precisely why increased federal match is offered in the first place. Allowing states to accept the funding, and then turn around and cut Medicaid coverage would work against that goal.

There were efforts to eliminate the Medicaid MOE in the CARES act, and more efforts to cut these protections are expected to arise again as Congress debates the next (4th) COVID-19 bill.

The new laws leave some important decisions to each governor to make, and also leave some problems unresolved that only the state governments can fix, because they are regulated only at the state level.

Each of the options described is available under current federal law or waiver authority:

I. Most Urgent:

Texas must avoid the dangerous public health consequences if a large share of our uninsured population is left out of testing and tracking of the disease. **Unobstructed access to testing is critical not only now as Texas moves toward peak levels of COVID-19 illness in the weeks and months ahead, but also is essential to our future ability to ease the level of required social distancing and re-open our state economy.**

- **Opt into and implement as soon as possible special [100% federally funded testing for the uninsured through Medicaid](#) (Congress' FFCRA, HR 6201). **Texas HHSC announced on 4/17/2020 that the agency has submitted a Medicaid State Plan Amendment to provide coverage for COVID-19 testing and related visits for uninsured Texans.**
 - The CARES Act clarified that “uninsured individuals” eligible for free testing include those eligible for limited Texas Medicaid benefits programs for breast or cervical cancer, and family planning services from Healthy Texas Women. [Federal guidance details](#) on this limited coverage for testing were released Monday 4/13/2020.**
- **Ensure that non-U.S. citizens in Texas who are uninsured can also access free testing statewide.** Roughly 1 in 5 uninsured Texans could be [excluded](#) from the Medicaid-linked COVID-19 option due to immigration status, because the Medicaid testing funding [is interpreted to exclude both lawfully present immigrants who are in their first five years in the U.S., and undocumented immigrants.](#) **This is still urgently needed.**

There are two principal federal sources for funding these testing costs.

- **First, additional 100% federal funding was allocated in both FFCRA and CARES, and can be available statewide to ensure that all uninsured Texans—regardless of immigration status—can access free testing.**
 - \$1 billion in the Families First Act was allocated *for testing*, and an additional \$100 billion in funding in the CARES Act to reimburse [hospitals](#) and other health care entities for health care-related expenses or lost revenues attributable to coronavirus.
 - Both allocations go to the “Public Health and Social Services Emergency Fund,” and under multiple provisions in federal law are not limited by the immigration status of the patient. These federal laws ensure that public funds for diagnosis, testing, and treatment of communicable diseases, emergency medical care, and disaster relief cannot be restricted based on immigration status.
 - This funding allocated in the FFCRA and the CARES Acts is available in addition to the uncapped Medicaid-linked funding for testing (not “either/or”).
- **A second approach to ensuring that uninsured non-U.S. citizen adults (both lawfully present and undocumented) can access free testing** is via state Medicaid policy. Several states ([CA](#), [NY](#), [WA](#)) have defined the testing benefit as a service that can be provided under “Emergency Medicaid,” which allows state Medicaid programs to pay for life-saving care (not comprehensive coverage) to persons who meet every other qualification for Medicaid except immigration status.

- **Free up Texas HHSC eligibility systems and staff to concentrate on new applications for Medicaid, the Supplemental Nutrition Assistance Program (SNAP) and the Children’s Health Insurance Program (CHIP), the new Medicaid testing program, and other critical HHSC tasks.** HR 6201 requires the state to suspend nearly all terminations of Medicaid coverage until after the federal disaster period is over (except for individuals who voluntarily end their coverage or move out of state).

The following policy steps will take work off the HHSC plate and ensure HHSC eligibility staff can prioritize the testing program and the expected new applications as more families experience job loss or reduced work hours.

- **Suspend renewals for Medicaid and CHIP** to comply with HR 6201 and eliminate unnecessary work, so beneficiaries keep their current coverage and can continue to receive health services. Leaders will need to make a plan for staggered renewals after the emergency has ended to avoid an overwhelming renewal processing load. **HHSC has suspended renewals for Medicaid as required by the FFCRA. However, they are waiting on an official response from CMS to suspend renewals for CHIP.**
- **Suspend periodic data checks between renewals for children’s Medicaid and the small number of parents covered in Texas Medicaid.** As no terminations of coverage are allowed, these activities will be a waste of scarce resources. **Income checks for Medicaid have been suspended. However, HHSC has not indicated a suspension of the 6-month income checks that occur for CHIP households at 185 percent of the federal poverty level and higher. These income checks should also be suspended.**
- **Ensure sufficient staffing levels at HHSC to process applications, as HHSC has experienced a significant backlog and delay in Medicaid and SNAP processing in the last 5 months.** HR 6201’s 6.2-point Medicaid federal matching rate increase (FMAP) will offset these and other health care costs related to COVID-19. **HHSC data on application “timeliness” for March, show significant improvement compared to February, with 83% of applications being processed “timely,” up from 67%. (Applications processed within the federally required 45 days, are considered “timely”). However, timeliness has not yet returned to normal rates around 95%. HHSC has made significant steps to adjust to current constraints and has a nationally recognized model for allowing telework that should avoid some reduction in staff resources. We will continue to monitor application processing and timeliness.**
- **Minimize paperwork required from applicants by relying on the self-attestation and electronic data sources allowed under federal Medicaid law** to the maximum extent possible. Follow up with verification requests only when the attestation is not compatible with up-to-date information from electronic data sources. **Texas has taken the positive step of allowing households to self-attest to their income if the normal verification methods like paystubs or contacting employers are unavailable. However, Texas should further minimize paperwork required from applicants by relying on the client’s statement and electronic data sources for all eligibility criteria (for example, residency, age, and relationships) as allowed under federal Medicaid law.**

HHSC has also waived the interview requirement for very-low-income parents during application.

- **Fill remaining gaps to ensure free COVID-19 testing for Texans with private insurance.** The Families First Coronavirus Response Act takes a vital step by covering the costs of COVID-19 testing to uninsured Texans, as well as those in Affordable Care Act-compliant insurance, self-insured plans used by many governments and larger businesses (including plans “grandfathered” under the ACA), Medicaid, CHIP, Medicare, TRICARE, Veterans Affairs, coverage for federal civilians, and the Indian Health Services. However, this provision of the new federal law does not apply to some bare-bones insurance and non-insurance coverage sold to Texans (including short-term plans, fixed-indemnity plans, health-sharing ministries and direct primary care).

- We applaud Governor Abbott's and TDI's earlier request for state-regulated insurers to do the same. We urge his administration to take all additional steps needed to ensure that all of Texas' state-regulated plans are held to the same high standard of coverage of testing without out-of-pocket costs, including testing-related costs like office visits or facilities fees, and with no surprise bills. **No additional steps are needed to ensure testing is covered with no out-of-pocket costs for traditional health insurance. TDI has [linked to insurers' coverage updates related to COVID-19](#).**
- TDI should require any bare-bones, temporary, and non-insurance plans that are not required to cover testing with no out-of-pocket costs by federal law or state directive to immediately inform their customers and provide them with information on how to access free testing for the uninsured. **This is still needed. On March 31, TDI formally encouraged limited-benefit plans to cover COVID-19 testing with no out-of-pocket costs, the same way traditional health insurers do. TDI also asked these plans to improve transparency about how they cover (or don't cover) COVID-related care. TDI is updating its online list of insurers that are making no-cost testing available. As we posted this, it appeared that only one short-term plan insurer had voluntarily complied, with a clear, publicly-posted policy outlining COVID-19 tests with no out-of-pocket costs.**

2. Other Time-Sensitive Needs:

We urge the Governor to pursue the following:

- **In keeping with the intent of Congress in the FFCRA and CARES act, identify and eliminate any remaining Texas policy barriers to:**
 - telehealth/telemedicine/telephonic care in Medicaid, CHIP, and private insurance for the duration of the emergency; **For Medicaid, HHSC has encouraged Medicaid and CHIP health plans to take full advantage of existing flexibility to provide telehealth services. On March 17, the Texas Department of Insurance issued [an emergency rule](#) to improve access to telehealth services in state-regulated health insurance plans.**
 - coverage for 90-day supplies of needed medical supplies and maintenance medications, allowing advance refills, and covering home delivery; **Texas State Board of Pharmacy authorized pharmacists in Texas to dispense up to a 30-day supply of medication (other than a schedule II-controlled substance) in the event a prescriber cannot be reached. On April 1, the Texas Department of Insurance issued [an emergency rule](#) to ensure that state-regulated health insurance plans cover an early, 90-day refill at more locations, including by home delivery.**
 - prevention, testing, and treatment of COVID-19, through specific actions already requested by Governor Abbott and TDI of state-regulated insurers on March 10. TDI should assess which of the requested actions have been completed uniformly by insurers voluntarily and which may need to be addressed through emergency rule or other means. **TDI has built on its March 10 bulletin by requiring specific actions listed [here](#). It appears that the only items requested in the March 10 bulletin, that have not since been required are: waiving requirements for prior authorization referrals, notification of hospital admission, and medical necessity reviews to facilitate care consistent with CDC guidance. If plans have not taken action in a consistent manner, TDI should require these changes.**
- **Include in Texas' COVID-19 public awareness campaign information about:**
 - Free COVID-19 testing, including availability without regard for immigration status;
 - The fact that Medicaid and CHIP will fully cover testing without co-payments (per HR 6201), including for Texas' CHIP Perinatal enrollees.

A broad public awareness campaign including these elements is still urgently needed.

- **Drop CHIP cost sharing for additional services:** In addition to the suspension of CHIP copayments for office visits and prescription drugs, Texas should eliminate any other out-of-pocket costs that may be related to COVID-19 treatment or a related hospitalization, suspend enrollment fees, and suspend the 90-day waiting period for new CHIP coverage.

HHSC has taken the following positive steps: CHIP will cover COVID-19 testing for CHIP clients with no prior authorization or cost-sharing required. (This is required by the FFCRA). CHIP co-payments for office visits and telemedicine are waived through the end of April 2020.

The following actions are still needed for Texas CHIP: waive enrollment fees, the 90-day waiting period, 6-month income checks, and copays for *all* covered medications and services.

3. Other Policies to Ease Access to Medicaid

- Adopt presumptive eligibility (PE) for all eligible populations, including children. Consider expansion of PE-qualified entities, including PE determinations at drive-thru COVID-19 testing sites. CMS has indicated flexibility to states around PE.
- Increase out-stationed eligibility staff at FQHCs and DSH hospitals.
- Implement Express Lane Eligibility (ELE) to ensure children enrolled in SNAP are also enrolled in Medicaid.
- Invest in greater Medicaid-CHIP outreach and enrollment assistance to maximize Medicaid's reach.
- **NEW need: HHSC must allow flexibility for community-based organizations to provide enrollment assistance remotely, in a manner that meets the needs of clients and supports continued social distancing.**

All of these actions could still be done to ease access to Medicaid.

4. Best Practice Policies to Reduce Barriers to Testing and Treatment

The following are policy options available to Texas under current law which would provide vital improved access to comprehensive care (including COVID-19 treatment) for uninsured, the elderly, and Texans with disabilities.

- **Expand Medicaid, which would create coverage estimated to reach 1.5 million currently uninsured Texas adults.**
- Restore continuous coverage for children's Medicaid (via State Plan Amendment) and for the small number of parents covered under Texas Medicaid (via 1115 waiver).
- Eliminate asset tests for Medicaid for the elderly and persons with disabilities.
- Increase the number of slots in HCBS waivers.
- Increase the income limit for Medicaid-CHIP coverage of children to at least 300% of the federal poverty income. Only 7 states have an upper income limit lower than Texas' — and 19 states have an upper limit above 300% of the federal poverty level for children.
- Exercise Texas' option to provide Medicaid maternity coverage for lawfully present immigrant pregnant women. Texas is one of only 6 states that do not.

All of these actions could still be done to reduce barriers to testing and treatment.

Additionally, we encourage the Abbott administration to work with federal partners to achieve these federal goals, via legislation or administrative actions:

- Open a special enrollment period for individuals to purchase comprehensive commercial health insurance on HealthCare.gov. **The Trump administration has announced that it does not intend to re-open the federally-facilitated ACA Health Insurance Marketplace. The Trump administration has proposed to instead use part of the \$100 billion fund for hospitals from the CARES Act to pay for COVID-19 treatment for the uninsured. That step alone is insufficient. The Administration or Congress must still act to ensure a streamlined Marketplace special enrollment period.**
- Seek further enhancement of the federal Medicaid matching funds rate (i.e., in the next Congressional COVID-19 act) to further ease mounting pressure on the state budget. **Still needed.**
- Suspend pending CMS regulations that would limit Medicaid financing to states, such as the Medicaid Financial Accountability Rule (MFAR). **Still needed.**
- Provide special funding for Community Health Centers (FQHCs) to help with costs of serving uninsured Texans and the costs of helping Texans enroll in Medicaid, CHIP, and HealthCare.gov coverage. **The CARES Act included supplemental awards of \$1.32 billion in FY 2020 for health centers for the detection of SARS-CoV-2 or the prevention, diagnosis, and treatment of COVID-19. It also allows FQHCs and rural health clinics to provide telehealth services to Medicare beneficiaries, now and into the future..**

Nationwide, FQHCs report continued fiscal distress from inadequate supplies of Protective Equipment and a decline in patient visit revenue by insured Americans. The National Association of Community Health Centers has requested that Congress provide a long-term extension to the Community Health Center Fund (set to expire in November 2020) and to align FQHC Medicare telehealth reimbursement with Medicaid to help stabilize operations. An immediate allocation of \$3.1 billion from the Public Health and Social Services Emergency Fund is also requested to enable FQHCs to keep their doors open, and NACHC anticipates needing several billion more in emergency federal funding over the next six months for the detection, prevention, and diagnosis of COVID-19.
- Allocate additional federal funds for outreach and enrollment assistance for public and private insurance. It's estimated that nearly half the 20 million Americans filing Unemployment Insurance claims in the last four weeks (over 1 million in Texas alone) have lost their employer-sponsored insurance, and they will need easy-to-access, qualified assistance finding new sources of coverage. However, in Texas and the other 13 states without Medicaid expansion, there will simply be no alternative source of coverage for some families who have lost employer-based coverage. **Still needed.**

For Questions: Anne Dunkelberg dunkelberg@cphp.org, Stacey Pogue pogue@cphp.org, Melissa McChesney mcchesney@cphp.org