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Medicaid and CHIP in the Texas Budget: Comparing House and Senate Bills

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The comparison between Senate and House bills is a little more complicated than usual. Generally, state agencies were instructed in 2012 by state leaders that for their 2014-2015 budget requests, they could only ask for the same amount of state dollars (general revenue, or GR) that they would spend in 2012-2013. A major exception was allowed for Medicaid, for which agencies were allowed to request funds to cover enrollment ("caseload") growth but (do not look for logic here) not for inflation or other cost increases.

Even though the agencies with Medicaid programs were allowed to ask for GR to cover caseload increases, the Senate still chose to exclude funding to cover Medicaid and CHIP caseload growth from its originally filed "base" budget bill, while the House budget bill introduced in January did include those costs. As a result, some of the "Exceptional Item" (EI) requests from the agencies (the process by which agencies can request funds above the original filed budget version) are different for the House and Senate processes.

Comparison of Selected Major Issues: Medicaid, CHIP, and other Article II "Exceptional Item" Requests and Other Initiatives		
Health and Human Services Commission	**Senate**	**House**
Medicaid Caseload Growth	**Yes:** Senate includes $334.9 million GR in bill	**Yes:** $334.9 million GR more included for this in the House budget as originally filed.
Medicaid Cost Growth HHSC EI #1	**Partial:** Senate adopts $912.7 million out of $1.68 billion requested.	**No:** House does not fund $1.62 billion.
Maintain CHIP Current Services: Costs and Caseload Growth HHSC EI #2	**Partial:** Senate funds $24 million of $49.9 requested for CHIP growth. (Senate did not fund CHIP caseload growth OR costs in original filed budget. The addition of about $3.7 million GR for CHIP caseload costs accounts for the difference from the House's EI #2 requested amount.)	**No:** House does not fund $46.2 million requested for EI #2.
Medicaid Services Provided by Certain ACA Provisions	**No:** Senate did not fund the $760 million GR in requested costs.	**No:** House did not fund $760 million GR requested for HHSC EI #3.

HHSC EI #3 (Coverage for former foster care clients to age 26; increased enrollment of already-eligible children; increased enrollment of already-eligible persons due to 12-month renewal period)	These policy changes related to the Affordable care Act (ACA) are not optional for Texas, and the costs eventually must be covered.	
OIG Staffing/Program Integrity **HHSC EI #4**	**Yes:** Senate funds $18.75 million GR for over 100 more Inspector General staff and related IT needs.	**No:** House lists EI #4 funds only in the Article XI "wish list".
Extend/Expand ACA Medicaid Primary Care Rate Increases **HHSC EI #8**	**No:** Senate did not fund request to extend Medicare-level fees for primary care services into 2015, add OB-Gyns to eligible PCPs, and mirror rates in CHIP and children's programs at Dept. of State Health Services.	**Yes:** House funds $44 million GR for these extensions/expansions.
Expand Family Violence Services **HHSC EI #11**	**No:** Senate lists EI #11 funds only in the Article XI "wish list".	**Yes:** House funds the $2.5 million request with federal Title XX Social Services Block Grant funds.
Reduce HHS Disproportionality and Disparity – HHSC EI #21	**No:** Senate lists EI #21 funds only in the Article XI "wish list".	**Yes:** House funds $1.5 million GR for these initiatives.
Dept. of Aging and Disability Services	**Senate**	**House**
Medicaid Caseload Growth	**Yes:** Senate funds Medicaid caseload growth in programs for seniors and Texans with disabilities, $59.5 million GR	**Yes/NA:** House included these costs in its original filed budget, per the budget instructions.
Maintain Operations at State-Supported Living Centers (formerly "state schools")	**Partial:** Senate funds $17.4 million GR of $22.2 million requested.	**Partial:** House funds $7.8 million GR of $22.2 million requested; lists $9.6 million in Article XI "wish list".
Pre-Admission Screening and Resident Review (PASaRR)	**Yes:** $9.8 million GR	**Yes:** $9.8 million GR
Fund Cost Growth (Community and Institutional)	**Almost:** Senate funds $61.9 million GR of $64.9 requested.	**No:** House does not fund.
Promoting Independence	**Yes:** Senate funds $28.1 million GR of $33.4 requested, with $5.2 million in nursing facility assumed savings accounting for difference.	**Yes:** House funds $28.1 million GR.
Community Services	**Partial:** Senate funds $107.9	**Partial:** House funds $96.4

Expansion *(reducing waiting or "interest" lists, new services)*	of $261.6 million requested; lists $153.8 million in Article XI "wish list". Attendant and habilitation services for IDD clients fully funded at $41.7 million GR.	million of $261.6 million requested. Attendant and habilitation services for IDD clients fully funded at $41.7 million GR.
Protect Vulnerable Texans *(increase staffing to improve oversight & quality)*	**Partial:** Senate funds $11.4 million GR of $19.9 million GR)	**Partial:** House funds $7.4 million GR of $19.9 million request; lists $11.6 million GR in Article XI "wish list".
Expand Program of All-inclusive Care for Elderly (PACE)	**No:** Senate and House did not fund $4.7 million GR requested to increase numbers of sites and persons served. **Note:** Rider 48, Special Provisions Relating to All HHS Agencies, directs that expansion be funded through the movement of clients' moving into PACE from other programs, bringing with them funding for additional slots in PACE.	
Department of State Health Services *(excludes Mental Health, Family Planning)*	**Senate**	**House**
Immunizations	**Partial:** Senate funds $17.9 million GR of $26.5 million requested; fully funds adult "safety net" vaccines, but no funds for meningococcal vaccines.	**Partial:** House funds $13.9 million GR of $26.5 million requested; for adult safety net, with $4 million listed in Article XI "wish list." Meningococcal vaccines also listed in wish list.
Children with Special Health Care Needs (CSHCN)	**No:** Senate does not fund $23.6 million GR requested to serve 802 additional children per year; listed in Article XI "wish list."	**Partial:** House funds $14 million GR of $23.6 million requested. Remaining $9.6 million GR listed in Article XI "wish list." House funds about 60% of request or about 475 children.
Tobacco Cessation/Chronic Disease Prevention	**No:** Senate does not fund $8.57 million GR requested. Listed only in Article XI "wish list."	**Partial:** House funds $2 million GR of $8.57 million requested; directs to partially restore tobacco "quitline". $6.57 million; in Article XI "wish list."
Prevent Healthcare-Related Infections	**Yes:** Senate funds $2 million GR requested (HHSC funding reduced for assumed Medicaid savings).	**Yes:** House funds $2 million GR requested (HHSC funding reduced for assumed Medicaid savings).
Office of Violent Sex offender Management	**Yes:** Senate funds $4.1 million GR requested.	**No:** House lists in Article XI "wish list."
Department of Aging and Rehabilitative Services	**Senate**	**House**
Maintain Early Childhood Intervention service	**Yes:** Senate funds $10.8 million GR requested.	**Yes:** House funds $10.8 million GR requested.

levels at 2.9 hours/child/month		
Expand Autism Services to unserved areas	**No:** Senate does not fund $4.75 million GR requested.	**Yes:** House funds $4.75 million GR requested.
Other DARS EIs	**No:** Senate does not fund Expansion of Independent Living Centers, Interpreter Services for Deaf, or Deaf and Hard of Hearing Services. All are listed in Article XI "wish list."	**No:** Does not fund Expansion of Independent Living Centers (Article XI "wish list" only); **Yes:** Funds $1.3 million request for Interpreter Services for Deaf; **Yes:** Funds $420,000 of $840,000 requested for Deaf and Hard of Hearing Services.
Reduce Waiting List for Comprehensive Rehab Services		**Yes:** House Article II subcommittee added $11.8 million GR to serve an additional 206 clients per year.
Cross-Agency Items	**Senate**	**House**
Acquired Brain Injury	**Yes:** $2.8 million across HHSC and DADS	**Partial:** $2.6 million GR
Community Attendant Care Wage Increases (DADS, HHSC)	**Partial:** $41 million GR of $176.9 million requested; raises the floor for attendant hourly wages to $7.75 in the second year of biennium, to 50 cents above minimum wage.	**Partial:** House included $97.5 million GR to raise the lowest hourly wages by 50 cents to $7.85.
Increase HHS Recruitment and Retention of Direct care Workers	**Yes**: Senate funds $28.5 million GR requested for DADS and DSHS positions (also $18.5 of $38.2 million requested for DFPS)	**Partial:** House funds $24.5 million of $28.5 million GR requested.

Off the List: Funding Issues You Won't find in the Exceptional Items

Personal Attendant Care: Low Wages and No Benefits

Personal attendant care and home health aides help nearly 200,000 seniors and Texans with disabilities with services that allow those Medicaid beneficiaries to live in the most integrated possible community settings, and to avoid more costly institutional care. The very low hourly rates paid for this care by Texas Medicaid make access to reliable attendant care an ongoing challenge, because it is so difficult for qualified workers to live on those wages. The Coalition of Texans with Disabilities reports that workers receive no paid sick leave, no paid vacation and no health insurance. The average worker today is a 55 year old woman.

Wages HHSC requested $176 million GR as part of an "Enterprise Exceptional item" for both DADS and HHSC programs, intended to fund a 50 cent per hour, across-the-board wage increase for all attendant workers. Funded in the chambers' bills now

headed to conference were increases only to the lowest-paid workers' hourly wages. The Senate included $41 million GR to raise the floor for attendant wages to $7.75—50 cents above minimum wage—but not until in the second year of biennium. The House included $97.5 million to raise the floor to $7.85 in 2014.

Impact of ACA on Attendant Care: No Medicaid Expansion Hurts both Workers and Texas Businesses. Many attendant care workers are uninsured today, but given their very low wages, many of them would qualify for coverage if Texas takes advantage of federal Medicaid funding to cover Texas adults below 138% of the federal poverty income line (FPL, $15,856 for an individual, or $26,951 for a family of 3 in 2013).

Under ACA, starting in 2014 employers with more than 50 full-time-equivalent workers who choose not to provide health benefits can be assessed "shared responsibility" penalties if a full-time worker qualifies for taxpayer-funded sliding-scale help with coverage in the new Health Insurance Marketplace. However, employers will not be penalized when workers enroll in the expanded Medicaid called for under the ACA.
Importantly, there is some overlap between the Medicaid coverage group defined in the ACA (0-138% FPL) and the Marketplace sliding-scale subsidy population (100-400% FPL). So, if Texas fails to accept the Medicaid funds and provide for our poorest uninsured, working poor adults from 100-138% FPL will have access to those subsidies—and that will increase the exposure of Texas employers to penalties. A March 2013 report from the Jackson-Hewitt Tax Service concludes that states that do not expand Medicaid will leave employers exposed to higher "shared responsibility" payments under the ACA, and projects that "the decision in Texas to forego the Medicaid expansion may increase federal tax penalties on Texas employers by $299 to $448 million each year."[1]

Unless Texas Medicaid Pays, Workers Increasingly Will Face Reduced Hours. Federal Medicaid law does not require states to cover the new insurance costs of the agencies that hire personal attendants and home health care aides. And, the Texas Legislature and the executive branch have neither debated nor taken action to address this ACA implementation issue. As a result, the businesses and nonprofits that hire attendants face a dilemma: unless Texas Medicaid will "pass through" the new business costs of workers' health coverage (or penalties, which are significantly lower than the cost of health benefits), employer may choose—as some in Texas already have—to limit workers to 29 hours per week or less, in order to avoid penalties which are only triggered by full-time workers accessing the premium subsidies.

This same dilemma is also present for most of Texas' nursing home industry, where the majority of staff are also typically not provided health benefits.
The House version of SB 1 includes a rider (Special Provisions Relating to all Health and Human Services Agencies, section 52), which calls for HHSC and the LBB to calculate the fiscal impact of the employer responsibility penalties on Long-Term Care Medicaid Providers, and report to the Governor and Legislative Budget Board by November 1, 2013. Keeping this rider in the bill will represent a step in the direction of prudent planning for these changes.

A Texas Solution to Coverage for the Lowest-income Uninsured Texans. Neither chamber's bill includes funding dedicated to drawing down the projected $4 billion to $8 billion in federal matching funds in 2014 and 2015 (LBB and HHSC estimates) for health care services if Texas allows our poorest uninsured adults to benefit from coverage as authorized by the ACA. Whether through Medicaid expansion or an Arkansas-style alternative, the new coverage would serve over 1 million more Texans in 2014-15, growing to 1.5 million in 2016-17.

In fact, the best estimates indicate that no new state GR would be needed for 2014-2015. The LBB and independent Texas experts (Perryman, Hamilton) project that accessing federal funds authorized under the ACA will result in net offsets to other GR-funded programs, benefitting Texas taxpayers through reduced local taxes for uncompensated care, significant job creation, and increased local and state revenue collections from new economic activity.

The Arkansas program approved by that state's legislature last week makes it clear that Texas can negotiate a coverage approach with federal authorities that allows our state to use an alternative approach to Medicaid, and still draw the billions in projected federal Medicaid funds. Ensuring that this coverage is in place in January 2014 will save Texas employers an estimated $299 million (or more) in annual penalties.[2] It will also ensure that nearly a million uninsured Texans below poverty are not left out, with no affordable coverage options in 2014, while Texans just above the poverty line gain access to sliding-scale premium assistance.
We believe that the "Texas Solution" language proposed in the Senate's Williams rider (Article IX, Sec. 17.12. Certain Medicaid Funds) should be acceptable to most conservatives, because it proposes a Texas plan rather than an expansion of traditional Medicaid. Chairman William's rider should be retained in the bill to ensure Texas has authority to move forward with a Texas Solution.

Medicaid and CHIP: Building the Next IOU

Neither chamber has fully funded all of the anticipated cost growth in Medicaid and CHIP, but the Senate investments are closer to the projected need. Lawmakers will have to be prepared to appropriate funds for another significant "Medicaid IOU" in 2015, to the extent that inflation and caseload growth are not funded. Adding to the IOU tab will be unfunded costs for new coverage for former foster care youth or the expected increased caseload take-up and retention rates in the program (HHSC EI #8).

If the 2015 Legislature faces another Medicaid IOU, how much will we owe? It is too early to say, as both chambers have indicated they expect to make additional allocations in conference committee. But if the budget were to fund Medicaid and CHIP at the highest levels authorized in the current bills, Medicaid and CHIP appropriations would still be at least $1.5 billion GR below the expected Medicaid and CHIP costs for 2014-2015.

Cost Containment Riders. Adding to the uncertainty regarding the adequacy of Medicaid GR appropriations are riders that appear, in somewhat different versions, in each chamber's bill, requiring Medicaid funding reductions based on projected future savings from a long list of proposed policy changes and initiatives. In the Senate bill, HHSC

rider #51 reduces Medicaid GR for the biennium by $400 million based on savings to be gained from 25 different listed changes. In the House bill's HHSC rider #51, Medicaid GR appropriations are cut by $348.9 million GR linked to a list of 20 options (each version includes a final "additional initiatives to be identified by the HHSC" item).

The lists include both practical and untested items, and are revised versions of the rider in the 2012-2013 General Appropriations Act which introduced, among other changes, the reduction in 2012 of provider fees for Medicaid clients with dual Medicaid-Medicare coverage down to the lower Texas Medicaid rates. Some of these reductions were subsequently reversed or eased by the HHSC when they resulted in major barriers to care for services such as cancer treatment.

Hospital industry analysts estimate that nearly half of the savings in either version of rider #51 appears to be derived from reduced payments to their facilities. They point to the need for Texas Medicaid to require from Medicaid HMOs more responsibility for ensuring delivery of care in the best settings and the avoidance of hospitalizations when possible.

While the drive to improve quality and outcomes in ways that are cost effective is wholly supported by consumer advocates, history has shown that the lists of potential Medicaid cost savings are often minimally analyzed and hastily vetted. Budget watchers and advocates alike should understand that at best these riders introduce additional significant uncertainty into the Medicaid IOU tally, and at worst they can disrupt care for the most vulnerable Texans.

Helping Babies to Adults with Developmental and Rehabilitative Services

Parents of infants and toddlers with developmental delays, and youth and adults recovering from illness and injury all turn to DARS for the services to let them reach their maximum potential. Funding cuts first adopted in 2011 continue to raise concerns. More restrictive eligibility requirements imposed for Early Childhood Intervention in 2011 remain in place, and the program is still funded below 2011 levels. Though both chambers funded the DARS EI request to prevent cutting services for the current, smaller pool of kids, Texas now serves a smaller pool of children in need, and will continue to do so in 2014-2015 under the current budget proposals.

For adults, unless House funding is adopted by conferees in the final budget, fewer Texans will be able to access Comprehensive Rehabilitation Services than were served in 2012-13, and waiting lists for those needing rehab services will grow.

Medicaid and CHIP Provider Rate Cuts from 2011 Remain

Medicaid and CHIP provider payment rate cuts in 2011 reduced 2012-13 spending by over $800 million GR. So far, neither bill reverses those cuts; though the House does include $44 million to extend the federally funded primary care rate increases in 2013-2014 established by the ACA to more providers and into 2015. The Medicaid and CHIP provider rate cuts of 2011—particularly the much deeper cuts applied to non-physician providers—create obstacles for Medicaid beneficiaries and care providers alike. We urge the conferees to reverse cuts to the greatest degree possible.

Waiting Lists for Community-Based Care

Most of the special programs that help Texans with disabilities of all sorts and seniors to live in community settings are Medicaid waiver programs at the Department of Aging and Disability Services (DADS). The agency requested funding to provide services to 16,631 more Texans, with an estimated cost of $220 million GR. The Senate funded "slots" for 5,698 individuals ($66.2 million GR), and the House 4,908 persons ($54.7 million GR). As of February 28, 2013, 105,264 Texans (unduplicated) were waiting on "interest lists" for the chance to get these services.

For more information or to request an interview, please contact Alexa Garcia-Ditta at garciaditta@cppp.org or 512.823.2873.

ENDNOTES

[1] The Supreme Court's ACA Decision and Its Hidden Surprise for Employers: Without Medicaid Expansion, Employers Face Higher Tax Penalties Under ACA, Brian Haile, Jackson Hewitt Tax Service Inc., March 13, 2013; http://images.go.jacksonhewitt.com/Web/JacksonHewittTechnologyServicesLLC/%7b6effb4ab-9091-4659-a8a4-dfbe5a759135%7d_Employer_Penalties_and_Medicaid_Expansion_%28Mar_2013%29_3-11-2013.pdf

[2] Op. Cit.