

AUGUST PFLUGER
11TH DISTRICT, TEXAS

CHAIRMAN OF
THE COUNTERTERRORISM, LAW
ENFORCEMENT, &
INTELLIGENCE SUBCOMMITTEE
DEPUTY WHIP

Congress of the United States
House of Representatives
Washington, DC 20515-4311

1124 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3805

HOUSE COMMITTEE ON ENERGY
& COMMERCE

HOUSE COMMITTEE ON
HOMELAND SECURITY

February 16, 2024

The Honorable Kay Granger
Chairwoman
House Appropriations Committee
H-307
United States Capitol
Washington, D.C. 20515

The Honorable Rosa DeLauro
Ranking Member
House Appropriations Committee
H-307
United States Capitol
Washington, D.C. 20515

Dear Chairwoman Granger and Ranking Member DeLauro:

As you work to finalize the Fiscal Year 2024 Labor, Health and Human Services, and Education, and Related Programs appropriations bill in conference, I respectfully urge my amendment, H.Amdt.798 to H.R.5894, be retained as agreed to by voice vote on November 14, 2023.

I am working with the Texas delegation in a bicameral effort. Together, we have been emphasizing the pivotal role that the amendment plays in ensuring the stability of safety-net providers nationwide and its maintenance of essential care needed for Medicaid beneficiaries.

H.Amdt.798 prohibits the use of federal funds for the finalization, implementation, or enforcement of the Centers for Medicare & Medicaid Services (CMS) February 17, 2023, Informational Bulletin on "Health Care-Related Taxes and Hold Harmless Arrangements" (Bulletin)¹ and CMS's proposal to impose expenditure limits on State-Directed Payments (SDPs) as proposed in CMS's May 3, 2023, proposed rule titled: "Medicaid and CHIP Managed Care Access, Finance, and Quality."²

Please find an enclosed appendix of letters from the Texas Delegation to CMS expressing concerns about the Bulletin and the proposed rule, its legality, and its impact on Texans (Appendix A and Appendix B). Additionally, letters from other stakeholders throughout the country are enclosed, underscoring the need to protect our most vulnerable Americans (Appendices C-G).

Nearly 90 million Americans are covered by the Medicaid program which provides coverage for essential health care services for the elderly and disabled adults, pregnant women, and millions of children, thus serving as a critical safety-net. Medicaid generally pays below the cost of providing care, which forces many safety-net health care providers in economically

¹ <https://www.medicaid.gov/sites/default/files/2023-02/cib021723.pdf>

² <https://www.federalregister.gov/documents/2023/05/03/2023-08961/medicaid-program-medicare-and-childrens-health-insurance-program-chip-managed-care-access-finance>

disadvantaged communities to take on significant financial challenges when administering care for Medicaid beneficiaries.

Unfortunately, recent CMS actions, outlined in both the Informational Bulletin and the proposed rule, deviate from established CMS practice, policy and statutory text. Combined, the Bulletin and proposed rule will severely limit states' ability to draw down critical federal Medicaid payments. These policies will destabilize the Medicaid program and pose a significant threat to safety-net providers nationwide. Preserving state flexibility in the ability to finance and administer the Medicaid program is crucial to maintaining the viability of safety-net providers and access to care for millions of Texans.

With respect to CMS' proposed rule, there are a variety of commendable policies that could enhance access to coverage and care. My amendment targets a specific proposal by CMS to impose expenditure limits on SDPs, however, there various other concerns regarding the proposal that could jeopardize states' access to critical financial resources. While we applaud CMS's goal of enhancing oversight of SDPs, and aiming to bolster fiscal accountability, the proposal to impose expenditure limits will significantly and negatively impact the flexibility and sustainability of states' Medicaid program like Texas.

For example, the proposed rule significantly expands CMS authority over SDPs by granting the agency the power to withhold approval or retroactively deny already-approved SDPs if it believes they are financed with impermissible non-federal dollars. This newfound discretion may introduce uncertainties into states' Medicaid financing structures, potentially hindering their ability to implement and maintain SDPs that contribute to the welfare of Medicaid beneficiaries.

Additionally, a major concern regarding the proposed rule is CMS's reliance on the Bulletin's "guidance" regarding the interpretation of what constitutes an impermissible "hold harmless" arrangement. The proposed rule mandates that individual hospitals participating in SDPs must provide written attestations affirming they are not engaged in any "hold harmless" arrangement. This proposal alone is not concerning, except for the fact that CMS, through the Bulletin, seeks to regulate private contracts and prohibit statutorily authorized and plainly permissible activities.

Although CMS's Bulletin ostensibly provides guidance on long-standing policy, it is in fact a power grab by the agency to implement its failed Medicaid Fiscal Accountability Rule (MFAR) through guidance and without undertaking a formal rulemaking process. The Bulletin takes aim at statutorily authorized, permissible financing arrangements for the Medicaid program. CMS attempts to construe federal statutory language prohibiting "hold harmless" arrangements from government actors to private arrangements. In other words, CMS wants to regulate private contracts. A federal court has enjoined CMS from enforcing this Bulletin in the State of Texas, after ruling that CMS exceeded its statutory authority.³ Furthermore, there is evidence that CMS

³ See <https://law.justia.com/cases/federal/district-courts/texas/txedce/6:2023cv00161/221363/31/>

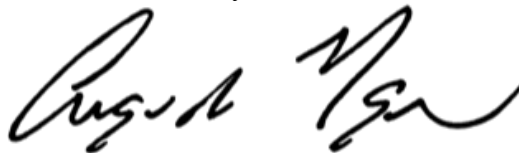
is politically targeting Republican-controlled states that did not expand Medicaid and is using the Bulletin as justification.⁴

States' Medicaid programs are already operating under an ever-increasingly complex regulatory landscape. These proposals by CMS will cause disruptions and add fiscal strain to state Medicaid programs. The expanded CMS authority and stringent attestation requirements may deter states from pursuing innovative SDPs that align with their unique healthcare landscapes and population needs. The risk of retroactive denial introduces unpredictability, affecting planning and financial stability. Healthcare providers, especially hospitals, now face the challenge of navigating a complex landscape of CMS requirements, coupled with intensified scrutiny of their financial arrangements. The proposed rule's stringent criteria for SDP approval and the attestation process impose additional administrative burdens, potentially diverting resources from patient care.

CMS' Bulletin and certain aspects of the proposed rule will have significant and negative impacts on our nation's and the State of Texas' Medicaid safety-net by reducing the ability of states to draw down federal funding for SDPs. Medicaid beneficiaries, not government bureaucracies will be the ones to suffer as reduced funding accelerate hospital closures, reduce service lines like OB-GYN, pediatrics, and behavioral health, limit access to care for low-income Americans, and leave states with no options but to reduce Medicaid benefits and services for the most vulnerable.

My amendment addresses these concerns. Therefore, I urge retention of H.Amdt.798 to H.R.5894 in conference negotiations to ensure continued stability in hospital operations and access to essential care for Medicaid beneficiaries. Thank you for your consideration and support. I look forward to continuing working with you to address this critical issue.

Sincerely,

A handwritten signature in black ink, appearing to read "August Pfluger". The signature is fluid and cursive, with the first name "August" being larger and more prominent than the last name "Pfluger".

August Pfluger

Member of Congress

CC:

Speaker of the House Mike Johnson

House Democratic Leader Hakeem Jeffries

⁴ See https://www.wsj.com/articles/how-bidens-cms-targeted-florida-medicaid-desantis-bc5dab9c?st=g70kzmv9alp9o3m&reflink=desktopwebshare_permalink

Appendix A

Congress of the United States

Washington, DC 20515

September 29, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave, S.W.
Washington, D.C. 20201

The Honorable Daniel Tsai
Deputy Administrator and Director
Center for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave., S.W.
Washington, D.C. 20201

Dear Secretary Becerra, Administrator Brooks-LaSure, and Deputy Administrator and Director Tsai:

We write to express our significant concern with recent proposed changes to Medicaid financing and the impact they may have on Texans that rely on our state's Medicaid program. The Texas Medicaid program is a vital safety net for elderly and disabled adults, pregnant women, and millions of children in the Lone Star state. In fact, and as of June 2023, the Kaiser Family Foundation (KFF) reported 5.8 million Texans were enrolled in Medicaid, including 3 out of every 8 children in the state¹. As such, the stakes around funding are clearly high, and regulatory unpredictability in Medicaid is a concern we take seriously.

This year, CMS has issued materials that call into question statutory language governing longstanding methods states use to fund the non-federal share of Medicaid payments. These materials include the Informational Bulletin entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments" (the "Bulletin") and the recently-proposed rules for Medicaid and Children's Health Insurance Program Managed Care Finance that were published on April 27, 2023, to be codified at 42 CFR § 438.6(c)(2)(ii)(G) and (H) (the "Proposed Rule").²³

We are concerned that CMS' recently proposed changes directly contradict the understanding upon which Texas and other states have relied for years to operate their Medicaid programs. As Judge Kernodle in the United States Eastern District Court for the Eastern District of Texas, Tyler Division, recently stated in his ruling enjoining CMS from using this unsupported interpretation: "CMS 'may not rewrite clear statutory terms to suit its own sense of how the statute should operate.'"⁴

¹ KFF/Medicaid in Texas/June, 2023/<https://files.kff.org/attachment/fact-sheet-medicaid-state-TX>

² CMS/Bulletin/February, 2023/<https://www.medicaid.gov/sites/default/files/2023-02/cib021723.pdf>

³ CMS/Rule/April, 2023/<https://www.federalregister.gov/documents/2023/05/03/2023-08961/medicaid-program-medicaid-and-childrens-health-insurance-program-chip-managed-care-access-finance>

⁴ State of Texas/Ruling/June, 2023/<https://law.justia.com/cases/federal/district-courts/texas/txedce/6:2023cv00161/221363/31>


We also urge you to consider the pronounced impact these changes would have on the ability of Texas to care for its' most vulnerable citizens. For example, should CMS adopt the Proposed Rule, Texas will likely lose its \$6 billion hospital state directed payment program (SDP) and its \$756 million physician SDP. Such a drastic funding loss will jeopardize care delivery across our state.

Finally, we are concerned that CMS' proposal to use the agency's Departmental Appeals Board (DAB) process to rule on denials of pre-prints, which are usually submitted annually, would provide the agency with broad authority to deny states an impartial and fair review of SDPs. If approved, this proposal would permit the agency unlimited leverage over states that are seeking approval of SDPs. The DAB has also had trouble in the past adjudicating cases in a timely manner, due to an overwhelming number of hearing requests and a backlog of appeals. We are confident that adding SDP appeals to DAB jurisdiction will only further exacerbate this issue. In summary, if this proposed change is adopted, CMS would have the ability to delay any final decision on pre-prints, leaving states scrambling on how to fund Medicaid, and more importantly, leaving people without access to lifesaving care.


As you know, consistent, predictable, and adequate funding is necessary to ensure that a large portion of Texas residents – mainly women, children, the elderly and disabled – have access to the care they need. The uncertainty created by this rulemaking will likely cause healthcare providers to limit the number of Medicaid patients they serve, or worse, withdraw from the program altogether.

We ask that you continue to engage with stakeholders, state leadership, and Members of Congress who share your goal of ensuring transparency in the Medicaid program.

Sincerely,



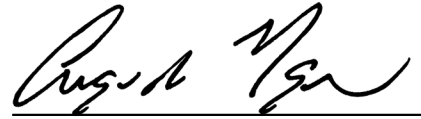
Michael C. Burgess, M.D.
Member of Congress



Dan Crenshaw
Member of Congress



Randy K. Weber, Sr.
Member of Congress



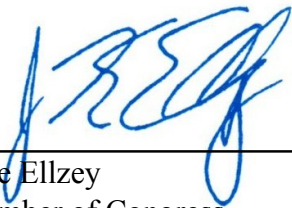
August Pfluger
Member of Congress



Pete Sessions
Member of Congress



John R. Carter
Member of Congress



Jake Ellzey
Member of Congress



Michael T. McCaul
Member of Congress



Brian Babin, D.D.S.
Member of Congress



Roger Williams
Member of Congress



Jodey C. Arrington
Member of Congress



Nathaniel Moran
Member of Congress



Pat Fallon
Member of Congress



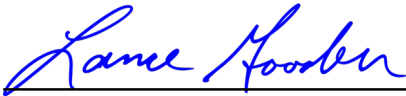
Troy E. Nehls
Member of Congress



Kay Granger
Member of Congress



Ronny L. Jackson, M.D.
Member of Congress



Lance Gooden
Member of Congress



Morgan Luttrell
Member of Congress



Beth Van Duyne
Member of Congress



Chip Roy
Member of Congress



Wesley Hunt
Member of Congress



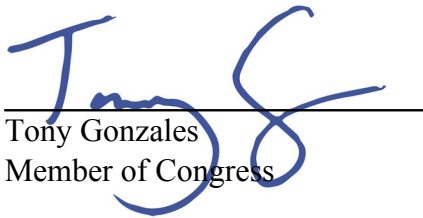
Michael Cloud
Member of Congress



Monica De La Cruz
Member of Congress



Keith Self
Member of Congress



Tony Gonzales
Member of Congress

Appendix B

Congress of the United States

Washington, DC 20515

September 27, 2023

The Honorable Xavier Becerra
Secretary, U.S. Department of Health &
Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Ave., SW Washington,
DC 20201

The Honorable Daniel Tsai
Deputy Administrator and
Director
Center for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201

Dear Secretary Becerra, Administrator Brooks-LaSure, and Deputy Administrator and Director Tsai:

Thank you for your tireless efforts to ensure access to care for our most vulnerable communities. We write today to express growing concerns over the May 3, 2023 proposed rule entitled “Medicaid Program; Medicaid and Children’s Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality”.

Medicaid is a vital program for Americans, especially many elderly and disabled adults as well as pregnant women and millions of children. In Texas, nearly 6 million people depend on Medicaid for access to health care.


While we appreciate the need to ensure the fiscal and legal integrity of the program, we remain concerned that a rule that requires changes to the Medicaid financing structure in Texas could not merely interrupt, but effectively eliminate Medicaid coverage for our state’s most vulnerable populations. This risk is particularly acute and would be particularly devastating at this time, when following the end of the Public Health Emergency, redetermination efforts have resulted in the loss of coverage for many Texans. The threats to access that these changes present simply cannot be sustained by the Texans who need them the most. As of July 2023, more than half a million Texans have lost their Medicaid coverage, and we stand committed to ensuring that there are no further unnecessary interruptions to care for Texans who rely on Medicaid.

We understand that with this proposed rule CMS hopes to address its concerns about the use of provider taxes known as Local Provider Participation Funds (LPPFs) to provide the non-federal share of the proposed hospital directed payment programs (DPPs) and other Texas Medicaid supplemental payment programs. As you know, all states except for Alaska have at least one provider tax in place and rely on these systems as a crucial part of their Medicaid financing structure.¹

LPPFs are a vital part of our health care safety net in Texas, particularly in areas of the state, including the southern border region and the 89 Texas counties where Medicaid patients are primarily served by non-governmental hospitals, and where Medicaid beneficiaries already have limited access to care. Further, it is our understanding that current LPPF arrangements are private arrangements with no state involvement.

For these reasons, we have deep concerns about continued access to care for people in Texas. We ask that before moving forward with this proposed rule, you work with the Texas Health and Human Services Commission and with the hospitals that administer this care to ensure it will not have a negative impact on Texans' ability to access Medicaid. We stand ready to assist in any way to facilitate these conversations and to ensure that these concerns are addressed.


Sincerely,




Marc A. Veasey
Member of Congress




Lizzie Fletcher
Member of Congress




Colin Z. Allred
Member of Congress




Henry Cuellar
Member of Congress



Jasmine Crockett
Member of Congress



Vicente Gonzalez
Member of Congress



Veronica Escobar
Member of Congress



Sheila Jackson Lee
Member of Congress

¹<https://www.kff.org/medicaid/issue-brief/medicaid-financing-the-basics/>

Appendix C



February 15, 2024

The Honorable Chuck Schumer
Senate Majority Leader
S-221 The Capitol
Washington, DC 20510

The Honorable Mike Johnson
Speaker of the House
H-232 The Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Senate Minority Leader
S-230 The Capitol
Washington, DC 20510

The Honorable Hakeem Jeffries
House Minority Leader
H-204 The Capitol
Washington, DC 20515

Dear Leader Schumer, Leader McConnell, Speaker Johnson, and Leader Jeffries,

On behalf of the seven not-for-profit, freestanding children's hospital members of the Children's Hospital Association of Texas (CHAT), **we request your support to (1) restore the state-federal partnership between the Centers for Medicare & Medicaid Services (CMS) and the states to be consistent with the laws passed by Congress, and (2) allow states to continue to fund their Medicaid programs based on state and local needs.**

The Pfluger amendment, adopted by unanimous consent during House floor consideration of the FY24 L-HHS legislation, advances both of these goals with a narrowly scoped limitation on the proposed CMS rule titled "Medicaid Program: Medicaid and Children's Health Insurance Program Managed Care Access, Finance and Quality" (Managed Care Rule).

The Pfluger amendment limits only proposals in the Managed Care Rule that depart from federal law by attempting to redefine Medicaid's long-standing state and federal partnership, specifically regarding how states finance their Medicaid programs. The specific provisions of the Managed Care Rule targeted by the Pfluger amendment expand CMS's regulatory authority, without any change in the underlying statutory authority, to limit sources of the non-federal share authorized by Congress and narrow the permissible sources of local funding for that non-federal share.

On February 17, 2023, CMS published an Information Bulletin, which was subsequently enjoined by a Federal District Judge in the Eastern District of Texas based on the finding that the Bulletin is inconsistent with federal law and regulation. CMS relies on the same assertion of authority enjoined in the Bulletin in its Managed Care Rule: authority that would restrict Texas, and other

February 15, 2024

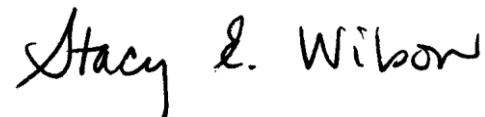
Page 2

states, from using Congressionally-authorized financing methodologies in their Medicaid programs.

The rule, which we anticipate will be finalized in the next few months, puts at risk \$6 billion in Medicaid funding in Texas. The proposed rule is especially problematic for children's hospitals, as they have only two substantive payer sources: private insurance and Medicaid. In Texas, Medicaid covers between 55% and 80% of the days that a child spends in a hospital. Thus, children's hospitals are disproportionately reliant on Medicaid funds. Without these funds, children's hospitals will not be able to continue to serve their communities.

We thank you for your leadership on federal healthcare issues that impact children and youth. We urge you to support the Pfluger amendment and protect the children and youth in Texas – more than 3.5 million children and youth – enrolled in Medicaid. Millions of children and their families depend on Medicaid to access lifesaving and life-sustaining healthcare.

Sincerely,

A handwritten signature in black ink that reads "Stacy E. Wilson". The signature is written in a cursive, flowing style.

Stacy E. Wilson
President

Appendix D



Charles N. Kahn III
President and CEO

November 13, 2023

The Honorable Tom Cole
2207 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

The Honorable Jim McGovern
307 Cannon House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Cole and Ranking Member McGovern,

The Federation of American Hospitals (FAH) is pleased to support Proposed Amendment 204 to the *Labor, Health and Human Services, Education, and Related Agencies Appropriations Act* (H.R. 5894).

The FAH is the national representative of more than 1,000 tax-paying community hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, DC, and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

As Congress debates government funding, it is critical that patients continue to have access to quality care. We urge you to adopt Proposed Amendment 204 to protect the ability of states and hospitals to contribute to the health care safety net. The amendment creates an imperative safeguard that would prevent CMS from using federal funds to implement burdensome limitations on provider assessments and state expenditure limits on directed payments.

We appreciate your support for local hospitals and the patients we serve. If you have any questions or would like to discuss our support of the legislation further, please do not hesitate to contact me or a member of my staff at (202) 624-1534.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles N. Kahn III".

Appendix E

January XX, 2024

The Honorable Chuck Schumer
Senate Majority Leader
S-221 The Capitol
Washington, DC 20510

The Honorable Mike Johnson
Speaker of the House
H-232 The Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Senate Minority Leader
S-230 The Capitol
Washington, DC 20510

The Honorable Hakeem Jeffries
House Minority Leader
H-204 The Capitol
Washington, DC 20515

Dear Leader Schumer, Leader McConnell, Speaker Johnson and Leader Jeffries,

Thank you all for your leadership on federal healthcare issues prior to and throughout the COVID-19 crisis. As you all know, millions of rural Americans depend on Medicaid for access to care.

The National Rural Health Association (NRHA) appreciates the opportunity to offer our comments and concerns regarding access to quality healthcare in rural communities. NRHA is a non-profit membership organization with more than 21,000 members nation-wide that provides leadership on rural health issues. Our membership includes nearly every component of rural America's health care infrastructure, including rural community hospitals, critical access hospitals, doctors, nurses and patients.

NRHA is requesting your help in (1) restoring the state-federal partnership between the Centers for Medicare & Medicaid Services (CMS) and the states to what is contained in the laws passed by Congress and (2) allowing states to continue to fund their Medicaid programs based on state and local needs.

Unfortunately, in recent years, CMS has departed from the statute and attempted to redefine Medicaid's long-standing state and federal partnership, specifically with regards to states' financing of their Medicaid programs. Most notably through the withdrawn Medicaid Fiscal Accountability Proposed Rule (MFAR), CMS has attempted to (1) arbitrarily expand its authority in reviewing sources of non-federal share and (2) narrow the permissible sources of local funding that states can use to fund the non-federal share of their Medicaid programs. Many states have pointed out that the Social Security Act provides states significant flexibility in funding the non-federal share. Specifically, Section 1902 (a)(2) of that Act allows states to fund up to 60 percent of the non-federal share with sources other than state general revenue. Yet CMS continues to overreach and delay or deny program approvals based on arbitrary and unsupported interpretations of federal law.

This state funding issue came to a head in 2019, when CMS proposed MFAR, which would have made significant changes to Medicaid financing policy. A broad array of stakeholders filed comments in opposition to the proposed rule, many of which stressed the agency's overreach and abuse of discretion in proposing policies that were inconsistent with law and longstanding agency policy. The opposition to MFAR was bipartisan and bicameral, with members of

Congress from both parties filing two pieces of legislation opposing MFAR's adoption. President Biden publicly opposed MFAR when he was a presidential candidate. The Trump Administration ultimately withdrew MFAR from the Federal Register in January 2021.

Notwithstanding the explicit rejection of the proposed MFAR and the formal withdrawal of the regulation from the Federal Register, CMS continues to assert the same unsupported and harmful Medicaid financing policies that were included in MFAR. The agency has been delaying program approvals and withholding vital funds from states intended for safety net providers and the vulnerable communities they serve. In doing so, CMS does not point to any change in law or regulation that would authorize CMS to adopt a new interpretation of existing statute and regulation. Nor could it given that the proposed MFAR policies that might have supported CMS' actions were formally withdrawn after the before-mentioned firestorm of disapproval. Below are just a few examples of recent CMS action:

- CMS has asserted to multiple states (and even to a federal district court) that the federal provider tax statute confers on the agency expansive and unfettered discretion to examine private agreements to determine whether these private agreements impermissibly hold providers harmless. One could understand that some “hold harmless” structures might be a violation if a state used them. However, CMS's underlying assumption—that private agreements made without the knowledge or involvement of a governmental entity administering the tax could constitute a violation of hold harmless prohibitions—is a fundamental mischaracterization of federal law and CMS's own current regulations. Although such a stance might have been consistent with the provider tax policies and rationales mentioned in MFAR, that proposal was withdrawn.
- CMS is again asserting – through the disapproval of state plan amendments – that patient care revenues received by a governmental entity cannot be public funds used in an intergovernmental transfer (IGT). CMS' disapproval decision is contrary to existing regulations and long-standing policy, but consistent with policies contained in the rejected MFAR.
- CMS has inserted MFAR-like policies in the special terms and conditions of section 1115 Medicaid demonstration waivers that echo policies proposed and withdrawn with MFAR. Section 1115 of the Social Security Act gives the HHS Secretary authority to approve demonstration projects that the Secretary determines are likely to assist in promoting the objectives of the Medicaid program. Once approved, states must implement and administer the waiver programs and authorities consistent with the special terms and conditions (STCs) set forth in the waiver. While each waiver is unique, certain STC subject areas and STCs are consistent across states and section 1115 waivers. One example is the “General Financial Requirements” category and related terms. A recent review of section 1115 waivers listed as “Approved” on the CMS Medicaid [website](#) revealed three new and noteworthy STCs now generally included in the General Financial Requirements subject area, beginning in April 2022:
 1. Financial Integrity for Managed Care Delivery Systems
 2. Requirements for Health Care-Related Taxes and Provider Donations
 3. State Monitoring of Non-federal Share (locality taxes)

- On February 17 2023, CMS issued an Informational Bulletin providing new guidance on health care related taxes and hold harmless arrangements, specifically arrangements involving the redistribution of Medicaid payments. In the Informational Bulletin, CMS reiterates what it characterizes as “federal requirements concerning hold harmless arrangements with respect to health care-related taxes.” CMS indicates that it views redistribution arrangements, even those without government involvement and based on an “implicit meeting of the minds,” to be “impermissible hold harmless arrangements as defined in section 1903(w)(4)(C)(i)” of the Social Security Act and 42 C.F.R. 433.68(f)(3). CMS further asserts that states should (1) make clear to providers that these arrangements are not permissible; (2) learn the details of how health care-related taxes are collected; and (3) take steps to curtail these practices if they exist. CMS’s interpretation in the Informational Bulletin essentially reiterates the agency’s interpretation that was definitively rejected last year by Judge Barker in the Eastern District of Texas as inconsistent with the Medicaid statute and regulations. CMS’s interpretation is also a dramatic shift from the stance it has taken (and confirmed by the U.S. Department of Health and Human Services Office of the Inspector General (OIG)) over the past 20 years with respect to Missouri’s provider tax program.

Put simply, CMS is threatening the care of millions of Americans by continuing to overstep its authority. NRHA is requesting that CMS return to its pre-2019 state funding approach and remove all MFAR policies from current operations. Please help restore the state-federal partnership and ensure that states have the flexibility to fund their Medicaid programs without tax increases, compromising the health care safety nets in rural, urban and underserved areas, or closing facilities.

We are available at any time to discuss this letter or the issues identified herein. Please reach out at your convenience to _____ at _____ with any comments or questions.

Sincerely,

Appropriate NRHA contact

Appendix F

December 15, 2023

The Honorable August Pfluger
U.S. House of Representatives
1124 Longworth House Office Building
Washington, DC 20515

Dear Congressman Pfluger:

On behalf of the hospitals we represent, we write to thank you for authoring and sponsoring an amendment to HR 5894 that will protect healthcare access for patients across the country.

Hospitals face many challenges in caring for indigent and Medicaid populations. Compensation for services does not match actual cost. Hospitals thus face harsh financial challenges as they strive to provide quality care for all patients, regardless of income. The Centers for Medicare & Medicaid Services (CMS) are responsible for overseeing the existing funding programs that ease the hardship of this dim financial picture. CMS-approved and administered funds ensure patients have access to care. For many facilities in the poorest communities, these dollars keep hospital doors open.

Your amendment is critical because it achieves two urgent goals: it ensures CMS remains bound by the law passed by Congress, and it stops the agency from taking uninformed and arbitrary action to deprive the medical safety net of existing financial support.

As you know, recent CMS proposals—including in both the Informational Bulletin and a recent proposed rule—pose a severe threat to hospitals across the country. The new policies run counter to decades of CMS action and statements of CMS employees about the scope of the Social Security Act. Moreover, the Bulletin and proposed rule policies lack support in law. Twice, a federal court has held that CMS's position finds no basis in the text of the Social Security Act. Despite this pronouncement, the agency remains wedded to the interpretation. CMS has neither rescinded the Bulletin nor abandoned the proposed rule. Your amendment ensures the agency cannot waste taxpayer dollars pursuing policies courts already denounced.

Your amendment further keeps intact the funding upon which hospitals rely to maintain services. Although CMS has long allowed states to receive funding to meet actual need, CMS now proposes to institute arbitrary caps and ceilings on certain types of Medicaid payments. If states can no longer access the Medicaid dollars they need through existing means, states will be forced to find alternatives. Options include increasing taxes on citizens or other businesses or diverting resources away from other state budget priorities. Where these alternatives are unavailable, hospital access to certain existing Medicaid dollars will vanish. Patients in the poorest communities will bear the worst impact. Your amendment stops that harm from occurring.



December 15, 2023

The Honorable August Pfluger
U.S. House of Representatives
1124 Longworth House Office Building
Washington, DC 20515

Congress's power of the purse is a hallmark of our tripartite government. By preventing CMS from using appropriated funds for unlawful and arbitrary policies, you and your fellow lawmakers act as good stewards of the federal fisc and as defenders of our medical safety net. We speak on behalf of all member hospitals when we applaud your action and support your effort to stop heedless agency action. With your support, we believe we can ensure our nation's hospitals have the support they need to serve Medicaid enrollees.

Our members are grateful for your attention and partnership. We look forward to engaging with you to ensure continued access to care for all.

Sincerely,

Florida Essential Healthcare Partnerships
Florida Hospital Association
Safety Net Hospital Association of Florida
Texas Essential Healthcare Partnerships

Appendix G



1108 Lavaca Street, Suite 700
Austin, Texas 78701
512/465-1000
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December 14, 2023

The Honorable August Pfluger
United States House of Representatives
1124 Longworth House Office Building
Washington, DC 20515

Dear Congressman Pfluger:

On behalf of our more-than 450 member hospitals and health systems, the Texas Hospital Association is extremely grateful for your efforts to protect funding for the Texas Medicaid program. The amendment you introduced to the Labor, Health and Human Services, Education and Related Agencies Appropriations bill for FY 2024 (H.R. 5894) will help ensure the Centers for Medicare & Medicaid Services (CMS) does not move forward with harmful policies that will unlawfully restrict state financing of the program.

As you know, nearly one in 5 Texans is enrolled in Medicaid, including low-income children, pregnant women and seniors. Nearly 6 million people depend on the program, and the changes proposed by CMS would have far-reaching catastrophic consequences. Your amendment reinforces the bipartisan concerns, expressed by the delegation to CMS in the fall, that the proposed changes to state financing will undermine access to care.

THA is thankful for your leadership and efforts to build support for the amendment among others in the delegation. We are thrilled the amendment passed by voice vote and are hopeful the appropriations bill will be brought to the House floor for a vote soon (or that the amendment can be moved through another legislative vehicle).

The thoughtful engagement on this issue by you and your staff, especially Clara Cargile and Alexandra Davis, is greatly appreciated. Please don't hesitate to let us know if there is anything more we can do to be supportive of your efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "John Hawkins".

John Hawkins
President/CEO
Texas Hospital Association