TEACHING HOSPITALS of TEXAS

September 25, 2020

House Committee on Human Services
Texas Capitol - E2.125
Austin, TX 78701

RE: Interim Charge 2.4 - Review how Texas is preparing for state and federal budgetary changes that impact the state's health programs, including: the Centers for Medicare and Medicaid Services proposed Medicaid Fiscal Accountability Rule.

Chair Frank and Members of the Committee,

Thank you for the opportunity to provide information on Interim Charge 2.4. The Teaching Hospitals of Texas members include large public urban teaching hospitals and several affiliated non-profit health systems sharing three core commitments. They provide quality care to all, in particular vulnerable Texans; are prepared for and provide trauma and disaster services and care; and support Texas' healthcare workforce and graduate medical education as well as clinical and delivery system research and transformation.

On Monday, September 14, 2020, CMS announced they would be withdrawing the Medicaid Fiscal Accountability Rule (MFAR). While CMS has announced the rule withdrawal there is the potential for the federal agency to republish the rule and move forward with the regulation in the future. This rule would adversely impact Texas' Medicaid Program by reducing program clarity and oversight transparency, reducing access and causing instability in the health care safety net by restricting local funding in the Medicaid program, narrowing provider definitions, placing new requirements and reviews related to state plan amendments and waiver-based supplemental payments, and interjecting new discretionary authority for CMS that is unclear and subjective. It has the potential to put $11 Billion in Medicaid hospital financing at risk.

In the rule summary, CMS notes the purpose of the proposed rule is to "*promote transparency*" and "*strengthen the overall fiscal integrity of the Medicaid Program*." CMS identifies the need for more information to assist in improving transparency and in assuring consistency with efficiency, economy

and quality of care in the program: "this proposed rule would promote transparency by establishing new reporting requirements for states to provide CMS with certain information on supplemental payments to Medicaid providers." THOT is fully supportive of improving transparency in the Medicaid program and as a vehicle to ensure the fiscal integrity of the program. We agree with CMS on the need for financial reporting at a level sufficient to meet the Medicaid program's fiscal integrity requirements. Texas supplemental payment programs require reporting to HHSC. HHSC consistently collects and reports hospitals, and other eligible provider, Medicaid and uninsured eligible costs and payments through the DSH/ UC application. In addition, HHSC has also set up a portal to capture data regarding local provider participation funds (LPPF).

While CMS proports to be promoting transparency, the rule actually reduces program transparency by interjecting new discretionary authority for CMS that is unclear and subjective; and usurps state authority.

When evaluating what state and local funding is allowed, MFAR adds a very broad definition of "net effect," enabling CMS to subjectively look at the "totality of the circumstances" in its decisions. CMS' broad and subjective purview, lacking specific criteria for enforcement, will further destabilize Medicaid financing and policy since states, local governments and providers will have no certainty regarding program financing.

MFAR also limits the use of current state matching funds by dictating which public funds state and local governments can use to match federal Medicaid funding. The rule also penalizes government providers and state health systems that have reduced their reliance on tax revenues, and chills limits public-private partnerships. If MFAR were to move forward again, Texas communities would need to either cut services or increase taxes to offset these new limits. Reduced funding to safety net providers caring for the uninsured and fortifying Texas' disaster planning and public health response[i] would put the health of Texas and its economic engine at risk.

Hospital districts in Texas have a state constitutional obligation to provide care to individuals who are indigent, and as such have partnered with the state to finance vital supplemental payments to ensure stability in the safety net.

Texas has worked over the years with CMS to implement methods of finance that are uniquely tailored to the needs of our state.

THOT believes this partnership has worked well and should not be disrupted by new restrictions and subjective decision making proposed by CMS in MFAR.

Additionally, MFAR gives CMS the authority to determine which state and local entities are defined as government units for purposes of Medicaid financing, creating a new, narrow definition for them and proposes a definition of "public funds" at odds with the Texas Constitution[ii]. The rule also provides CMS wide discretion on determining provider types. This provision interferes with how states allocate dollars across provider types, making it difficult for states to determine with confidence whether their payment and financing approaches meet federal requirements.

MFAR increases uncertainty with new requirements and more reviews of state plan amendments. MFAR limits federal approvals (state plan amendments (SPA)) for supplemental payments to three years and requires new criteria to be included in plans, causing administrative burdens for states even when programs are unchanged.

Texas Medicaid covers a diverse population of more than 4 million Texans, including children, nursing home residents, and individuals with disabilities.

Texas Medicaid supplemental payments are crucial as Medicaid base payments on average cover only 69% of hospital costs (and according to the most recently published state public data, just over 50% of hospital costs for large urban public hospitals).

In addition to Medicaid, Texas Hospitals provide billions in uncompensated care to uninsured Texans the costs of which these supplemental payments also help defray.

These proposed changes will cause delays and instability in the financing system with potential backlogs or changes in CMS administration delaying critical payments to hospitals and providers. CMS seeks broad discretion on SPA approval and provides little direction on meeting economy, efficiency, quality of care and access requirements.

Significantly, CMS provided no estimated fiscal impact for the proposed rule, simply claiming the impact is unknown and that it does not "have sufficient data to predict or quantify the impact of the proposed provisions," except for a $222 million reduction related to new limits on supplemental payments to professionals.

To reiterate, the uncertainty related to how CMS will apply its proposed vague but expansive authority to disallow programs and Medicaid funding could put at risk a significant share of $11 billion in funding that today helps offset otherwise catastrophic Medicaid and uninsured losses.

Resulting reductions in Medicaid funding will leave states and local governments with limited options to identify new revenue (e.g., increases in local property taxes); or service reductions (e.g., cuts in cost- effective Medicaid optional services or reductions in care for those who lack health insurance).

In addition, many of the proposed provisions in the rule would have taken effect immediately, leaving Texas with insufficient time to make policy and budgetary adjustments to mitigate the loss of non-federal share and federal funding.

THOT is appreciative of CMS' decision to withdraw and the work of Texas' leaders in communicating the serious unintended consequences to Texas of the proposed rule.

Thank you for your consideration of these comments. Please let me know if you have any questions or we can be of assistance to the Committee.

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[i] THOT's Safety Net providers are prepared for disasters and public health such as the Wuhan coronavirus.
[ii] Section 3 Article 52 of the Texas Constitution.