

HFMA Region 9 Annual Conference
New Orleans, Louisiana

Texas Medicaid Update

Freddy Warner

Chief Government Relations Officer

Memorial Hermann Health System

November 10, 2019

1

Presentation Outline

- **2019 Texas Legislative Session Overview**
- **Status of 1115 Medicaid Transformation Waiver**
- **2019-20 State Interim Legislative Overview**
- **116th Congress – Impacts on Healthcare Providers**
- **2020 State and Federal Election Cycle**

2

State Legislative/Budget Overview

- **The 2019 Texas Legislative Session and 2020-21 biennial state budget - Perspective:**
 - **Texas has the highest uninsured rate in the country: +/- 20%**
 - Current national uninsured rate: 8.8%
 - **Texas one of 19 states declining to expand Medicaid program, pursuant to the *Affordable Care Act***
 - Expansion would have generated \$8.5 billion per year in federal funding
 - Average uninsured rate for expansion states is 6.5%
 - **Texas MSAs have the highest uninsured rates in the country**
 - **Texas among handful of states with disproportionately high percentages of undocumented residents**
 - **Texas is lowest per capita spending state for Medicaid**
 - **Texas State Comptroller Glenn Hegar projected stronger state economy as budget-writers planned for the 2020-2021 biennium**
 - Severance tax trend indicated *energy sector* rebound
 - Monthly sales tax figures also evidenced strengthening state economy
 - Leadership asked state agencies to anticipate budget cuts in the interim
 - 2019 Legislature faced \$2.1 Billion Medicaid shortfall (better than expected)

3

3

2019 Texas Legislative Session

- **Stronger than expected state economy yielded more general revenue for state budget-writers than in recent sessions**
 - 55% of state general revenue (GR) from state sales tax
 - 11% of state GR from oil and gas production (severance) and motor fuel taxes
- **Leadership priorities remained public school finance reform, and property tax reductions**
- **2018 election cycle resulted in significant Democratic gains; moderated recent social conservative, ideological battles**
- **Consensus among state leaders to spend "Rainy Day Fund" for Hurricane Harvey response, school safety**
- **Hospitals and healthcare providers leveraged strong budget cycle, natural disasters, and gun violence to highlight, increase funding for Texas' *trauma infrastructure***
- **Lawmakers responded to 1115 Medicaid Waiver changes**

4

State Legislative/Budget Overview

- Texas health systems' 2019 legislative priorities focused on *fiscal matters*:
 - Maintenance of safety net, trauma and rural *add-ons* from 2015 and 2017 sessions
 - *Despite* 2015 and 2017 “add-ons,” rate remains 58% of cost of care
 - Senate and House included in 2017 and 2019 *base budgets*
 - Repeal of the *Driver Responsibility Program*, and creation of a new state *Trauma Fund*
 - Status of HHSC appeal of CMS Disallowance of “expense alleviation” agreements
 - *Local Provider Participation Funds* (LPPF) proposals
 - Continuation of 1115 Medicaid Waiver
 - CMS granted initial 5-year term in 2011, followed by 15-month extension, which ended 12/31/17
 - In December 2017, CMS renewed the waiver for another 5 years, through 2022
 - Yields \$6 billion per year
 - Consider waiver funding *in lieu of* \$8.5 billion per year in federal Medicaid expansion funding
 - HHSC/CMS negotiations RE terms and conditions
 - CMS punitive towards *non-expansion* states; i.e., Texas

5

5

2019 Texas Legislative Session

- **2020-21 Biennial State Appropriations Bill (HB 1):**
 - Comptroller Hegar reported 8.1% more state general revenue (GR) available
 - HB 1 is first appropriations bill to exceed \$250 Billion for the biennium
 - Senate and House agreed to spend +/- \$5 billion in Economic Stabilization Fund (ESF), aka “Rainy Day Fund (RDF);” ESF on track to surpass \$15.4 B
 - HB 1 includes Safety-Net rate enhancement (“add-on”): increases base Medicaid reimbursement from 52 to 58 cents per dollar of cost of care
 - 2015, 2017 legislatures approved
 - HB 1 includes Trauma *add-on* for eligible designated trauma centers
 - HB 1 includes *add-on* for rural hospitals’ in-patient and out-patient services
 - HB 1 includes \$60 Million in expanded GME funding for physician training
 - HB 1 includes \$20 Million in Nursing Shortage Reduction Program funds
 - HB 1 includes \$231 Million in supplemental funding for Teacher Retirement System (TRS) retiree health benefits

6

2019 Texas Legislative Session

- **Supplemental State Appropriations Bill (SB 500):**
 - **Separate, supplemental appropriations bill, included \$2.1 Billion for *Medicaid shortfall* for the remaining months of the 2018-19 biennium**
 - **Incorporated nearly \$6 Billion in *Rainy Day Funds***
 - **SB 500 included Hurricane Harvey infrastructure funding**
 - **SB 500 included \$100 Million Medicaid rate enhancement for children's hospitals**
 - **Historical perspective regarding Medicaid shortfall**
 - **Legislature underestimates Medicaid enrollment and cost growth and must use the supplemental to fund the shortfall**

7

2019 Texas Legislative Session

- **Local Provider Participation Fund (LPPF) bills:**
- **Lawmakers approved creation of 8 new LPPFs**
- **Lawmakers passed an enabling statute, allowing for blanket authority for counties, or those without hospital districts, to create LPPFs**
- **Legislative support for LPPF bills reflected growing concern that CMS will disallow charity care, expense/burden alleviation, and other IGT agreements**

8

2019 Texas Legislative Session

- **HB 2048 (Zerwas/Huffman) repeals the *Driver Responsibility Program (DRP)*, and replaces the primary funding mechanism for the state's trauma infrastructure**
- **2+ year advocacy campaign resulted in wide array of stakeholders: county judges, sheriffs, justices of the peace; AARP, CPPP, TPPF, Smart on Crime, ACLU, THA, TMA, TNA**
- **When combined with federal funds, the legislation will generate \$176 M, to offset \$320 M in unreimbursed trauma care costs; provide \$151 M for safety-net hospitals**
- **Funding mechanisms:**
 - **\$2 increase in auto insurance policy annual renewals**
 - **Increase in base state traffic fines from \$30 to \$50**
 - **Increase in DWI and DUI fines, ranging from \$3,000 to \$6,000**

9

2019 Texas Legislative Session

- **SB 1264 focused on eliminating *surprise medical billing*, with significant bipartisan and bicameral support**
- **Texas Department of Insurance (TDI) comment period ended September 27**
 - Rules for implementation of SB 1264
 - Effective date is January 1, 2020
- **TDI report due in advance of 2021 legislative session**
- **Prohibits *out-of-network* balance bills, and creates a dispute resolution process for:**
 - **Out-of-network emergency services (either a facility's or a provider's bill)**
 - **Services provided at an in-network facility by an out-of-network healthcare provider**
 - **Imaging or lab services relating to healthcare services provided by an in-network physician or healthcare provider**
- **Provides regulatory agencies authority to enforce violations through a referral to the AG, or disciplinary action**
- **Balance billing prohibition does *not* apply to copayments, coinsurance or deductibles; *or* if a consumer elects a written agreement in advance of services being rendered for a non-emergent service**
- **Creates a bifurcated dispute resolution process:**
 - **Mediation for facilities and insurance companies**
 - **Arbitration for physicians, non-facility providers, and insurance companies**

10

2019 Texas Legislative Session

- **SB 752, resulted from *Hurricane Harvey*; expands liability protection for volunteers and facilities that support them during natural and manmade disasters: clarifies the *Texas Good Samaritan Law***
- **Grants immunity from civil liability, unless conduct is *reckless, or intentional, willful and wanton misconduct***
- **Care provided must be within the healthcare provider's scope of practice**
- **Facilities are protected if the healthcare provider satisfies these requirements, and there is no expectation of compensation for the care provided**

11

2019 Texas Legislative Session

- **Texas leads the nation in the number of freestanding emergency centers (FECs); 60% remain unaffiliated with a hospital system, and therefore not subject to the same regulations**
- **HB 1941 allows the Texas AG to bring a cause of action against any FECs or hospitals that do not participate in the Medicare or Medicaid program for charging an "unconscionable" price for emergency care: more than 200% of the average charge for the same or substantially similar care**
- **HB 2041 requires independent, unaffiliated FECs to provide written disclosures of patient charges, including observation fees, and the facility's network status with insurance companies**

12

2019 Texas Legislative Session

- **The Texas House Speaker created a select committee to study behavioral health funding and programs following the 2017 legislative session. The May 2018 Santa Fe HS shooting motivated lawmakers to improve children's access to mental health services, via school safety legislation. Texas lawmakers also addressed the national opioid crisis.**
- **SB 11 created the Texas Mental Health Consortium**
- **HB 3285 requires the Texas HHSC to expand *telemedicine*-based treatment options for substance abuse disorders**
- **HB 2174 requires *e-prescribing* for controlled substances; limiting opioid prescriptions to a maximum, 10-day supply; and requires HHSC to provide patients with medication-assisted treatment without prior authorization**

13

Tobacco 21 – SB 21

- **Raises minimum age to purchase tobacco, cigarettes or e-cigarettes – Implementation date: *September 1, 2019***
- ***Texas became 15th US state to raise the legal age for purchasing tobacco products***
- **Exempts military personnel**
- **Exempts those born on or before August 31, 2001**
- **Creates Class C misdemeanor for those who attempt to buy these products for someone under the legal age limit**
- **Prohibits dispensing coupons or samples of any affected products to anyone under the legal age limit**
- **Prescribes signage and training for businesses selling these products; *new signage must be posted within 72 hours* of the September 1 effective date of the new law.**
- **S. 1258, and HR 2411, being considered in Congress, would set the national legal age for purchasing tobacco products at 21**
 - **NOTE: Senate sponsors are McConnell/Kaine; from largest US tobacco producing states**

14

1115 Medicaid Waiver Update

- **Significant changes loom for the 1115 Medicaid Waiver, a 5-year renewal of which CMS approved in December 2017:**
- **A variation of the Medicare cost report's S-10 data tool will be used to calculate UC payments based on hospital charity costs. Beginning October 1, 2019, the Medicaid shortfall and bad debt costs will no longer be allowed in determining UC payments**
- **HHSC must submit a DSRIP Transition Plan to CMS by March 31, 2020; HHSC submitted its draft plan October 1, 2019**
- **Hospitals have petitioned HHSC for expansion of the UHRIP program**
- **SB 2480 establishes the Medicaid Waiver Renewal Legislative Oversight Committee**
- **HCR 145 expresses *legislative intent* that Texas negotiate updates to the 1115 Waiver, *in lieu* of Medicaid expansion, as contemplated under the Affordable Care Act (ACA)**

15

1115 Medicaid Waiver Update

- **HHSC proposed waiver renewal implementation rules in July 2018; months of negotiations between Governor Abbott, HHSC and CMS**
- **HHSC finalized rules for new UC funding policy in January 2019**
- **HHSC submitted a revised UC tool in May 2019, for providers planning to apply for UC funding during the Waiver renewal term**
- **CMS approved the new UC tool in August 2019**
- **New rules for implementation took effect October 1, 2019 (Federal FY)**
- **\$6.2 Billion in combined UC and DSRIP funding levels were maintained for the first two years of the renewal period (2017-18 and 2018-19 federal fiscal years)**
- **Beginning October 1, 2019 the UC pool was *resized* based on (2017) S-10 charity costs reported by eligible hospitals. Payments to hospitals will be based on the new UC funding policy for renewal years 3, 4 and 5**
- ***Good news for Texas:* new UC Pool Amount: \$3.87B**

16

1115 Medicaid Waiver Update

- Children's and specialty hospitals that do not use the S-10 worksheet, will use *cost reports* to determine allowable uncompensated care (UC) costs
- UC funding will no longer include *bad debt*
- UC funding will no longer include *Medicaid shortfall* (difference between the cost of providing a service and the actual reimbursement for that service)
- Allowable UC costs will generally not include costs from *non-hospital providers*; however, UC payments can be made to certain, qualifying non-hospital providers, including certain *physician practice groups* (clinics), government *ambulance* providers, and government *dental services* providers
- UC payments will be distributed based on reported UC costs, but will not include providers' *intergovernmental transfers (IGT)*

17

Status of 1115 Medicaid Waiver

- Texas HHSC must advance 1115 waiver rulemaking despite a number of *unresolved issues*:
 - Potential impacts on supplemental payment programs: Disproportionate Share Hospital (DSH) program; Uniform Hospital Rate Increase Program (UHRIP)
 - CMS disallowance of the current funding model for the non-federal share of waiver payments – *Expense or Burden Alleviation* agreements
 - Rider 38 hospitals – Rider 38 was originally embedded in the 2014-2015 biennial state appropriations bill, and was intended to protect eligible rural hospitals from reductions in UC reimbursement; the definition of “rural hospital” was revised in the 2018-19 appropriations bill. Growth in “non-rural,” Rider 38 hospitals has significantly impacted aggregate distribution of UC payments
 - Impact of federal court ruling in the Children's Hospital Association of Texas (CHAT) challenging CMS rulemaking affecting the calculation of “Uncompensated Care” (UC)
 - Reductions in federal, ACA-related DSH allocations for eligible hospitals across the nation (Currently delayed through November 21, 2019, via “continuing resolution”)
 - The 2019 Texas Legislature and leadership remained opposed to ACA-related Medicaid expansion, as well as consideration of a statewide tax for safety net hospitals

18

2019-20 Interim Legislative Activities

- **Leadership offices requested potential interim charges by September 2019**
 - **Lieutenant Governor Dan Patrick released Senate interim charges in October.**
- **With significant legislative retirements already announced, Lieutenant Governor Dan Patrick and Speaker Dennis Bonnen will shuffle committee chairmanships**
 - **Bonnen's retirement announcement leaves the House in limbo.**
- **Leadership may also create select, special committees to focus on 2021 legislative priorities**
- **2020 election cycle will impact legislative leadership, decennial redistricting process**

19

2019-20 Interim Legislative Activities

- **Senate Business and Commerce will study the cost of health care in Texas, make recommendations designed to increase access, bring down the cost of care. The committee will also consider proposals aimed at reducing the country's highest uninsured rate.**
- **Senate Finance Committee will continue its biennial assessment of cost of the Texas Medicaid program, to determine how to reduce program costs, despite continued caseload growth.**
- **Senate Health and Human Services Committee will undergo an assessment of all current methods of financing state health and human services, including federal waivers, LPPFs, and payment models predicated on quality and value.**

20

116th Congress – Federal Health Sector Impacts

- **Impact of a split Congress, with Democrats controlling the House; Republicans the Senate**
 - Senate Republicans hold 53/47 majority; far short of 60-vote, filibuster-proof threshold
- **Opportunities for health and human services bipartisan support remains limited to *surprise medical billing*, prescription drug prices, the opioid crisis, and other behavioral health initiatives, especially tied to gun control**
- **Texas Congressman Pete Olson led effort to *delay* federal Medicaid DSH cuts , originally associated with 2010 passage of the ACA. 302 of 435 US House members support delaying (10/01/19) scheduled DSH cuts.**
- ***Surprise Billing* – Key Senate and House committees of jurisdiction considering proposals**
- **Drug Pricing Reform**
 - May include changes to the 340 B Discount Drug Program
- **Impact on the Affordable Care Act (ACA)**
 - **Impact of ongoing ACA lawsuit**
 - Awaiting 5th Circuit Court decision
 - **Election cycle created opportunities for several states to consider Medicaid expansion**
 - **Congressional Democrats will seek to shore up the ACA; Republicans weaken it**
 - **Math is on Democrats' side**
- **Stark Law Reform**

21

Surprise Billing

- **US Senate and House committees of jurisdiction considering various proposals: how to protect consumers and resolve payment disputes between providers and plans:**
 - **Benchmark “rate-setting”**
 - ***Baseball-style arbitration* (New York State Legislature)**
 - **Mediation v. Arbitration**
 - **Hospitals/Facilities, Physicians/Professional Services, Insurance Companies/Payers**
 - **National polling:**
 - **Voters trust doctors; distrust insurance companies**
 - **80+% worry about affording health insurance coverage**
 - **85+% worry about receiving unexpected medical bills**
 - **Voters overwhelmingly blame insurance companies v. doctors for surprise bills**
 - **75% believe doctors should develop their payment system v. insurance companies**
 - **85% believe an independent, third-party should determine the payment v. government rate setting**

22

Drug Pricing

- **Bipartisan solutions emerging, but are the votes there?**
- **Allow federal government to negotiate drug prices in Medicare, v. private insurers: all or limited number of drugs (Pelosi)**
- **Lower out-of-pocket costs for Medicare beneficiaries (Trump, Azar); Huge CBO score: \$177 B over 10 years**
- **Change or eliminate *pharmacy benefit managers* structure**
- **Cap out-of-pocket spending for Medicare Part D drug coverage program; shift more financial responsibility to drug manufacturers**
- **Index US drug prices to prices paid for the same drugs in other countries. PhRMA opposes as “price control.” Healthcare providers concerned about impacts on existing discount programs**
- **Compel drug manufacturers to list drug prices in their advertising**
- **Break up drug manufacturers’ monopolies, and end, or limit “pay-for-delay” agreements between legacy manufacturers and generic manufacturers**
- **CMS Medicare payment rule for CY 2020 extends 30% 340 B hospital rate reductions, despite 2 federal court rulings in 2018 and 2019; on appeal**

23

2020 State Election Cycle

- **Control of Texas House of Representatives in play**
 - **Democrats emboldened by 2018 gains**
 - **Democrats need to flip 9 seats to take the House**
- **Texas Senate will remain in Republican control**
 - **Could “3/5 rule” be in jeopardy?**
- **Congressional and state legislative retirements have resulted in significant political musical chairs**
- **Focus of the 2021 legislative session will be on *redistricting*: redrawing of congressional and state legislative district lines**

24

2020 Federal Election Cycle

- **Referendum on Trump**
- **Senate Republicans defending 22 seats; Democrats only 8**
- **Difficult to see a path for Republicans to retake the House**
- **Healthcare will continue to be a polarizing political issue**
- **Medicare for all**
 - CBO score
 - Future of private insurance
 - Tax implications
 - Large corporations and billionaires v. middle-class
- **Timing of ACA lawsuit: will SCOTUS punt to 2021?**
 - Issue: Does elimination of the *individual mandate*, as part of the December 2017 Tax Cuts and Jobs Act, render the entire ACA unconstitutional?
 - Timing of 5th Circuit decision, following July 9 oral arguments?

25

QUESTIONS

Freddy Warner

Chief Government Relations Officer

Memorial Hermann Health System

frederic.warner@memorialhermann.org

(713)392-9750

26