

*Administrator*

Washington, DC 20201

April 22, 2022

Stephanie Stephens
State Medicaid/CHIP Director
Health and Human Services Commission
Mail Code: H100
Post Office Box 13247
Austin, Texas 78711

Dear Stephanie Stephens:

On April 16, 2021, Elizabeth Richter, then-Acting Administrator for the Centers for Medicare & Medicaid Services (CMS), sent a letter notifying you that the January 15, 2021 approval of Texas's request to amend and extend its section 1115(a) demonstration entitled "Texas Healthcare Transformation and Quality Improvement Program (THTQIP)" (project number 11-W-00278/6) was erroneous. In that letter, CMS explained that it had "materially erred in granting Texas's request for an exemption from the normal public notice process under 42 C.F.R. § 431.416(g)" prior to approving Texas's THTQIP extension request because "the state's exemption request did not articulate a sufficient basis for us to conclude that approving the state's emergency request for an exemption from the normal public notice process was needed to address a public health emergency or other sudden emergency threat to human lives."¹ I am writing to inform you that CMS is withdrawing the above referenced April 16, 2021 letter. Accordingly, CMS will hereafter consider Texas's THTQIP demonstration to be approved as extended and governed by the Special Terms and Conditions (STCs) that CMS approved on January 15, 2021.²

The State of Texas brought suit on May 14, 2021, claiming that CMS lacked authority to issue its April 16, 2021 letter. The United States District Court, Eastern District of Texas, granted a preliminary injunction against CMS on August 20, 2021, based in part on its conclusion that CMS did not provide Texas notice of its intent to reconsider approval of Texas's THTQIP demonstration project extension before issuing the April 16, 2021 letter, as required to invoke its inherent authority to reconsider its decisions under Fifth Circuit legal precedent. The Texas THTQIP demonstration project has been in effect under the terms of the January 15, 2021 approval since the entry of that order.

¹ Letter from Elizabeth Richter, Acting Administrator of CMS to Stephanie Stephens, State Medicaid/CHIP Director, Texas Health and Human Services Commission (April 16, 2021). (<https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/tx-healthcare-transformation-cms-ltr-st.pdf>)

² CMS previously approved an amendment on June 8, 2021, authorizing Texas to include non-emergency medical transportation as a managed care service, that is considered part of the January 15, 2021 STCs. Letter from Anne Marie Costello, Acting Deputy Adm'r & Dir., Center for Medicaid & CHIP Servs, Centers for Medicare & Medicaid Servs. to Stephanie Stephens, State Medicaid Director, Texas Health & Human Servs. Comm'n (June 8, 2021). (<https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/tx-healthcare-transformation-ca.pdf>)

The district court's order on the preliminary injunction did not address the underlying legal issues of whether CMS's January 15, 2021 approval was unlawful for failure to comply with public notice and comment requirements. CMS remains committed to working with states to conduct robust public notice and comment periods to receive feedback from Medicaid enrollees and other stakeholders on all 1115 demonstrations, in accordance with federal requirements. However, CMS is withdrawing the April 2021 letter, as CMS has concluded that it is not the best use of the federal government's limited resources to continue to litigate this matter. This should resolve the issue without the need for further litigation and will create no disruption to the people who rely on Texas' Medicaid program, since the demonstration has been in effect under the terms CMS approved in January 15, 2021, as well as subsequently approved amendment.

CMS will not re-issue a substantially similar letter or take any future action to rescind CMS's January 15, 2021 approval of the THTQIP demonstration project based on failure to comply with public notice and comment requirements as set forth in the April 16, 2021 letter. Moreover, we do not anticipate that our decision to withdraw the April 16, 2021 letter will cause any disruption to Texas's Medicaid program because, as stated above, the THTQIP demonstration project is currently in effect under the terms CMS approved on January 15, 2021, and the subsequently approved amendments. Accordingly, our decision to withdraw the April 16, 2021 letter should not have any impact on Texas or CMS's daily operations.

If you have questions, please contact Ms. Judith Cash, Director of the State Demonstrations Group, Center for Medicaid and CHIP Services, at (410) 786-9686.

Sincerely,

A handwritten signature in blue ink that reads "Chiquita Brooks-LaSure". The signature is written in a cursive, flowing style.

Chiquita Brooks-LaSure