

**Congress of the United States**  
**Washington, DC 20515**

March 12, 2020

Seema Verma, MPH  
Administrator, Centers for Medicare and Medicaid Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Administrator Verma:

As Members of Congress, we take an active interest in protecting the integrity of the Medicaid program, which currently serves over 3 million Texans and therefore strongly oppose the Healthy Texas Women (HTW) Section 1115 Demonstration that the Centers for Medicare & Medicaid Services (CMS) approved on January 22, 2020 (“HTW waiver”). While we are supportive of expanding Medicaid funding for family planning and sexual health services, the approval of a demonstration project that restricts a patient’s choice of provider will do nothing to increase access to these services and will instead compromise the health of Texans. This project sets a dangerous precedent for other states that might seek to pursue similar restriction proposals.

Under §1115 of the *Social Security Act*, the Secretary of Health and Human Services can waive certain Medicaid requirements to allow states to implement demonstration projects that are “likely to assist in promoting the objectives” of the Medicaid program.<sup>1</sup> This demonstration, however, does not: it waives the longstanding precedent of ensuring beneficiaries have “freedom of choice” (FOC) when choosing a provider by banning qualified family planning providers that perform or “promote” abortion services or affiliate with abortion providers.<sup>2</sup> Approving this waiver that limits FOC breaks with CMS precedent, provides no experimental value to the Medicaid program in Texas, and will further limit access to essential care.

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<sup>1</sup> Section 1115, Social Security Act

<sup>2</sup> 42 U.S.C. § 1396a(a)(23)(B). CMS has repeatedly refused to waive free choice of provider for family planning services, See Letter from Manning Pellanda, Dir., CMS Div. of State Demonstrations & Waivers, to Julie Lovelady, Interim Medicaid Dir., State of Iowa Dep’t of Human Sevs., Waiver List (Feb. 2, 2015) at 2, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/ByTopics/Waivers/1115/downloads/ia/ia-marketplace-choice-plan-ca.pdf>; See also Letter from Marilyn Tavenner, Adm’r, CMS, to Beverly Mackereth, Sec’y, Pa. Dep’t of Pub. Welfare, Waiver List (Aug. 28, 2014), <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/ByTopics/Waivers/1115/downloads/pa/pa-healthy-ca.pdf>.

This HTW waiver is based on the state-funded family planning program that began in 2013 and excluded providers that performed or promoted elective abortions. That program has had a clear and widespread negative impact on women across Texas. In the years since this program was implemented, approximately 45,000 fewer women had access to the health care services they needed.<sup>3</sup> Under the HTW program, one third of publicly insured women reported difficulty finding a provider that accepted their insurance, 41 percent of women stopped using their preferred contraception method, and 73 percent of women eligible had never heard of the program.<sup>4</sup> Importantly, a study in the *New England Journal of Medicine* showed that blocking patients from going to Planned Parenthood in Texas was associated with a 35% decline in women in publicly funded programs using the most effective methods of birth control and a dramatic 27% increase in births among women who had previously accessed injectable contraception through those programs.<sup>5</sup> These numbers are alarming, particularly because Texas has one of the highest maternal mortality rates in the country.<sup>6</sup> Significant research shows that delayed access to care and low socio-economic status contribute significantly to maternal mortality. If we are going to improve the health and wellbeing of women in Texas, we need to increase access to quality care. This waiver will not accomplish that objective.

Moreover, we are concerned that the HTW waiver will set a troubling precedent allowing states to put ideology before patients. Family planning clinics provide a variety of critical services, including affordable birth control, testing and treatment for STIs, vaccinations, pap tests, lifesaving cancer screenings, and other essential primary and preventive care. It is unconscionable to punish patients by denying them the choice of providers because those providers offer legal abortion services.

The approval of this waiver provides federal funding for the current HTW program that has demonstrably failed to meet the health care needs of Texans. No program that receives federal funds should discriminate against qualified providers. For that reason, we request that you rescind the approval of the HTW 1115 Demonstration waiver, and work with stakeholders and Congress to implement a program that will truly improve the health and well-being of Texans.

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<sup>3</sup> "Excluding Planned Parenthood has been terrible for Texas Women: and Texas Still Wants Medicaid to Pay for Its Bad Idea," Center for Public Policy Priorities (Aug. 2017), available at [https://forabettertexas.org/images/HW\\_2017\\_08\\_PlannedParenthoodExclusion.pdf](https://forabettertexas.org/images/HW_2017_08_PlannedParenthoodExclusion.pdf).

<sup>4</sup> White, Burke, Hopkins, and Potter. "Texas Women's Access to Reproductive Health Services Since the 2016 Statewide Reorganization of Women's Health Programs." University of Texas Austin. June, 2019.

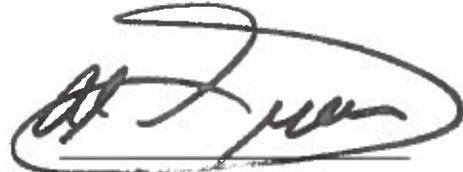
<sup>5</sup> Amanda J. Stevenson, et al., "Effect of Removal of Planned Parenthood from the Texas Women's Health Program," *New England Journal Medicine* (Mar. 3, 2016), available at <https://www.nejm.org/doi/full/10.1056/NEJMs1511902#>.

<sup>6</sup> Maternal Mortality in Texas, *America's Health Rankings* (2019), available at [https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal\\_mortality\\_a/state/TX](https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/TX).

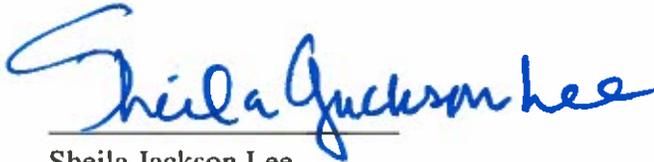
Sincerely,



Lizzie Fletcher  
Member of Congress



Al Green  
Member of Congress



Sheila Jackson Lee  
Member of Congress



Sylvia R. Garcia  
Member of Congress



Filemon Vela  
Member of Congress



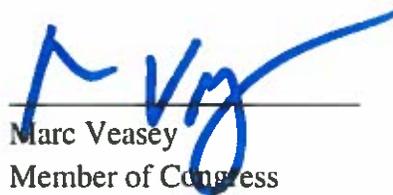
Veronica Escobar  
Member of Congress



Joaquin Castro  
Member of Congress



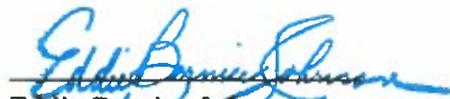
Lloyd Doggett  
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Marc Veasey  
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Colin Z. Allred  
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