

**Testimony of Center for Public Policy Priorities
Joint hearing of The House Committees on Appropriations, Subcommittee on Art. II and
General Investigating and Ethics**

Submitted June 25, 2018

The Center for Public Policy Priorities appreciates the opportunity to testify on Appropriations Interim Charge 18/General Investigating & Ethics Interim Charge 10: *Monitor the agencies and programs under the Committees' jurisdiction and oversee the implementation of relevant legislation passed by the 85th Legislature, Oversight of the Texas Health & Human Services Commission's management of Medicaid managed care contracts.*

The Benedictine Sisters of Boerne, Texas, founded CPPP in 1985 to advance public policy solutions for expanding access to health care. We became an independent, tax-exempt organization in 1999, and over time our focus has expanded to include economic opportunity and fiscal policy. We are based in Austin, Texas, and work statewide. At CPPP, we believe in a Texas that offers everyone the chance to compete and succeed in life.

CPPP has joined in a letter from 14 Texas organizations to The Governor, Lt. Governor, members of the Texas Legislature, and the Texas Health and Human Services Commission (HHSC) regarding the Dallas Morning News' reporting series on Medicaid Managed Care, and the key issues it has raised. My testimony will not cover all of that entire letter, but each of your offices has received a copy and I am available for questions about the letter, along with representatives from the other signatories.

My testimony focuses on the final paragraph from the letter:

Proactive agency oversight must be backed by Legislative openness to bad news: *The recent reports include stories of dangerous MCO policies that should have been stopped before ever taking effect, and of agency findings of threats to health and safety that never became public. If this is to change, our Texas Legislative culture must welcome hard truths about problems and challenges state agencies face, including those that will require appropriations as part of their solutions. A culture of transparency and high performance—one that does not encourage agencies to obscure problems but rewards them for confronting them—could have identified and prevented many of the issues raised in the Dallas Morning News series.*

I worked for the Texas Medicaid director in 1993 when Medicaid Managed Care was brand new to our state. We knew then that Fee-for-Service Medicaid in Texas had done a lousy job of guaranteeing care – remember the *Frew* lawsuit was first filed that year, and at its heart was the failure of Texas Medicaid to guarantee children access to medical and dental. Still, the main pressure we were facing was, as ever, fiscal, and Lt. Governor Bullock was insisting on a magic bullet to slow Medicaid spending growth, and Medicaid Managed Care was it.

Gov. Bullock was so intimidating that when the first Pink Book ([Texas Medicaid in Perspective](#)) was published by our office, we included two near-identical bar charts on the same page, just to avoid any impression that an earlier similar chart which his staff had provided him was in error.

This anecdote tees up the two topics I want to address:

1. First, that an inordinate amount of energy goes into obscuring critical realities in the name of shielding elected officials and agencies from criticism; and
2. Second, that was also the same year Texas froze physician and other health care professionals' Medicaid fees, and ended regular updates in those fees to address inflation.

1) Needed: transparency and public exposure of complaints. Protecting Medicaid Managed Care plans, agency, lawmakers from embarrassment has for many years (to varying degrees depending on leadership of moment and their culture) consistently taken precedence over the competing values of patient safety, pursuit of excellence via

continuous quality improvement, care in the least restrictive setting, and the right of Texas taxpayers to have full knowledge of how their money is being spent. That said, many instances in the DMN reports (and in my experience) portray great agency work that uncovered serious shortcomings, and that demonstrate the willingness and capacity of agency to put clients before vendors. Unfortunately, we see too many instances where problems ferreted out by the agency were actively repressed or simply left to die from inaction.

While the attitudes of agency Commissioners have a great impact on the degree of transparency about revealing when policies fall short, it would be a mistake to say the buck stops there. The Governor, Lt. Governor and state Legislature—not the agency alone—also strongly shape the culture that determines whether hiding flaws is prioritized over correcting them and improving program quality.

If we want to really pursue excellence in Medicaid Managed Care—not just to stay out of the newspapers—adopting a culture that no longer seeks to hide problems but only to resolve and learn from them is our best cure. If we open the windows, and expose the truth about all taxpayer-supported work despite risk of potential embarrassment, we could achieve ongoing quality improvements and a transparency that makes whistleblowers unnecessary.

2) Needed: evaluation of the fact that we allow substantial retained profits – well beyond costs of care—to Medicaid Managed Care plans, while physicians and other practitioners including mental health and therapy providers have not had regular updates or any cost basis for their fees for about 25 years.

In 2016, retained profits (after “experience rebates”) of Texas Medicaid Managed Care plans ranged from a high of \$168 million for one plan, to a loss of \$31 million for another. The highest profit percentage (of gross revenues) was 7.2%, and the lowest a loss of 6%.

This is not to suggest that no profits are allowable, or that Medicaid Managed Care plans are the only Texas Medicaid providers making a profit. But we may be shooting ourselves in the foot by over-rewarding MCOs who stand to profit from limiting care access, while starving access to the providers who could keep their Medicaid patients out of hospitals, support optimal developmental supports for kids of all kinds, prevent worsening of disabilities, support optimal birth outcomes, and perhaps even prevent newspaper articles.

HHSC does not require a minimum Medical Loss Ratio.

HHSC does require an “Experience Rebate”

Pre-Tax Incomes as a % of Revenue	HMO Share	HHSC Share
≤ 3%	100%	0%
> 3% and ≤ 5%	80%	20%
> 5% and ≤ 7%	60%	40%
> 7% and ≤ 9%	40%	60%
> 9% and ≤ 12%	20%	80%
>12%	0%	100%

There has long been confusion over the degree to which the Texas Medicaid MCO methodology limits retained profits, see chart.

The Legislature should sponsor an independent review of the imbalance in Texas Medicaid reimbursements across classes of providers, and the implications for access to care that result. The study would have to be done by an entity free of concern about impact on future business with HHSC, the Legislature, or state elected officials.

Thank you for the opportunity to testify. Any questions may be directed to Anne Dunkelberg, Associate Director, CPPP; dunkelberg@cppp.org.

The **Center for Public Policy Priorities** is an independent public policy organization that uses research, analysis and advocacy to promote solutions that enable Texans of all backgrounds to reach their full potential.

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