

How to Comment:

CPPP will submit comments opposing this rule change and making the points highlighted below, and Texas advocates and providers are encouraged to do the same. [Comments on the proposal](#) are due May 22, 2018 (this link to the proposed rule includes a green “Submit a formal comment” button).

The form to submit these comments will allow you to input simple comments in your own words, or to attach a document if you have longer comments. Here are key issues you can consider including in your comment:

- US HHS should not eliminate this oversight and monitoring of access to care in fee-for-service Medicaid. Instead, HHS should ensure that access to care every Medicaid beneficiary is equally protected regardless of whether they are served in fee-for-service, Medicaid Managed Care, or a Medicaid waiver;
- The proposed rule would allow Texas Medicaid to make cuts of any size to fee-for-service Medicaid provider rates without detailed projections or tracking of impact, and fee-for-service rate cuts in Texas have historically been mirrored with Medicaid Managed Care premium cuts.
- Texas Medicaid has experienced serious contractor failures and damaging provider rate cuts that reduce access to care, and the fact that we have outsourced care to Managed Care plans should not be used as justification to reduce oversight and monitoring;
- I am/we are concerned about access to care for all Medicaid enrollees, and especially for people with disabilities, medically fragile children, pregnant mothers, and frail elders.

Comment Examples: Here are short comments from national advocacy organizations.

- [Community Catalyst](#)
- Georgetown University Center for Children and Families: [template](#)

Comments Due by 5/22/2018: *Help Stop Efforts to Weaken Medicaid Access to Care Oversight*

The Trump administration has proposed a federal rule that will harm access to care in Texas Medicaid and Medicaid in other states by weakening already-limited program oversight of access. CPPP is opposed to this rule and concerned that it foreshadows future federal efforts to further gut Medicaid oversight. Comments on the rule are due by May 22. This brief explains how the rule would weaken current standards, why the rule is bad for Texas, and how to submit your own comments.

Federal Medicaid law calls for states to ensure that Medicaid “*services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.*” Current federal law rules require states to monitor and ensure that every Medicaid beneficiary has sufficient access to care, through separate rules for “fee-for-service” Medicaid and Medicaid Managed Careⁱ. The US Department of Health and Human Services (HHS) Centers for Medicare and Medicaid Services (CMS) Administrator announced in 2017 her intention to roll back both sets of rules.

As a first step, the Trump administration has issued a proposed rule that would roll back current fee-for-service Medicaid access policies. The 2015 rule now in effect requires state Medicaid programs to do periodic checks on access to specific Medicaid services for beneficiaries who receive services through a fee-for-service delivery system (that is, for those not enrolled in Medicaid Managed Care). States have to report to HHS every three years (following an [Access Monitoring Plan](#)), and report the impact on access to care any time the state reduces provider pay rates.

Fee-for-Service: The state Medicaid program pays clinics, doctors, dentists, directly for each service they provide.

Medicaid Managed Care: In Texas, 91.7%* of our 4 million Medicaid enrollees get most or all of their care from Health Maintenance Organization insurers. The state pays premiums to the insurers, and the health care providers are paid by the insurers. (*as of July 2017)

The newly proposed rule would allow Texas and 16 other states with over 85% of their Medicaid enrollees in Managed Care to drop the fee-for-service monitoring and reporting standard, and also exempt them from monitoring the impact of fee-for-service provider rate cuts. In Texas, no specific form of tracking and analysis of the impact of any size fee-for-service provider rate cut on access to care would be required, only “*an assurance that data indicates current access is consistent with requirements of (federal Medicaid law).*”

In other states with lower shares of Medicaid Managed Care enrollment, the proposed rule declares that provider rate cuts of up to 4% in one fiscal year or 6% in two years would no longer require evaluation or reporting of their impact, nor would any input from beneficiaries or providers be required. Those states could thereby cut provider rates by 11% over four years without any required tracking or analysis of the impact of the rate cut on access to care.

If so few in Texans are still in “fee-or-service” Medicaid, why should we care about this rule change? Here are several reasons:

1. **We do care about all Medicaid enrollees across the U.S., not just in Texas.** Nationwide, Medicaid enrollees not in Medicaid Managed Care tend to be disproportionately people with disabilities, medically fragile children, and frail elders, and it is critical that their access to care be actively monitored, and not swept under the rug.
2. **Federal Medicaid access oversight should be established in a way that ensures that every type of beneficiary is equally protected from inadequate access,** which can be driven both by profit-making incentives of Medicaid Managed Care health plans, or by state Legislatures’ reluctance to fund adequate Medicaid rates. There should be no gaps in accountability resulting from whether a beneficiary is in a 1915(c) waiver, a risk-based Medicaid Managed Care plan, or using services delivered via fee for service.
3. **People with disabilities, medically fragile children, and elders receiving long-term services and supports from Medicaid waivers outside of a Medicaid Managed Care premium may be left with gaps in federal access oversight if this rule eliminates fee-for-service access oversight.**
4. **The proposed rule would allow Texas to adopt small or large fee-for-service rate reductions without formal tracking,** and other states to adopt successive annual smaller “nominal” cuts that would add up

to large reductions. Without formal tracking, we will not know if these one-year or cumulative multi-year cuts deeply reduce access to care, and thus whether state Medicaid programs are complying with federal Medicaid law.

5. **The proposed rule fails to acknowledge and examine the interplay between state Medicaid fee-for-service rates and Medicaid Managed Care premiums and provider payment rates. All Medicaid fee-for-service rate reductions in Texas in recent years have been mirrored in Medicaid Managed Care premium cuts.** In other words, allowing deep rate cuts in fee-for-service will likely drive deep cuts Texas MMC as well, harming access to care across all of Texas Medicaid, not just fee-for-service Medicaid. Current federal rules require states to account for network adequacy in the process of certifying that their Medicaid Managed Care rates are actuarially sound, but having separate uncoordinated systems of access oversight for Medicaid Managed Care and fee-for-service care (exacerbated by the elimination of oversight for some fee-for-service care) exposes Medicaid beneficiaries to potentially harmful gaps in care.
6. **Based on recent HHS communications, we are concerned that this proposed rule will be followed with proposals to weaken federal Medicaid Managed Care access oversight.** Privatization of care delivery via Medicaid Managed Care should never be allowed to act as a mechanism for diminished accountability for meeting standards, and ongoing state and federal oversight is needed. **Texas Medicaid has endured numerous well-publicized contractor failures in the last 20 years, and most advocates for Texas Medicaid enrollees and the providers who care for them would strenuously disagree that private contractors can consistently be relied on to act to protect the medical and functional needs of children, pregnant women, adults with disabilities, and seniors.**

Texas has experienced a very mixed Medicaid Managed Care transition and performance for people with disabilities, medically fragile children, and frail elders. Testimony at this [May 9 public hearing](#) of the Texas House Committee on Human Services highlights recent serious performance failures.

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Read expert analyses and comments here from the [National Health Law Program](#), [Health Affairs](#), and the [Georgetown University Center for Children and Families](#)

ⁱ Current HHS rules for Medicaid Managed Care were finalized in April 2016, and incorporated significant new standards for state monitoring and reporting of availability and accessibility of services, including network adequacy standards.