



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

THOMAS M. SUEHS
EXECUTIVE COMMISSIONER

February 28, 2012

The Honorable Rick Perry
Governor
State Capitol, Room 2S.1
Austin, Texas 78701

The Honorable David Dewhurst
Lieutenant Governor
State Capitol, Room 2E.13
Austin, Texas 78701

The Honorable Joe Straus
Speaker of the House of Representatives
State Capitol, Room 2W.13
Austin, Texas 78701

Dear Governor Perry, Lieutenant Governor Dewhurst, and Speaker Straus:

Texas law prohibits the Health and Human Services Commission (HHSC) from using taxpayer money in the Medicaid Women's Health Program (WHP) to contract with "entities that perform or promote elective abortions or affiliate with entities that perform or promote elective abortions." TEX. HUM. RES. CODE § 32.024(c-1). Last week, I signed an order that adopts the administrative rules that fulfill this statutory obligation. I received a copy of Planned Parenthood's letter to you last week that complains about these new rules. I want to provide you with background that will address the misrepresentations in Planned Parenthood's letter.

Planned Parenthood never denies the statutory language quoted above, but it suggests that we are on weak legal ground in adopting the rules and that the rules conflict with federal law. Planned Parenthood, however, fails to cite a provision of federal law to support this claim. In our application to renew the WHP waiver and in our responses to the comments to the proposed rules, we noted that the Social Security Act gives states the right and responsibility to establish the qualifications of Medicaid providers. That is precisely what the Legislature did in enacting the statutory language.

All that Planned Parenthood can invoke to support its asserted conflict with federal law is an opinion of the Texas Attorney General. That opinion, Attorney General Opinion GA-0845, does

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nothing more than clarify and confirm HHSC's authority to adopt a rule that defines the statutory term "affiliate." It neglects to mention that the Attorney General unequivocally declared to Senator Bob Deuell in a separate opinion issued the same day (Attorney General Opinion GA-0844) that the Legislature had every right to enact the law that Planned Parenthood complains about.

Planned Parenthood also suggests that HHSC can comply with state law without banning affiliates of abortion providers from receiving WHP funding. But considering the Legislature's decisive and unambiguous instruction in Senate Bill 7, this claim obviously is untrue. So, unlike those who have complained to you, I cannot casually disregard my duty to execute the laws duly enacted by the Legislature, and that duty is fulfilled, first, by the enactment of rules to implement the law. There can be no doubt about these expectations, especially since the Legislature considered and rejected the very arguments that Planned Parenthood presented to you last week.

As you know, we have a deep commitment to the women served by the Women's Health Program, and I am certain that HHSC can comply with state law while ensuring that clients maintain access to preventative health and family planning services. There currently are more than 2,500 Women's Health Program providers enrolled in the program in more than 4,600 sites. We believe that most of those providers already comply with the new rules. We will be reaching out to them and other traditional Medicaid providers to ensure that they are ready to serve more women. HHSC also will provide assistance to any woman who needs help finding a new provider.

Finally, I want to address Planned Parenthood's suggestion that it cannot be held responsible for the termination of the Women's Health Program and its attempt to blame you and the Legislature for this result. As we plainly noted in our application to the Centers for Medicare and Medicaid Services for renewal of the Women's Health Program waiver last October, we do not believe that it is necessary to ask the Secretary of Health and Human Services for permission to waive any provision of the Social Security Act to implement the Legislature's qualifications for WHP providers.

We said then and have repeated many times since that Congress sensibly entrusted the states with the discretion to determine the qualifications of Medicaid providers and did not delegate that responsibility to the Secretary. So, while we respect the Secretary's concerns about provider choice, her position on this issue contradicts the clear instructions of Congress, which long ago understood that the states are best suited and prepared to establish the qualifications of health care providers who elect to practice a healing profession in the state and to enroll in a state's Medicaid program.

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While Planned Parenthood may disagree with the Legislature's decision to tailor providers' eligibility to participate in the WHP, we recognize the importance of this issue not only to the administration of the Medicaid program, but to the Legislature's authority to ensure the public health and safety in Texas. Consistent with Congress' deference to states to determine provider qualifications, CMS has accepted numerous qualification requirements that Texas has imposed, even though they are not included in any federal law. More important, if CMS is pressured to terminate this program over this agency's implementation of the Legislature's qualifications on provider eligibility, then no state can ever confidently apply policies and requirements that advance important and legitimate state interests to regulate providers' participation in Medicaid. In fact, I have told CMS that its current position effectively means that the state must allow tax cheats, deadbeat parents, and even people suspected of serious abuse to participate in the Medicaid program. This is a risk I am unwilling to expose our clients to.

Finally, I want to assure you that I am fully committed to doing everything I can to ensure the continuation of the Women's Health Program while upholding Texas law. We desire and are fully prepared to continue this program in a manner that provides Texas women access to valuable services, and are hindered only by the CMS' inability to honor one (out of many) of the state's requirements for provider qualification. Simply put, our priority is to place the health of Texas women first over an unlegislated preference for a particular group of providers. If the program ends, it will end because the federal government preferred to promote its support of abortion providers and their affiliates rather than the health of Texas women. I remain hopeful that CMS will reconsider its position, and I look forward to working with state and federal leaders to protect vital reproductive services for low-income women.

Sincerely,


Thomas M. Suehs