UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

STATE OF TEXAS; TEXAS HEALTH AND HUMAN SERVICES COMMISSION,	§	
Plaintiffs,	§	Case No. 2:__-cv-000__-Z
v.	§	
ELIZABETH RICHTER, in her official capacity as Acting Administrator of the Centers for Medicare & Medicaid Services; THE CENTERS FOR MEDICARE AND MEDICAID SERVICES; XAVIER BECERRA, in his official capacity as Secretary of the Department of Health and Human Services; the UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; and the UNITED STATES OF AMERICA,	§	
Defendants.	§	

COMPLAINT

I. INTRODUCTION

1. The poor shall always be with us. Texas, like every State, seeks to ensure its most vulnerable citizens have an opportunity to obtain quality healthcare despite their limited means. And like every State, Texas has "developed intricate statutory and administrative regimes over the course of many decades" to deliver these vital healthcare services through the Medicaid system. *Nat'l Fed'n of Indep. Bus. v.*

Sebelius, 567 U.S. 519, 581 (2012) ("*NFIB*"). As of the filing of this Complaint, Texas offers Medicaid to approximately 4.3 million of its citizens. Tex. Health & Human Servs. Comm'n, *Texas Medicaid and CHIP Reference Guide*, at 2 (13th ed. 2020), https://tinyurl.com/y4bhjfyv.

2. Texas and the federal government cooperate to make Medicaid available in Texas. Generally speaking, Texans fund Medicaid through billions of dollars of taxes, and the federal government returns a portion of those taxes in the form of grants to implement Medicaid. *See NFIB*, 567 U.S. at 581 (reporting a federal government estimate that it would spend at least $3.3 trillion between 2010 and 2019 on Medicaid expenditures). Participating States, including Texas, accept those grants in exchange for providing medical assistance to needy individuals subject to federal-law requirements.

3. Texas is a (famously) large State with substantial regional differences in population, population density, demographics, health needs, and geography. By default, federal law imposes a variety of statewide requirements on state Medicaid plans. For example, fee-for-service Medicaid must provide a "free choice of providers" to all enrollees statewide, which generally prohibits a State from requiring participants to select a specific provider designated by the State. 42 U.S.C. §§ 1396a(a)(23), (e)(2), 1396n(a)-(b), 1396u-2; *see also, e.g.*, 42 C.F.R. § 431.51.

4. Federal law contemplates that each State is different, and that different States will sometimes need to vary from uniform requirements under Medicaid. Federal law therefore empowers federal authorities to allow States to deviate from

federal Medicaid requirements in various ways—including through a demonstration project, by which a State may propose alternative means of serving some part of its Medicaid population, a waiver, by which a State may be excused from one or more Medicaid requirements, or both.[1]

5. Texas depends on a number of waivers and demonstration projects to implement its Medicaid program. The one at issue here is the Texas Healthcare Transformation and Quality Improvement Program ("THTQIP" or the "Demonstration Project"). Texas has relied on THTQIP in some form since 2011. Since 2011, Texas's THTQIP has been extended 3 times: in 2016, 2017, and 2021. Texas is in routine contact with the federal government on numerous aspects of its Medicaid program, including the Demonstration Project, other related waivers or authorities, and the State's overall Medicaid plan.

6. Archetypal examples of how States can serve as laboratories of democracy, demonstration projects allow States to experiment with innovative ways to manage complex healthcare systems. They are temporary by design, enabling both state and federal Medicaid regulators to examine and update these experiments periodically. Because they are temporary, a State employing a demonstration project may require extensions or additional demonstration projects in order to complete a significant healthcare-related goal. Like other States, Texas has used its demonstration projects to achieve (among other things) the goal of shifting from an

[1] *See generally Medicaid 101: Waivers*, MACPAC, https://www.macpac.gov/medicaid-101/waivers/ (last visited May 14, 2021) (summarizing the distinction between waivers and demonstration projects).

outdated fee-for-service delivery model for Medicaid to a modern, managed-care-provider delivery model.

7. States who engage in demonstration projects are required to gather data along a variety of metrics in order to determine whether various components of the project are working as intended, advancing the goals of Medicaid, and better providing healthcare for citizens in need. This data allows state and federal governments to see what policies work before rolling them out to larger segments of the population.

8. The temporary nature of demonstration projects also carries significant risks and drawbacks for the States. Implementation of modern healthcare programs requires considerable investments of time and treasure by both private and public actors, meaning that significant healthcare policies cannot be changed overnight. A State that engages in a demonstration project requires periodic approvals extending the current project or implementing a new project. Federal regulators scrutinize state proposals closely, including any waivers of general federal requirements a State may request as part of a proposed project. State and federal officials may negotiate for months regarding the particulars of these waivers. Failure to obtain approval of an extension to a demonstration project can leave a State with policies that are half-implemented and without an immediate option to reverse course.

9. The nature and significance of many demonstration projects demand that all parts of a State act immediately once it receives approval. By their nature, demonstration projects involve the provision of vital care to a State's most needy

citizens. Federal approval of a demonstration project sometimes necessitates lawmaking, executive guidance, or regulatory action, requiring a State's legislature, governor, and relevant administrative agencies to act. And because these projects include components that will be performed under contract with private entities, they often involve complex bidding processes or contract amendments that can take a substantial amount of time to complete. In both situations—whether by way of actions by a State's public officials or by means of negotiations with private actors—a State must move swiftly once it has regulatory approval to implement programs providing care for those in need in order to make the most of the limited time available before the approval process must start anew.

10. Such dispatch was particularly necessary in this instance. Following the onset of COVID-19 in early 2020, Texas's healthcare system faced a severe market contraction because of changes in healthcare consumption related to the virus. This, in turn, introduced an unexpected problem in Texas's THTQIP: The project was designed to expand managed care to additional populations and services with an aim at aligning incentives between providers and patients, increasing financial stability, and creating opportunities for reimbursement of uncompensated costs in the system. Yet the virus was an exogenous event that dramatically increased the demand for emergency care and decreased the willingness of Medicaid beneficiaries to obtain

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.