

*Via Email Only*

March 23, 2020

Stephanie Muth  
Deputy Executive Commissioner, Medicaid  
Paul Leche  
Senior Counsel, Appeals Division  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

Re: Continued Access to Services by Medicaid Beneficiaries with Disabilities

Dear Ms. Muth and Mr. Leche:

As the designated protection and advocacy agency for the state of Texas, we write on behalf of the many individuals with disabilities who depend on the Medicaid program for necessary acute and long term care services to sustain health and maintain quality of life. We understand there are many aspects of the Texas Medicaid program that require close examination and quick action in the upcoming days to address the national emergency declaration due to the coronavirus and COVID-19. We also understand that many advocates will focus on the specific populations they serve in making recommendations to the Texas Health and Human Services Commission (HHSC). We do the same.

For Medicaid beneficiaries with disabilities, one of the more immediate and critical challenges involves ensuring access to all Medicaid services that currently require prior authorization by the Texas Medicaid and Healthcare Partnership (TMHP) or the Medicaid managed care organizations (MCOs). It is our understanding that the Centers for Medicare and Medicaid (CMS) have informed states that they have the flexibility to suspend prior authorization requirements and extend the length of services already approved through prior authorization.<sup>1</sup> Such action is of particular importance to individuals with disabilities as many of the services they require are subject to specific prior authorization processes that must be initiated at the start of service and renewed on a periodic basis, typically between 90 days and 6 months. By suspending the prior authorization requirement, new services can be provided based upon the treating physician's order. For ongoing services that were previously authorized, HHSC should direct TMHP and the MCOs to extend the current authorization period throughout the emergency timeframe.

Our earlier letter to you provides additional information about the issues confronting individuals who rely on medical supplies and equipment and we refer you to that correspondence. The authorization of other services, such as personal care assistance, nursing services, and therapies, is equally critical. Because each specific long term care benefit may have its own assessment/authorization process, HHSC should direct the appropriate entities to automatically extend all current level of care/level of need/medical necessity

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<sup>1</sup> *COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies*, Centers for Medicare and Medicaid Services, March 18, 2020.

determinations so that new requests for services and requests for increased services can be prioritized and approved as quickly as possible. It is also likely there will be interruptions in accessing therapy services that have already been approved. Because these authorizations are typically time-limited, authorized therapy visits may not occur during the approved time-frame. As such, HHSC should direct TMHP and the MCOs to allow beneficiaries to obtain the full amount of approved therapies once these services are available, even if they extend beyond the previously specified end-date.

If Texas Medicaid takes the above actions, Medicaid beneficiaries should not experience excessive delays in obtaining needed services or interruptions in the receipt of existing services. As such, the impact on the appeal/fair hearing processes will likely be reduced. Nonetheless, there will still be plan appeal and fair hearing issues that will arise. To address these matters, HHSC should take the following steps to protect the health of Medicaid beneficiaries and afford them the due process to which they are entitled:

- Suspend the MCO plan appeal exhaustion requirement and allow managed care enrollees to directly proceed to a fair hearing or reduce the 30-day timeframe for MCOs to resolve internal plan appeals to 5 days.
- Extend the timeline for requesting fair hearings by an additional 120 days for terminations, reductions, or denials of requested Medicaid services issued on or after February 1, 2020.
- Extend the timeline from 10 to 20 days for requesting a continuation of services pending a fair hearing for terminations, reductions, or denials of requested Medicaid services and for denials of Medicaid and Medicaid waiver program eligibility issued on or after March 15, 2020.
- Postpone all pending fair hearings for beneficiaries whose services have been continued throughout the hearing process (i.e. CFC, PCS, PDN, etc.).
- Prioritize fair hearings for individuals who are not receiving continued services and are awaiting a hearing date.
- Grant all requests for expedited fair hearings for COVID-19 related services.
- Grant all requests for hearing continuances when a beneficiary cannot access additional information from his or her medical provider in a timely manner.

It is our understanding that HHSC can implement some of these recommended actions without CMS approval while others may require submission of a Section 1135 waiver request. As stated at the outset of this letter, we also understand there are other temporary changes that will be necessary to protect all Medicaid beneficiaries during this public health crisis. We ask the state of Texas to respond accordingly.

Sincerely,



Maureen O'Connell  
Attorney at Law



Peter Hofer  
Attorney at Law