



**Center for Medicaid and CHIP Services**

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November 7, 2012

Ms. Kay Ghahremani  
Associate Commissioner for Medicaid/CHIP  
State of Texas, Health and Human Services Commission  
11209 Metric Boulevard, Building H, Mail Code H100  
P.O. Box 85200  
Austin, TX 78758

Dear Ms. Ghahremani:

I am writing in response to your agency's August 20, 2012 and October 25, 2012, letters regarding the implementation of the state administrative rule prohibiting certain qualified providers from participating in the Women's Health Program (WHP), a program that has been important in helping ensure that women in Texas have access to preventive care services.

On April 30, 2012, in *Planned Parenthood Ass'n of Hidalgo Cty. Tex. v. Suehs*, Civil. No. A-12-322-LY (W.D. Tex.), a federal district court entered a preliminary injunction preventing you from applying the new rule to the WHP providers that brought that lawsuit. Your August 20 letter confirmed, however, that you are already applying the rule to WHP providers that are not parties to the above-named case. The day after your letter, a three-judge panel of the United States Court of Appeals for the Fifth Circuit issued a decision vacating the district court's preliminary injunction. On October 25, 2012 the Fifth Circuit denied the plaintiff providers' request to rehear the case en banc. We understand that on the following day a state court issued a temporary restraining order against the rule with respect to the same group of WHP providers, but we presume based on your letters that the State is continuing to apply the rule to all other providers.

As the Centers for Medicare & Medicaid Services (CMS) has communicated previously to the State, the state administrative rule is inconsistent with the terms of Texas' approved demonstration, and with federal law, because it restricts women's ability to receive services from the qualified family planning providers of their choice. We have made clear that we would have been willing to continue to provide full federal funding for WHP as long as Texas refrained from implementing a rule that is inconsistent with these legal requirements. We have also provided the State considerable flexibility to allow Texas to prepare to transition to a state-funded program following the Governor's announcement of the State's intention to implement the administrative rule and for the State to assume full financial responsibility for the program. Throughout, we have committed to working with you to ensure that any transition or phase-out would minimize disruption in critical health care services for women in Texas. Thus, several months ago we offered to continue to provide federal funding for the program until December 31, 2012, to provide Texas time to transition to a fully state-funded program or phase out the program.

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You have communicated that the State continues to prepare to transition the program to a fully state-funded program. Although you previously indicated that you wished to transition the program to a fully state-funded program by October 31, 2012, your August 20, 2012 letter requested that the transition date be 90 days following the date of the trial court's merits decision in *Planned Parenthood v. Suehs*. We cannot continue to provide full federal funding for a program that is not in compliance with federal law any longer than is necessary to minimize disruption in care to beneficiaries. Accordingly, if the State continues to impose its restriction on women's choice of family planning providers, federal funding will not continue past December 31, 2012, when the authority for the current demonstration, as extended, ends.

We understand from your October 25, 2012 letter that you intend to complete the transition to a fully state-funded program before December 31, 2012. We look forward to reviewing the transition plan update your letter describes. It remains very important to us that the State complete its transition of the program before the end of the year to ensure there is not an abrupt end to services for beneficiaries.

In order to minimize the impact on beneficiaries if you are unable to transition the program, as a contingency, please also provide CMS with a draft phase out plan. The plan should include provisions for stopping new enrollments, reviewing all beneficiaries for other eligibility options, and providing timely and adequate notices to beneficiaries.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Mann", written in a cursive style.

Cindy Mann  
Director