Medicaid Provider Taxes are a Longstanding and Compliant Method for States to Obtain the Non-Federal Share

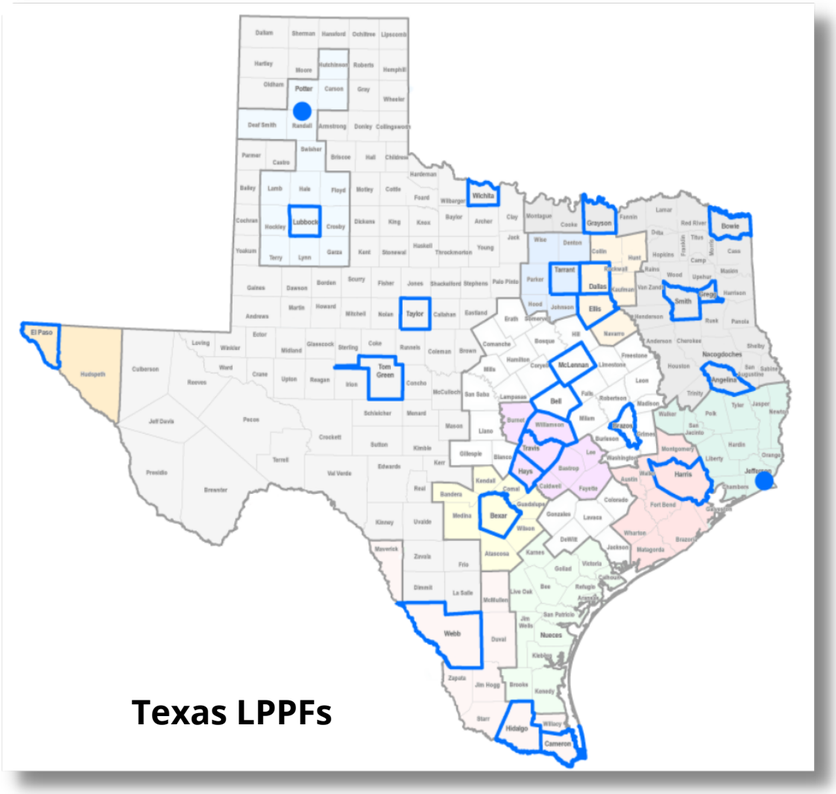
November 2021

In fiscal year 2021, the Texas Medicaid program provided essential health care services to over 4.8 million Texans currently enrolled in Medicaid. To care for these Medicaid beneficiaries, Texas hospitals relied on around $11 billion in Medicaid supplemental payment programs authorized through the state's 1115 waiver program and Medicaid directed payment programs (DPPs). Now, key supplemental payment programs have expired, and unless replacement DPPs are swiftly authorized, hospitals will be without up to $6.3 billion in essential funding at a time when the state's Medicaid enrollment is growing and COVID-19 continues to surge. ***The federal Centers for Medicare and Medicaid Services (CMS) must act quickly to ensure these crucial funds are available to support services provided to Texas Medicaid beneficiaries.***

Sources of Texas' non-federal share, including the state's Local Provider Participation Funds (LPPFs), appear to be a sticking point in the negotiation of these essential replacement programs. ***Support for and preservation of the LPPFs is essential to maintaining the long-term stability of Texas' health care safety net.***

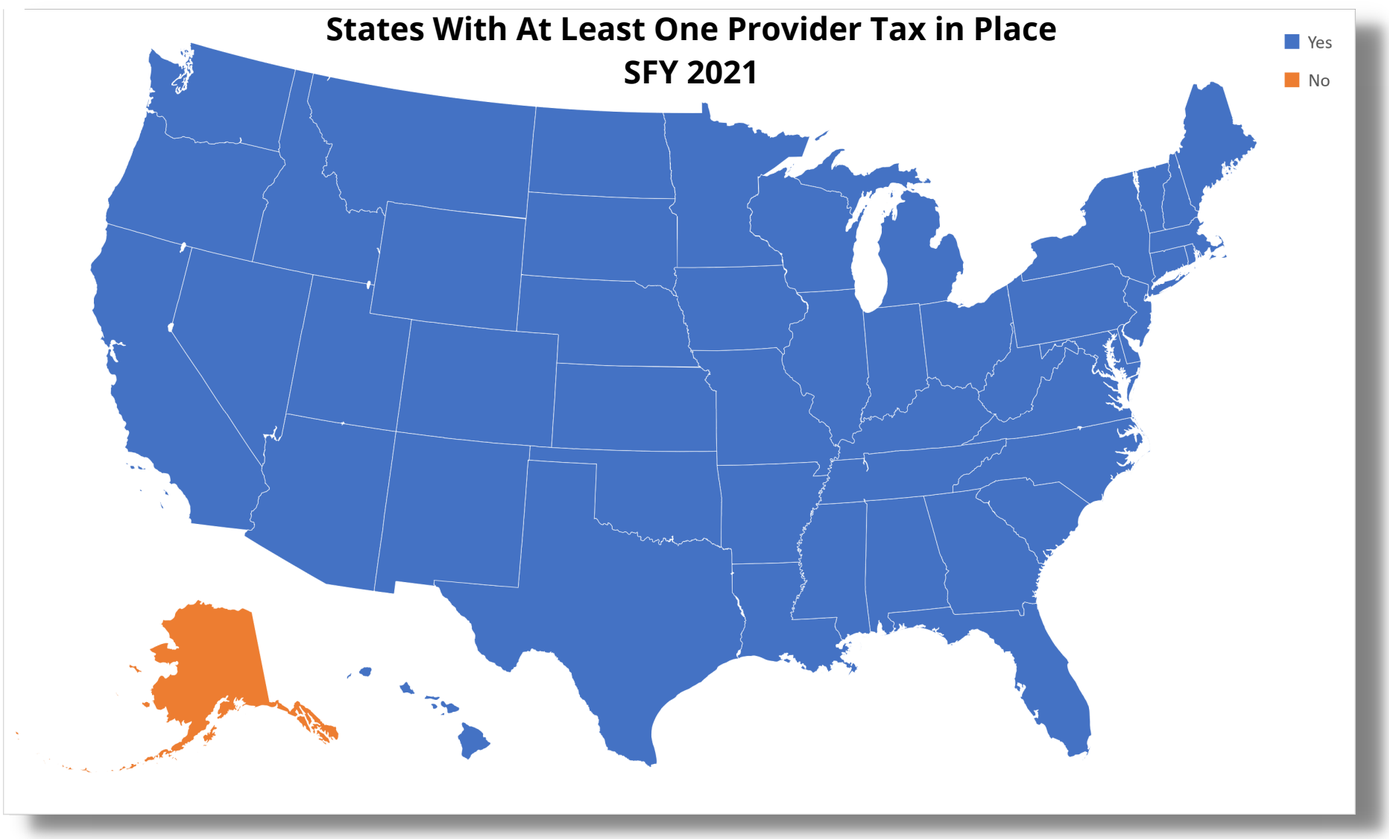
Medicaid Financing is a Shared Responsibility

Medicaid financing is a shared responsibility of the states and the federal government. Federal law allows up to 60% of the non-federal share to come from sources other than the state,[1] and in Texas, many counties and other local governments support this contribution through Medicaid provider taxes called Local Provider Participation Funds (LPPFs). Since 2013, CMS has consistently approved Texas Medicaid supplemental payments funded by LPPFs, and in fiscal year 2021, LPPFs provided a portion of the nonfederal share for three of the state's five Medicaid supplemental payment programs. At least one LPPF funds the non-federal share of supplemental payments in every Medicaid service delivery area in Texas, and ***50% of Texas hospitals benefit from these LPPFs.*** [2]



Medicaid Provider Taxes are Common, Well Defined and Widespread

Provider taxes like the LPPFs are a common and well-defined source of the non-federal share. As recently as January 2021, CMS affirmed that "states can use permissible funding sources, including intergovernmental transfers and provider taxes that comply with federal statute and regulations to fund the non-federal share of state directed payments."[3] Notably, federal law states that CMS may not restrict intergovernmental transfers derived from valid state or local provider taxes,[4] and Texas statutes expressly include the federal requirements for a valid provider tax for each LPPF authorized in the state. [5]



Nationwide, health care-related taxes have been a growing financing source, raising $36.9 billion in nonfederal share nationwide in 2018.[6] Except Alaska, ***virtually every state and DC have consistently had at least one provider tax since 2013.*** CMS has repeatedly[7] approved DPPs funded by valid provider taxes; as of 2019, approximately 22% of all DPPs across 34 states were funded by a provider tax. At least ten states[8] also rely, at least in part, on provider taxes to finance the non-federal share of Medicaid expansion.[9]

Texas's Medicaid Provider Taxes are Compliant and are not Unique

Despite years of approvals in Texas without any questions regarding the LPPFs, CMS is currently raising unsupported concerns in its review of the proposed hospital DPP. LPPFs and similar provider taxes are a vital part of the health care safety net in Texas and states around the country. LPPFs are fully compliant, locally administered Medicaid provider taxes and provide no basis to delay program approval.

1 42 U.S.C. § 1396a(a)(2).
2 HHSC LPPF Payment to Medicaid Payment Analysis (9/21)
3 State Medicaid Director Letter (SMDL) 21-001 (Jan. 8, 2021).
4 42 U.S.C. § 1396b(w)(6)(A).
5 Texas Health & Human Services Commission: Local Provider Fund Legislation and Year Enacted
6 MACPAC, Health Care-Related Taxes in Medicaid (May 2021) (citing U.S. Government Accountability Office (GAO). 2021. Questionnaire data on states' methods for financing Medicaid payments in 2018, a supplement to GAO-21-98. E-mail to MACPAC, February 23).
7 Kaiser Family Foundation, State Health Facts, States With a Hospital Provider Tax in Place.
8 MACPAC Issue Brief: Directed Payments in Medicaid Managed Care, August 2020
9 Families USA, Options to Generate the State Share of Medicaid Expansion Costs, Appendix (Jan. 2019)

Patients Over Politics:
Medicaid Standoff Threatens Existing Access to Care for Texans

November 2021

In Texas, **non-governmental hospitals make up at least 50% of the Medicaid hospital safety net statewide.** The participation of these non-governmental hospitals in the state's Medicaid safety net helps to ensure that the almost 5 million Texans on Medicaid have access to the same continuity of care as commercially insured Texans.

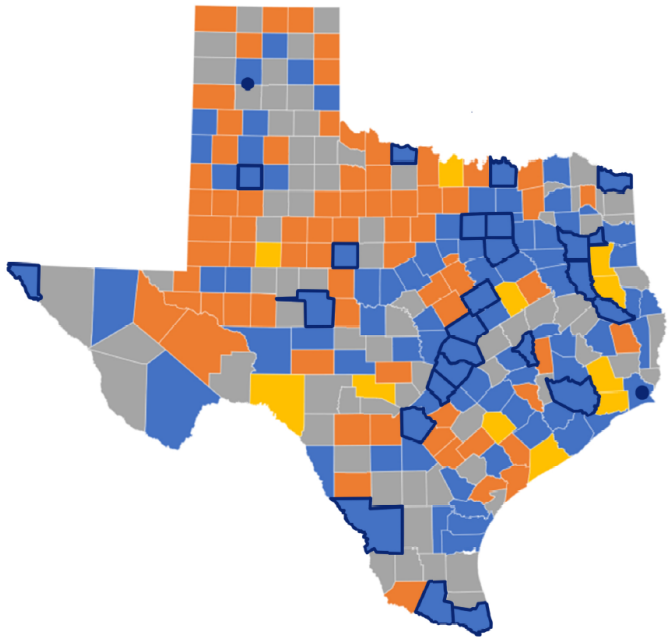
Medicaid is a nationwide program jointly funded by the federal government and the states, which are required to pay for at least 50% of Medicaid costs. Non-governmental hospitals not only provide essential care to Medicaid patients in Texas, but also help fund the non-federal share of these Medicaid payments. In Texas, many counties and other local governments impose provider taxes, as defined under federal statute and regulation, on non-governmental hospitals through funding mechanisms known as Local Provider Participation Funds (LPPFs). **The state authorized and locally administered LPPFs allow local governments to help draw down federal matching funds for Medicaid payments to hospitals in every region of the state, without raising taxes on citizens or diverting scarce general revenues from other public programs.**

LPPFs have been a growing part of the way Texas finances Medicaid since 2013 and have always received overwhelming bipartisan support from local, state and federal policy makers. Texas LPPFs support care to Medicaid managed care patients (through the Uniform Hospital Rate Increase Program (UHRIP)), charity care for the uninsured (through the Uncompensated Care Pool (UC)), and innovative quality improvement partnerships with community health care providers (through the Delivery System Reform Incentive Payment (DSRIP) Program). **In 2020, 28 local governments collected a total of $1.4 billion through LPPFs, which generated a total of $3.2 billion in Medicaid funding for these programs statewide.**

These Medicaid payments, and the LPPFs that contribute to them, have been caught up in the current standoff between Texas and the Centers for Medicare and Medicaid Services (CMS) over the extension of Texas' Medicaid demonstration waiver. Hospitals have now gone months without the established payments needed to cover their actual costs of providing care to Medicaid patients, and **CMS has even suggested it may question whether the LPPFs can be used to help fund these types of payments in the future.**

This sudden disappearance of established funding for low-income Texans is unsustainable for our hospitals, and the possibility that our state may no longer be able to rely on LPPF funding in the future only deepens the pending crisis. **To protect our Medicaid safety net, we must get current funds flowing and preserve our method of financing future payments.**

Texas and CMS have major policy disagreements about how to provide care to this state's most vulnerable residents, but this can't be at the cost of Medicaid beneficiaries losing access to their current levels of care



- No hospital
- Served equally by Governmental & Non-Governmental Hospitals
- Served Primarily by Governmental Hospitals
- Served Primarily by Non-Governmental Hospitals
- Local Government Operating LPPF

As they work towards resolution of these complicated issues, Texas and CMS must act quickly to stabilize the Texas safety net by (1) getting stopgap funding to providers immediately, and (2) acknowledging and approving the established role of LPPFs and non-governmental hospitals in helping to fund our state's Medicaid program.