



November 23, 2020

The Honorable Greg Abbott  
Governor

The Honorable Dan Patrick  
Lt. Governor

The Honorable Dennis Bonnen  
Speaker, Texas House of Representatives

Dear Sirs:

Decades ago, Texas created a Medicaid Managed Care system that was a model for the nation, but the system has drifted from the free-market principles that made it such a success. While some Managed Care Organizations (MCOs) are operating within the original intent of the program, others are failing Texas taxpayers and Medicaid members on key measures like cost, quality, and customer satisfaction.

During the upcoming legislative session, the state has the opportunity to take straightforward actions to rectify these issues and ensure that Medicaid managed care continues to create value for taxpayers who pay for it and Texans who rely on it.

Amerigroup (an Anthem Company) brings forward today a variety of observations and recommendations about the managed care program that we strongly believe are in the interest of the State of Texas. Health plan performance — how to achieve it, measure it, and separate the top performers from the poor ones — is a challenging topic in the industry. While many may find the conversation difficult, it is clearly an essential one, especially in the midst of a public health crisis. We offer this perspective as an independent company that has done business in Texas, in close partnership with the State of Texas, for a quarter of a century. We do not participate in any health plan association.

Amerigroup completed a comprehensive analysis of 8 years of state data regarding the performance of various MCOs and the system by which the Texas Health & Human Services Commission (HHSC) monitors and measures their performance. Our conclusions, detailed in the attached summary, are jarring. Briefly, we found that:

1. Taxpayers are forced to spend too much money for underperforming MCOs.

2. Procurement should be more transparent.
3. State law allows poor performers to enter and remain in the market.
4. It is too difficult for HHSC to police the system.
5. The state needs stronger protections against MCO financial losses that affect taxpayers.

Please see the attached for more information about this analysis. It demonstrates that, by increasing transparency and accountability in managed care procurement and post-procurement processes, the state can optimize care for Medicaid members, reduce bureaucratic inefficiencies, and create sustainable cost savings for the benefit of all Texans.

We respectfully request that you consider supporting these practical initiatives and legislation next year; they would create:

1. A transparent procurement process that includes objective measures to determine best value for cost, quality, and customer satisfaction;
2. Post-procurement measures that hold MCOs accountable when they fail to reach cost, quality, and customer satisfaction benchmarks;
3. A careful and strategic effort to reduce the number of MCOs operating in Texas, thereby helping ensure HHSC can adequately monitor contract performance while still preserving competition; and
4. Clear HHSC discretion to award contracts only to high-performing MCOs and not be constrained by existing law that requires the issuance of mandatory contracts to certain organizations. Managed care procurement cannot be reformed without first addressing this issue.

In addition, to create the time and space that these changes require, HHSC should strongly consider postponing future Medicaid Managed Care procurements until these issues can be successfully addressed. Such a pause would help the state avoid future pitfalls — and would improve MCO performance, taxpayer value, and service to Medicaid members in the process.

Taken together, these steps would help restore the competitive balance and focus that is supposed to be the hallmark of Medicaid Managed Care in Texas.

To be clear, Amerigroup has great confidence in HHSC — we genuinely appreciate our long relationship and history with the agency. We strongly commend you for appointing Cecile Young, a well-respected HHSC veteran, as the agency's executive commissioner. We have enormous faith that HHSC can create a system of managed care that maintains and perpetually cultivates high performance for Medicaid members, taxpayers, and the state.

While Amerigroup could easily continue to operate under the status quo, we feel compelled to help build a better system, founded on performance and transparency, that better aligns with the state's values and the intent of Texas' essential managed care system.

As an aside, please note that effective December 18, 2020, Greg Thompson will assume the role of health plan President for Amerigroup. I am fully committed to supporting a smooth transition, and I have worked with him side-by-side for years serving the Texas Medicaid managed care system.

Sincerely,

A handwritten signature in black ink that reads "Patrick Sturdivant". The signature is written in a cursive style with a large, sweeping initial "P".

Patrick Sturdivant, President  
Amerigroup Health Plan

c: Cecile Young, Executive Commissioner, Health & Human Services Commission

## **SUMMARY: Analysis of MCO Performance in Texas**

In 2019 and 2020, following a series of news articles relating to Medicaid Managed Care in Texas, Amerigroup (an Anthem Company) conducted a comprehensive analysis of public state data regarding the performance of various managed care organizations (MCOs). This study also reviewed the efficacy of the system by which the Texas Health & Human Services Commission (HHSC) monitors and measures their performance, as well as a thorough review of statutes that govern the agency and managed care in general.

This analysis of public data has been presented to other MCOs, appropriate associations, HHSC administrators, and several legislators and legislative staff members (we continue to work in close coordination with each of these parties). It concluded that:

- 1. Taxpayers are forced to spend too much money for underperforming MCOs.** Over the last eight years, a large group of provider-owned and for-profit plans contributed to at least \$612 million in losses, according to financial data that has been reported by MCOs to HHSC. By Amerigroup's estimate, those losses likely triggered increased state payment rates to MCOs (due to HHSC's practice of structuring rates to reflect MCOs' collective performance during the previous year). Further, by another analysis, Texas has paid more than \$1 billion in premiums over the past four years alone, in just three of the state's six Medicaid products, to several underperforming MCOs without necessarily seeing better health outcomes among Medicaid members. This demonstrates the considerable amount of business that the state does with inefficient MCOs. This is not HHSC's fault; it is the fault of system that welcomes new health plans without adequately assessing their ability to deliver on cost, quality, and customer satisfaction metrics.
- 2. It is too difficult for HHSC to police the system.** Since 2005, the number of state managed care contracts has nearly doubled; managed care contracts are now the state's largest. But procurement, management, and oversight of those contracts has not kept up. For instance, four Medicaid procurements have had to be cancelled in the last three years. As HHSC staff testified in April 2018, the proliferation of managed care products and contracts, coupled with the pivot away from fee-for-service models, represents a "huge organizational shift" for the agency — one that should be better reflected in its staffing levels and budget. Texas does not need, nor does adequate competition require, a California or New York model of boundless MCO participation.
- 3. Procurement should be more transparent.** The state's procurement processes produce an unlevel playing field, in that they do not clearly articulate standards that MCOs should work to achieve. The process does not provide adequate indicators of MCOs' past or expected future performance, as required by law, nor can it produce metrics that justify contract awards. In addition to the various procurement process improvements that

HHSC is pursuing, the agency should establish cost, quality, and customer satisfaction indices against which MCOs are required to perform, in both procurement and post-procurement settings.

4. **State law allows poor performers to enter and remain in the market.** The state’s system is structured to bring more players into managed care, even when those organizations may not be able to compete on cost, quality, or customer satisfaction. The system emphasizes quantity over quality, creating an “everybody gets a trophy” dynamic in which low-performing entities still get eight- and nine-figure Medicaid contracts. The system’s financial structure essentially pays these MCOs more to continue serving Medicaid members, even when the organizations have established track records of losses, inefficiency, or mediocre performance on quality metrics.
5. **The state needs stronger protections against MCO financial losses that affect taxpayers.** Texas has been a national leader in protecting taxpayers from excessive MCO profits. However, the consequences of excessive losses and inefficiencies — which ultimately drive up the state’s Medicaid rates — are not prescribed in law and thus have not been reflected in HHSC’s decisions about market participation and Medicaid contract procurement. This, too, is not necessarily HHSC’s fault. Indeed, it appears HHSC has no choice *but* to award contracts to certain low-performing MCOs due to obscure Texas laws.\*

**\* Mandatory Contracts Undermine Best Value and Competition**

Texas should have no law, policy or administrative rule that requires contracting with a vendor who cannot demonstrate performance in the product being bid, most especially in complex products designed to serve sensitive populations like seniors or medically fragile children.

As noted in Conclusion #5 above, there is a significant conflict in Texas law regarding HHSC’s discretion to award, or not award, managed care contracts to certain types of MCOs. These provisions are:

1. Government Code, Chapter 533.004 (requiring mandatory contracts for certain provider-owned plans), and
2. Government Code, Chapter 2155.144 (n) (stating that best-value considerations are superior to any other law in HHSC procurement decisions).

The lack of legislative clarification on the former “mandatory contracts” provision undermines HHSC’s ability to make best-value decisions in future procurements. This is best demonstrated by a lawsuit brought earlier this year by a Houston-based health plan that was denied a managed care contract by HHSC after receiving a very low score through the state’s procurement process.

Neither the state district court in Travis County nor the Third Court of Appeals could resolve the competing provisions around mandatory contracts and best-value statutes.

**As a result, both courts have ruled that under current law, HHSC *must* award contracts to certain provider-owned MCOs, no matter how poorly they perform or how HHSC rates their performance on behalf of the state, taxpayers, and Medicaid members.** The case now awaits review by the Texas Supreme Court.

Such lack of discretion, if ultimately upheld, creates a serious risk of future protests and litigation around managed care procurement. It also contributes strongly to administrative issues that have resulted in the cancellation of four managed care procurements in the last three years alone.

This analysis demonstrates that in many cases, due to current state law setting out mandatory contracts, HHSC simply does not have the ability to effectively require better performance from certain MCOs.



December 10, 2020

The Honorable Greg Abbott  
Governor

The Honorable Dan Patrick  
Lt. Governor

The Honorable Dennis Bonnen  
Speaker, Texas House of Representatives

Dear Sirs,

We have received correspondence to you from the Texas Association of Health Plans and the Texas Association of Community Health Plans regarding our recent analysis of Medicaid managed care in Texas. We are glad this overdue conversation is taking place, and we hope it leads to a more competitive and sustainable Medicaid system that preserves managed care *and* strengthens it for taxpayers, Medicaid members, and future generations.

Amerigroup's recommendations boil down to two very simple ideas. First, some managed care organizations (MCOs) perform better than others, and the state is better off working more with high performers and less with low performers; associations could never arrive at such a common-sense conclusion because they are dues-supported organizations that operate on a 100% consensus model. Second, Texas needs to base Medicaid contracting decisions on transparent, objective, data-driven metrics that cover the range of benefits managed care is meant to create — specifically around some new but mostly existing quality, customer satisfaction, and cost data. We are keenly aware that other considerations may also be appropriate.

**No one who believes in competition — and no MCO that is willing to participate in a truly competitive managed care system — should disagree with these conclusions.**

The data that drove our recommendations was provided to the state by MCOs themselves and is freely available to the public. Our analysis is simply a plain-text reading of that data — it is incontrovertible and transparent, and we provided it to MCOs and the Texas Health & Human Services Commission (HHSC) before releasing it publicly. In simply attacking the data and this intuitive reading of it, the Associations undermine their own ability to find solutions that meet the legislature's goals. Nor do they offer any new ideas for improving managed care in Texas. Theirs is a stark defense of a legislative status quo — even in Medicaid procurement, which has undergone four cancellations in just three years.

The legislature, by contrast, has made clear over and over that it wants to move the Medicaid program to a higher level of performance. There is no question that managed care is generally good for Texas. But everyone — including the Associations — should also agree that the system can be improved and the legislature is key to improving it. Decisions made in the 87<sup>th</sup> Legislative Session will help determine whether managed care will be the competitive, multi-faceted system leaders imagined when they created it a generation ago, or whether it will remain a participatory market that stresses only the quantity of MCOs, not their overall performance on behalf of Texans. Only the

legislature can fix laws mandating that contracts be awarded to certain MCOs regardless of their performance. And only legislators can address procurement in ways that end the ongoing threat of contractual protest and litigation.

Amerigroup seeks best-value performance criteria that are organized in transparent indices. As was demonstrated in the report prepared for HHSC by the consulting firm Mercer, there are major deficiencies in the best-value criteria utilized in procurements, including that there is almost no consideration of cost performance. *“The [best-value criteria] are not tied directly to specific quality and outcome goals such as lower cost, increased innovation and improving preventive care,”* the Mercer report authors found.

Like the Associations, we commend HHSC on its procurement process improvements. But there is more to be done, and again, only the legislature can do it. In our experience, you and other legislative leaders have embraced every opportunity to make all facets of state government more efficient, effective, and competitive, which is why we offered our recommendations in the first place.

Indeed, the legislature has already weighed in on many of these issues in the past (see S.B. 7 from 2013). Our recommendations build on that past action, working to ensure that legislators will achieve the positive change they seek in Medicaid managed care.

We also are sharing a point-by-point analysis of the Associations’ letter with legislators, committees, and staff members who are working directly on this issue. Thank you very much for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Thompson", with a long horizontal line extending to the right.

Greg Thompson, Incoming President  
Amerigroup Health Plan

c: Cecile Young, Executive Commissioner, Health & Human Services Commission