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NEWS

Texas judge halts \$116 billion Medicaid proposal that could affect 1.8 million

The ruling blocks the state health agency from finalizing a new set of contracts on coverage for low-income Texans.



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Cook Children's Health Plan president Karen Love speaks during a news conference in Fort Worth on June 26. Cook Children's Health Plan was denied two Medicaid contracts by the Texas Health and Human Services Commission earlier this year. (Andrew Long)



A state judge Friday halted a \$116 billion Medicaid contract proposal that would have excluded three Texas children's hospital plans — including one run by Cook Children's Hospital in Fort Worth — and forced 1.8 million low-income Texans to change their health coverage.

District Judge Laurie Eiserloh of Travis County blocked Texas Health and Human Services Executive Commissioner Cecile Erwin Young from finalizing a set of contracts that would have displaced nearly half the Texans who receive Medicaid and Children's Health Insurance Plan coverage from six managed care organizations across the state, switching them to new plans next year.

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The judge granted the temporary injunction sought by four health plans that have lost billions of dollars after 12 years in the program. Eiserloh found the proposed changes violated state law and exceeded the state agency's authority.

"The intended contract awards will impose significant harm and confusion on millions of Texas's STAR & CHIP members," the judge wrote in a 10-page order.

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The ruling came after a week of testimony from health plan officials and leaders of the Texas Health and Human Services Commission.

Eiserloh set a Nov. 3 trial on a permanent injunction. The ruling can be appealed before then, or Young could opt to cancel the procurement and start the agency's fourth attempt to renegotiate the contracts in the past six years.

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In addition, state lawmakers concerned with the proposal have said they plan to revisit procurement laws next spring.

Officials with Cook Children's Health Plan in Fort Worth, which would have been eliminated under the proposal, celebrated the ruling.

"This decision is a major win for the 125,000 children and families who rely on CCHP for their health care coverage," plan officials said in a statement. "We believe this ruling will help ensure that our Members continue to have access to the care they need, when they need it."

Texas Children's Health Plan leaders expressed relief that the 425,000 children and pregnant women covered by the plan would not see disruptions anytime soon.

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"We are grateful to the Court for agreeing with our position," Michael Murphy, president of TCHP, said via email. "But we are also alarmed that it came to this point."

The decision will give Texas lawmakers an opportunity to examine a "fundamentally flawed" procurement process, said Craig Smith, CEO of Driscoll Health Plan.

"There's an old saying in Texas that questions the substance of a person as 'all hat and no cattle,'" Smith said. "Well that correlates to any process that relies more on promises than on performance. "

Officials at Texas HHS did not return emailed requests for comment.

At issue is a proposed renegotiation of the state's Medicaid contracts being considered by state health officials. If finalized, the proposal would raise the number of national for-profit chains operating under the program, displace highly rated plans with new untested ones, reduce the number of local managed care organizations and shrink the overall number of managed care organizations operating Medicaid programs in the state.

The proposal would eliminate from the program health plans run for two decades by three of the state's four major nonprofit children's hospitals: Cook Children's Hospital, Driscoll Children's Hospital in Corpus Christi, and Texas Children's Hospital in Houston.

Dropping those three plans would displace about 700,000 members from their current coverage. Officials from Cook's and Driscoll have said their plans, created to serve the two programs, would shut down if their contracts weren't renewed. The hospitals are not in danger of closing, officials have said.

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It also would displace hundreds of thousands of residents from three other plans, all of which had been operating under the program since 2012.

Several of the affected plans have been among the state's highest-rated managed care organizations in the program.

The proposed changes would require a massive outreach effort on the heels of the agency's [botched 2023 reduction](#) in Medicaid rolls, ordered by state and federal officials at the end of the pandemic emergency, that resulted in 2 million Texans losing coverage, more than half of whom lost coverage because of paperwork issues, not eligibility.

The proposed contract procurement has triggered appeals and lawsuits, as well as criticism from lawmakers, hospitals and health care advocates who said the procurement was unfair, against the law, and tainted by the [early release](#) of documents to a bidder that wound up being one of the proposal's biggest winners.

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Critics argue the procurement did not comply with [state laws](#) designed to prioritize community-focused and specialized health plans, such as those catering to children’s needs.

Lawmakers have demanded that Young, appointed in 2020 by Gov. Greg Abbott, cancel the procurement so legislators can work out a new contract procurement system when they meet for the legislative session next year.

Asked Thursday for a comment from Abbott, a spokesman told *The Dallas Morning News* the governor does not get involved in state agency procurements.

Contract procurement is the primary responsibility of the Texas HHS. Taxpayer-funded Medicaid managed care contracts consistently rank as the nation’s costliest state contracts, with Texas boasting some of the largest agreements nationwide.

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Texas’ Medicaid STAR and Children’s Health Insurance Program, or CHIP, provide coverage for a range of medical services, including routine, acute and emergency care.

The STAR program primarily serves pregnant women and low-income children and their caregivers. CHIP offers health coverage to children from low-income families whose earnings exceed Medicaid’s eligibility threshold — which in Texas is among the lowest in the nation. Texas, among 10 states that have not expanded access to Medicaid under the Affordable Care Act, has the highest rate of uninsured residents in the country.

State defends proposal

Officials at the state health agency have defended the proposal, saying that giving any advantage to highly rated plans already operating in Texas would close the market to new bidders and shut out chances for innovation and more cost-effective plans.

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The agency already awards several contracts to local Medicaid/CHIP insurers under the state's mandatory contract laws, including Dell Children's Health Plan in Austin — the only nonprofit children's hospital plan left in the program under the proposal.

Young and other agency officials told legislators earlier this summer that the agency complies with a state law requiring the state to give a fair shake to all applicants, whether new to the state or longtime contractors, and therefore cannot give any advantage to plans that have good track records in the state.

Speaking in public for the first time about the effect of the proposal since it was announced in March, Young told the judge earlier this week she was sad when she learned the three children's hospital plans did not make the cut after the 18-month procurement process.

She gave preliminary approval, Young testified, because her hands were tied by state law and a new procurement scoring system designed by her staff and approved before the requests for bids went out.

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Young said she relied on her staff to do the heavy lifting when developing the resulting plan but said it was ultimately her decision to let the contracts continue to inch toward being signed.

“This was a struggle I had myself,” she said under questioning from a lawyer for one of the plans. “When I learned that some of the children's hospital plans were not included, I actually wanted to try to find a way to add them back in, but I couldn't come up with a principled way to do it because you can't just look at one particular performance measure. ... And my personal preference couldn't prevail. It made me sad, but it was my decision.”

Internal appeals by the plans were rejected in June by Kay Molina, the agency's deputy executive commissioner for procurement and contracting services.

Young said she is still reviewing the appeals but has given no indication of when she might make her decision. A court rule requires her to wait until early November.

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Continuity of care question

The plaintiff health plans leaned heavily on the notion of so many Texans being affected by the change, which could mean shifts in providers, pharmacies and hospitals they've been using under their current coverage.

Young said she did not know at the time she gave preliminary approval to the plan that it would affect the coverage of 1.8 million Texans, but she and other agency officials insisted guardrails are in place to ensure the newly contracted managed care organizations were ready for the changeover and set up to handle the influx of new members.

Contracts have to be updated and renegotiated and shifting of coverage for members is always a possibility, Young said.

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Making sure members don't experience undue interruption in services is a top priority, she said.

"It's difficult for the plans when there is a disruption, but our responsibility is for the kids to continue to receive services," Young said. "We want to make sure the services are there for kids, but it isn't the same thing

as having the same plans. It's about having the same services.”

The process has also been marred by controversy after sensitive bid proposal information was prematurely disclosed to Aetna and one other plan, as well as a

care information clearinghouse website.

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Although the state has acknowledged the release was a mistake in emails to affected health plans, officials said it was not illegal and did not influence the outcome.

Young has said that the matter was being addressed internally but declined to provide further details.



By **Karen Brooks Harper**

Karen Brooks Harper has covered Texas politics in and out of Austin for nearly 30 years. She's also covered the cartel wars along the TX-MX border, Congress in Mexico City, and 6 hurricanes, among other stories. Raised on blues and great food in the MS Delta, she lives in ATX with her family, her guitar, and her boxing gloves. In that order.

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