



November 29, 2022

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services (CMS)  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Meena Seshamani  
Deputy Administrator  
Center for Medicare  
Centers for Medicare & Medicaid Services (CMS)  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Becerra, Administrator Brooks-LaSure, and Deputy Administrator Seshamani,

**On behalf of the Physician-Led Healthcare of America (PHA), I write to you out of deep concern that the Centers for Medicare & Medicaid Services (CMS) is straying from the clear letter of the law and bowing to pressure from the American Hospital Association (AHA) and Federation of American Hospitals (FAH), in order to deny Doctors Hospital at Renaissance, Ltd.'s (DHR Health) pending physician-owned hospital expansion exception request as a "high Medicaid facility" (HMF).<sup>1</sup>**

PHA was founded in 2001 as the stakeholder voice for physician-owned hospitals and has worked to represent physician-owned hospitals, physician-led facilities, physician-led practices and other physician-led initiatives to better advance access to care in local communities. Today, PHA serves as a voice for all physician-led initiatives that advance clinical quality and efficiency. PHA promotes, educates, and advocates for exceptional patient centered care through physician leadership with core values that include helping define and advance innovative healthcare models, collaboration among healthcare professionals, optimum clinical quality and efficiency and patient first approach to care delivery. PHA helps its members support efforts to advance quality and availability of patient care in local communities, while continuing to maintain and expand healthcare standards for patient care through quality improvement initiatives.

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<sup>1</sup> <https://www.cms.gov/files/document/2021-dhr-expansion-exception-request.pdf>



Hospitals qualifying as high Medicaid facilities (HMF) are community safety-net hospitals that serve a disproportionate share of low-income and Medicaid patients. To qualify, a high Medicaid facility must demonstrate that:

- 1) it is not the sole hospital in a county;
- 2) it has the highest Medicaid admissions of any hospital in the county for the three most recent years; and
- 3) it must certify that it does not discriminate against federal healthcare beneficiaries.

**The law is clear that a hospital that meets the criteria above “is” a high Medicaid facility eligible for expansion.<sup>2</sup>** As demonstrated by DHR Health’s application, DHR Health undisputedly meets the legal standard under federal law to qualify as a HMF. CMS should follow the letter of the law and grant DHR Health’s pending application based on the criteria established in statute and regulations under federal law.

**We ask that the agency apply the law as written and not create new criteria, out of whole cloth, upon which to consider an expansion request.** Doing so would disregard the letter of the law and establish a subjective, arbitrary and capricious standard that with the sole effect of denying access to care to a vulnerable population.

Federal law clearly provides that if a hospital meets the statutory and regulatory criteria to qualify as a HMF, then CMS should grant the hospital’s application.<sup>3</sup> However, CMS has indicated to DHR Health that the agency is considering whether DHR Health has expansion capacity under its previously approved expansion request, in determining whether the HMF expansion request should be granted. The law does not allow CMS to consider new qualification criteria that does not exist in federal statute or regulation when reviewing an application. CMS itself has iterated this point, stating in a 2015 decision that it “*cannot consider any concerns unrelated to the statutory and regulatory eligibility criteria when determining whether to grant an exception to a requesting hospital*”<sup>4</sup> and “*if a hospital qualifies as either an applicable hospital or high Medicaid facility, CMS “does not have the discretion to grant less than the requested increase in facility capacity.”*<sup>5</sup> Additionally, during rulemaking in 2020, CMS reiterated that in considering a hospital’s application for expansion, it is not proper for the agency to establish new criteria under which it may approve or deny the hospital’s request.<sup>6</sup>

**We request that CMS abide by the rule of law and grant DHR Health’s application based on the clear criteria outlined in federal statute and regulations.** Granting DHR Health’s application will uphold the rule of law, and will increase access to healthcare services, reduce physician shortages, help address health disparities, and improve health outcomes in the Rio Grande Valley of deep South Texas. These

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<sup>2</sup> “a high Medicaid facility described in this subparagraph is a hospital that –“ 42 USC 1395nn(i)((F); “a high Medicaid facility is a hospital that satisfies all of the following criteria:” 42 CFR 411.362(c)(3) (emphasis added).

<sup>3</sup> *Supra* n. 2.

<sup>4</sup> 80 Fed. Reg. 55851, 55852 (Sep. 17, 2015).

<sup>5</sup> *Id.*

<sup>6</sup> 85 Fed. Reg. 85866, 86256 (Dec. 29, 2020).



are goals that are aligned with HHS' Equity Action Plan. DHR Health is a model community safety-net hospital and health system that serves an underserved region of the country with 90 percent Hispanic population and 25 percent poverty, 30 percent uninsured, and 32 percent Medicaid rates.

This is a critically important matter directly impacting the healthcare of a majority Hispanic community South Texas. I trust that CMS will follow the criteria established in statute and regulations under federal law and approve DHR's HMF expansion request.

Sincerely,

A handwritten signature in black ink that reads 'Liss MD'. The signature is fluid and cursive, with 'Liss' being the first name and 'MD' being the title.

Frederic Liss, MD  
President, Physician-Led Healthcare for America