

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop: S2-26-12
Baltimore, Maryland 21244-1850



May 27, 2021

Loren Anthes, MBA, CSSGB
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The Center for Community Solutions
William C. and Elizabeth M. Treuhaft Chair in Health Planning
1501 Euclid Avenue, Suite 310
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Dear Ms. Anthes:

The Department of Health and Human Services (“HHS” or “the Department”) received your January 22, 2021 correspondence, addressed to Secretary-designate Xavier Becerra, through the designated mailbox for petitions to review guidance, pursuant to the Good Guidance Practices Regulation, 85 Fed. Reg. 78,770 (Dec. 7, 2020), see also 45 C.F.R. § 1.5. Secretary Becerra has asked me to respond to you directly.

Upon review of your request, the Centers for Medicare & Medicaid Services (“CMS” or “the Agency”) determined that your concerns are not a petition “to withdraw or modify any particular guidance document.” See 45 C.F.R. § 1.5(a). Instead, we understand you are requesting the Agency to take immediate action to protect those individuals who rely on Medicaid in states with proposed and approved work and community engagement requirements in demonstration projects under section 1115 of the Social Security Act (“the Act”), by denying all pending proposals and withdrawing approvals for all states with these authorities. Because your correspondence does not request the withdrawal or modification of any particular Departmental or Agency guidance, we are not treating it as a petition under 45 C.F.R. § 1.5 but will address the concerns raised in your letter in the response below.

CMS understands the challenges beneficiaries and states are facing with addressing the COVID-19 pandemic and its related economic and social effects, and the importance of ensuring Americans have access to health coverage, including through Medicaid for those who are eligible. Under section 1115 of the Act and its implementing regulations, CMS has the authority and responsibility to review, approve, and maintain continued oversight of demonstration projects in order to ensure that they are currently likely to assist in promoting the objectives of Medicaid, and CMS may withdraw waivers or expenditure authorities if it “find[s] that [a] demonstration project is not likely to achieve the statutory purposes.” 42 C.F.R. 431.420(d). Concerned about testing policies that risk loss of health care coverage or benefits to Medicaid beneficiaries, particularly given the uncertainty of the COVID-19 pandemic and its potential impact on economic opportunities and access to transportation and to affordable child care,

which effects may linger long after the end of the declared public health emergency, CMS issued letters to states with section 1115 demonstration authority to implement work and community engagement requirements to provide notice of CMS' intent to review their currently approved demonstrations. These letters stated that, taking into account the totality of the circumstances, CMS preliminarily had determined that allowing work and other community engagement requirements to take effect, as currently approved in certain demonstration projects, would not promote the objectives of the Medicaid program as required under section 1115 of the Act.¹

Since these letters were issued, CMS has withdrawn authority for work and community engagement requirements previously approved in demonstration projects in Arkansas and New Hampshire on March 17, 2021 and in Michigan and Wisconsin on April 6, 2021.² We also have withdrawn the previous State Medicaid Director Letter on work and community engagement requirements, entitled, "Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries" (SMD: 18-002) from the Good Guidance Portal at www.hhs.gov/guidance and from Medicaid.gov. As specified in the preamble to the final rule on Good Guidance Practices, "the Department can rescind a guidance document by not posting it, *or not maintaining its posting*, on the HHS guidance repository." See 85 Fed. Reg. 78,777 (emphasis added).

CMS is committed to its fiduciary responsibility to ensure that proposed and approved section 1115 demonstrations are likely to further the objectives of the Medicaid program. Pending applications for demonstrations to test work and community engagement requirements will be considered on their individual merits, and CMS will make an independent decision about whether the demonstration satisfies the statutory requirements of section 1115 of the Act before approving any demonstration for which there is a pending application.

We thank you for your advocacy and support of the Medicaid program and the populations it serves. Should you have additional questions, please contact Ms. Teresa DeCaro, Acting Director, State Demonstrations Group, Center for Medicaid and CHIP Services, at (410) 786-9686.

Sincerely,



Anne Marie Costello
Acting Deputy Administrator and Director

¹ The CMS letter regarding the Ohio Group VIII Work Requirement and Community Engagement Section 1115 Demonstration can be accessed here: <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/oh-work-requirement-community-engagement-cms-ltr-state-demo-02122021.pdf>.

² The CMS withdrawal letters for these four states (AR, NH, MI, and WI), respectively, can be accessed here: <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ar-works-ca2.pdf>, <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/nh-granite-advantage-health-care-program-ca2.pdf>, <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/mi-healthy-michigan-ca2.pdf>, and <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/wi-badgercare-reform-ca2.pdf>.

EXHIBIT A



VIA ELECTRONIC SUBMISSION TO
Good.Guidance@hhs.gov

January 22, 2021

Secretary-designate Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Re: Request for Immediate Action to Rescind and Unwind Section 1115 Medicaid Work Requirements Demonstrations

Dear Secretary-designate Becerra:

The Center for Community Solutions requests you take immediate action to protect those individuals who rely on Medicaid in states with proposed and approved section 1115 work and community engagement requirements demonstration projects by denying all pending proposals and withdrawing approvals for all states with these waivers.

Since 2017, we have written about and argued against work requirements in Ohio's Medicaid program. As we said during our public comments to the state when first introduced, we believe the waiver represents a disparaging and legally questionable set of eligibility reforms that will create unnecessary complexity, grow the size and cost of government and perpetuate Ohio's status as a low-value health purchaser through disenrollment and poorer outcomes.¹

By way of background, the Centers for Medicare and Medicaid, in its State Medicaid Director letter SMD: 18-002, issued guidance taking the unprecedented position that requiring work and volunteering as an element of eligibility correlates to better health outcomes and is, therefore, consistent with federal law established in the Social Security Act. However, the evidence in Ohio clearly contradicts this errant logic. In two reports required by Ohio's General Assembly and developed by independent, third-party reviewers, Ohio's expansion was associated with better health outcomes, improved primary care utilization, lower household debt, better housing and food security, greater primary care physician participation, better economic mobility and lower smoking rates.²

It is also important to remember that a requirement of 1115 demonstrations is budget neutrality. Given the increased complexity and sophistication that would be required of a system largely dependent on local government administration and adjudication, it would be reasonable to assume costs would

¹ Anthes, L. (2020, January 07). Testimony: Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver. Retrieved January 19, 2021, from https://www.communitysolutions.com/public_testimony/testimony-group-viii-work-requirement-community-engagement-1115-demonstration-waiver/

² 202018 Ohio Medicaid Group VIII Assessment: A Follow-Up to the 2016 Ohio Medicaid Group VIII Assessment. (2018, August). Retrieved January 19, 2021, from <https://www.medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Final-Report.pdf>



increase to accommodate the need. Indeed, data from Virginia,³ Kentucky,⁴ and Pennsylvania⁵ confirms this assumption as the operational costs for implementation number in the hundreds of millions. And, looking back to Ohio's proposal, to meet the requirements of budget neutrality, the state noted the reduction of caseload driven by the requirement as a driver of underspending, thus fulfilling the obligation of the neutrality requirement. However, through this admission, the state identifies the policy's impact being primarily that of disenrollment and not the Social Security Act's clear language in section 1901 signifying the objective of Medicaid to "furnish medical assistance".

Ohio is grappling with the same challenges as all states in addressing COVID-19. And while the public health emergency has enabled Ohio Medicaid to forestall this destructive proposal and ensure over 140 thousand Ohioans have been able to garner coverage since March of 2020, the emergency is only temporary and we are facing a resurgent opioid crisis. That's why we are asking you do everything in your power to affirm court rulings on the illegal nature of these waivers and eliminate them from the nation's Medicaid policy vocabulary.

If you need additional information, please contact Loren Anthes at lanthes@communitysolutions.com.

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³ Martz, M. (2018, February 05). Bill gets bigger in revised analysis of Medicaid work requirement. Retrieved January 19, 2021, from https://richmond.com/news/virginia/government-politics/general-assembly/bill-gets-bigger-in-revised-analysis-of-medicaid-work-requirement/article_882a5762-d57d-5edb-b6e4-ff079ace7b38.html

⁴ Williams, M. (2018, February 26). Medicaid Changes Require Tens of Millions in Upfront Costs. Retrieved January 19, 2021, from <https://www.rollcall.com/news/politics/medicaid-kentucky>

⁵ Brubaker, H. (2018, March 06). Pa. Human Services head cites expense of forcing Medicaid recipients to get jobs. Retrieved January 19, 2021, from <http://www.philly.com/philly/business/pa-human-services-head-cites-expense-of-forcing-medicaid-recipients-to-get-jobs-20180306.html>