
June 4, 2021

Kelsey Bergfeld
Coalition Manager
Advocates for Ohio's Future
175 S. Third Street, Suite 350
Columbus, OH 43215

Dear Ms. Bergfeld:

The Department of Health and Human Services (“HHS” or “the Department”) received your April 1, 2021 correspondence 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. However, upon review of your request, attached as Appendix A, 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 withdraw the Ohio Group VIII Work Requirement and Community Engagement 1115 Demonstration because the approved demonstration project is contrary to the core purpose of the Medicaid program and does not promote health. 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 Social Security Act (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 The COVID-19 pandemic has had a significant impact on the health of Medicaid beneficiaries. Uncertainty regarding the current crisis and the pandemic's aftermath, and the potential impact on economic opportunities (including job skills training and other activities used to satisfy community engagement requirements, such as work and other similar activities), and access to transportation and affordable child care, have greatly increased the risk that implementation of the community engagement requirements approved in these demonstrations will result in coverage loss. In addition, the uncertainty regarding the lingering health consequences of COVID-19 infections further exacerbates the harms of coverage loss for Medicaid beneficiaries.

For these reasons, these letters provided notice to the relevant states that CMS was commencing a process of determining whether to withdraw the authorities approved in the state's demonstration that permit the state to require work and other community engagement activities as a condition of eligibility or of receiving certain Medicaid benefits. If a state wished to submit to CMS any additional information that in the state's view may warrant not withdrawing those authorities, we noted that such information should have been submitted to CMS within 30 days. We explained that, if we ultimately determined to withdraw those authorities, we would promptly notify the state in writing of the determination, the reasons for it, and its effective date, and we would afford the state an opportunity to request a hearing to challenge our determination prior to the effective date. In response to this letter, Ohio submitted additional information for CMS' consideration on March 11, 2021, which information currently is under review.²

Following the above-described notices and the opportunity for the states to submit additional information, 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. As explained in letters to those states, early implementation of community engagement demonstration initiatives showed that the implementing states experienced or were set to experience rapid beneficiary coverage losses. Coupled with the changed circumstances of the COVID-19 pandemic and its health and economic effects, many of which are likely to persist long after the end of the declared public health emergency, we have serious concerns about testing policies that risk loss of health care coverage and harm to beneficiaries. Accordingly, we determined that, on balance, the authorities that permitted these states to require work and community engagement as a condition of eligibility were not likely to promote the objectives of the Medicaid statute and, therefore, withdrew the relevant authorities from these demonstration projects.³ As indicated in the withdrawal letters, each of these states has the right to appeal this decision by requesting a hearing before the Departmental Appeals Board, following the

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 Ohio's March 11, 2021 correspondence to CMS can be accessed here: <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/oh-cms-ltr-from-state-03112021.pdf>.

³ 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>.

procedures set forth in 45 C.F.R. Part 16. We continue to review other currently approved work and community engagement requirements, like Ohio's, and may take further action with respect to demonstration projects in other states upon completion of our individualized review.

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 Medicaid beneficiaries in Ohio. 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,

A handwritten signature in black ink that reads "Anne Marie Costello". The signature is written in a cursive, flowing style.

Anne Marie Costello
Acting Deputy Administrator and Director

EXHIBIT A



VIA ELECTRONIC SUBMISSION TO
Good.Guidance@hhs.gov

April 1, 2021

Acting Administrator Elizabeth Richter
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Re: Request to Rescind Ohio's Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver

Acting Administrator Richter:

We write in response to Ohio Medicaid Director Maureen Corcoran's March 11 2021 letter responding to your notice that CMS was considering withdrawing Ohio's 1115 work reporting requirements waiver. Though the Ohio Department of Medicaid (ODM) attempted to provide additional justification for the current 1115 waiver and wishes to proceed in imposing work reporting requirements, Advocates for Ohio's Future (AOF) does not believe there is any evidence that would counter the already documented harm that the waiver would cause and ask that you move forward to withdraw Ohio's Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver.

AOF is a nonprofit, nonpartisan coalition of over 500 state and local health and human services policy, advocacy and provider organizations that strive to strengthen families and communities through public funding for health, human services, and early care & education. We work to empower and support nonprofit organizations in the critical work they do, especially as it relates to lifting up the most vulnerable among us. At our core, AOF and our partner organizations believe all people should have access to high quality, affordable health care.

In public statements, Ohio Governor Mike DeWine has argued that Ohio should still move forward with the work requirements, "This is not a punitive thing. This is something to help people." Whatever the Governor's intention, there should be no mistake that establishing work reporting requirements in Ohio and the consequential disenrollment for those who are not compliant will be very harmful, both to those individuals and to our communities. Ohio may not intend to punish people who can't comply with the requirements, but those who fail to correctly report their work, those unable to successfully report exemptions, and those who can't find work will be punished with the loss of critical health care benefits under Ohio's 1115 waiver.

Ohio's 1115 waiver should be withdrawn because work requirements approved by the previous administration are contrary to the core purpose of the Medicaid program and do not promote health. The statutory purpose of Medicaid is "to furnish...medical assistance" to individuals "whose income and resources are insufficient to meet the costs of necessary medical services." Denying eligibility based on work status or an enrollee's ability to report work inherently marginalizes racialized communities who are systemically displaced from legal work, education, or the financial infrastructure of markets for trade.

The Ohio Department of Medicaid estimated that of the 36,000 Ohioans who do not meet the exemptions for reporting, 18,000 people would lose their health care coverage endangering their health and the stability of their families. The 18,000 people, or vastly more, who would lose coverage will undoubtedly have worse health

outcomes. They are unlikely to receive preventive care, timely treatment and access to a medical home. We can accurately predict their health outcomes will decline. This is contrary to the purpose of Medicaid.

The Ohio Department of Medicaid's own study of Group VIII Ohio Medicaid enrollees gets it right - health care coverage allows people to work. Dropping tens of thousands of people from health care coverage will hurt the health of workers in a state that already has some of the worst health outcomes in the nation and significant racial health disparities.

The Ohio 1115 waiver also deepens inequities between those who are and are not eligible for healthcare because of their income. At its heart, this waiver allows government to determine whether a person is worthy to have health care coverage. In other words, some people must meet work reporting requirements while others are exempt from the needless burden. This is contrary to the purpose of Medicaid.

Medicaid and the Group VIII "expansion" is about ensuring people without sufficient income have access to care. Medicaid's purpose is not about measuring or enforcing the labor value of low-income people or increasing the risk of losing health care coverage. What ODM proposes is that amongst people with little money, but not those with lots of money, some will be given access to health care and others will have to pass growing bureaucratic hurdles. The values inherent in Ohio's work requirement are that

- a 50-year-old (exempted from reporting) is more deserving of health care than an 18-year-old;
- a person in a rural county (exempted from reporting because of high unemployment) is more deserving of health care than a person in one of our large cities where local unemployment or racially inequitable unemployment can be just as high;
- a person in treatment struggling with addiction is exempt from work reporting and deserves health care more than someone who is houseless/experiencing homelessness

All of these positions would intensify the systemic issue of racism in our country. We can expound in detail on each issue, but prefer to keep this message crystal clear: everyone deserves access to health care coverage without burdensome barriers. This waiver would not "help people" get back to work, and will carry with it great harm to our families, neighbors, and communities.

Thousands of comments submitted by consumers, including AOF and many of our partner organizations, as part of the waiver approval's public comment period (state and federal) reinforced that the work reporting requirements would be a burden that could cause thousands of Ohioans to lose their medical coverage. We cannot lose an inch more coverage in our communities, nor any more lives to disease caused by lack of access to health care.

We urge you to withdraw Ohio's 1115 waiver to protect those who depend on Medicaid for health care coverage in Ohio.

If you have further questions, please contact Kelsey Bergfeld, Coalition Manager of Advocates for Ohio's Future by email at kbergfeld@communitysolutions.com.



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