

November 4, 2022

Daniel Tsai, Deputy Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, S.W.
Washington, D.C. 20201

Sent via email

Re: Healthy Michigan Plan Section 1115 Demonstration Extension Application

Dear Deputy Administrator Tsai:

We are writing with respect to Michigan's extension application for its section 1115 Medicaid demonstration, "Healthy Michigan Plan," which is set to expire December 31, 2023. The proposal, for which the state comment period just closed, seeks to extend the state's demonstration project for five years. The [application](#) that was posted for state public comment lacked the required information to comply with CMS's demonstration transparency requirements that are set out at 42 CFR § 431.408, failing to provide even a basic description of some of the waiver and expenditure authorities the state is requesting to continue. As a result, the State's forthcoming application to CMS cannot be deemed complete as set forth at 42 CFR § 431.412. We therefore ask that upon receipt of the state's application, you withhold your certification of completeness and instead return the application to the agency with direction to modify the application to meet the completeness requirements and to conduct an additional 30-day comment period so that the public has a meaningful opportunity to provide feedback on the state's proposals.

CMS regulations identify seven different elements that a demonstration extension application must include to be determined complete. At a minimum, Michigan's application that was posted in draft form for state-level comment fails to meet 42 CFR § 431.412(c)(2)(vii), which specifies that state must document their compliance with the public notice process set forth in 42 CFR § 431.408. Under this regulation, at 42 CFR § 408(a)(1)(i) a state's extension application must include "a comprehensive description of the demonstration application or extension to be submitted to CMS that *contains a sufficient level of detail* to ensure meaningful input from the public."

Michigan's application fails to provide a sufficient level of detail in its extension application as required by § 431.408(a)(1)(i). The sparse seventeen-page application does not contain key information about a number of the proposals the state seeks to continue, specifically those that would affect beneficiaries' access to care. A few examples of key missing details include:

- A description of the premium requirements for individuals with income above 100 percent of the federal poverty line with less than 48 cumulative months of coverage;
- A description of cost-sharing requirements, including who would be subject to copayments and the services for which copayments would be required;
- A description of the Healthy Behaviors Incentives Program, including what actions would qualify as a "healthy behavior" and the amount of cost-sharing reductions beneficiaries would receive for completing a "healthy behavior;" and
- A description of the penalty for individuals with incomes above 100 percent of the federal poverty line with 48 or more months of cumulative enrollment for non-payment of premiums

and not completing a health risk assessment – namely, the loss of coverage and undefined lockout period.

Additionally, the application fails include the hypothesis and evaluation parameters of the demonstration extension as required by 42 CFR § 431.408(a)(1)(i)(D). The state includes the goals for the demonstration extension and a summary of the evaluation of the current demonstration, but does not have the two elements specified in the regulation above. As you know, a section 1115 demonstration is an *experiment* – so to test the experiments authorized through these demonstrations a hypothesis is needed to explain the legitimate demonstration purpose while evaluation parameters explain how the state plans to identify the outcomes of the experiment. Without these details included in extension application, the experimental nature of the demonstration is undermined.

While the state provides high-level estimates of total enrollment over the proposed five-year extension period as required by 42 CFR § 431.408(a)(1)(i)(C), it does not provide estimates on how each provision would affect enrollment, namely the disenrollment and lockout from coverage for those with 48 or more cumulative months of enrollment. Furthermore, [a study of the state's own evaluation data](#) has shown that premiums imposed on Healthy Michigan beneficiaries increased the likelihood of individuals voluntarily disenrolling from coverage; yet, there is no analysis highlighting the potential enrollment effects of this policy, or others. This is especially important given that several provisions have yet to be implemented due to the Families First Act continuous coverage protection so the extent of enrollment harms may be even larger than current data suggests.

This missing information significantly inhibits meaningful input from the public. Without the inclusion of key details about each provision and given the absence of hypotheses and evaluation parameters as well as the lack of detailed enrollment estimates, individuals who sought to submit comments on Michigan’s extension application will have had no way to understand the full scope of what the state was proposing. Even if the state submits a more robust application to CMS to review for the federal comment period, that is not a sufficient remedy; the state must redo its state comment period with an improved application that provides a comprehensive description of the provisions the state is requesting to continue. The state’s failure to include the information described above means that the state’s extension application does not meet the regulatory requirement at 42 CFR § 431.408 for containing a sufficient level of detail to provide the public with an opportunity to provide meaningful input during the state comment period.

As such, we believe that the application does not meet the requirements for section 1115 extension applications under 42 CFR § 431.412 and should not be certified as complete. Instead, CMS should return the application to the state and advise the state to revise its proposal to include more information and re-open a full comment period so that the public can comment on the proposal in a meaningful way.

Please let us know if you have any questions.

Sincerely,

Joan Alker
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McCourt School of Public Policy

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