

June 27, 2012

Cynthia Mann, CMS Deputy Administrator/Director
United States Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Ms. Mann,

The undersigned organizations would like to thank you and your colleagues for your efforts to ensure that the process for developing and approving research and demonstration projects under section 1115 of the Social Security Act is transparent and includes meaningful public input. Our organizations have worked together for many years to ensure that there is meaningful public input in what are often very consequential decisions related to the Medicaid program that are made through the waiver process. We are very encouraged that the new procedures will result in a greater degree of public input and transparency.

Given our interest and involvement, we have closely followed CMS' efforts to establish a new review and approval process for section 1115 demonstrations through recently issued regulations and guidance and creation of a new website to solicit public input and share documents. Again we commend you for your efforts. This letter is intended to raise some issues for CMS to consider that would result in greater transparency and more meaningful public input. We would also like to request a meeting with you and your staff to discuss these issues in greater depth.

- 1) *Demonstration Section 1115 waiver amendments should be subject to the recently issued guidelines on public notice and comment at 42 CFR Part 431 Subpart G.* You indicated in the letter to state health officials dated April 27, 2012, that the final rule left open whether waiver amendments were subject to the regulations governing public notice and comment and that at this time states submitting amendments did not need to comply with the new rule. We feel very strongly that waiver amendments should be subject to public notice and comment requirements – unless the amendment is purely a technical change. Amendments can be as consequential as the underlying waiver – and in some cases more so. For example, the state of Florida submitted a plan amendment in July 2011 to expand their five-county pilot program to the entire state and to go beyond the scope of what has occurred in the five counties by including capitated long term services and supports in addition to acute care. Also in April of this year, Florida submitted a plan amendment to their Meds-AD waiver to substantially restructure its medically needy program by charging premiums in most circumstances. This amendment is a sharp departure from the underlying waiver and deserves full public scrutiny.
- 2) *CMS new website is a significant step in the right direction. However, additional information, such as the “Questions and Answers” that pass between the state and*

federal government during waiver negotiations should be posted as they are written rather than after the waiver is approved. We understand that CMS intends to post these documents as part of the administrative record once a waiver has been approved, but meaningful public input requires that these documents should be shared as they are being negotiated.

In addition, we have a number of other suggestions for enhancing the website which we would be happy to discuss with your staff at an in-person meeting. Joan Alker from Georgetown University Center for Children and Families will be in contact with you and your staff about this request for a meeting. Thank you very much for all of the hard work you and your staff has put into this effort, and we look forward to continuing to work with you to improve the waiver demonstration process further.

CC: Vikki Wachino, Allison Orris

AARP

American Art Therapy Association

American Health Care Association

American Heart Association

Bazelon Center for Mental Health Law

Center on Budget and Policy Priorities

Children's Hospital Association

Community Catalyst

Easter Seals

Families USA

First Focus

Georgetown University Center for Children and Families

HIV Medicine Association

LeadingAge

March of Dimes

Medicaid Watch; Community Access National Network

MHA

National Alliance on Mental Illness

National Association of Community Health Centers

National Association of Councils on Developmental Disabilities

National Health Law Program

National Senior Citizens Law Center

National Council on Aging

National Multiple Sclerosis Society

New Mexico Center on Law and Poverty

Planned Parenthood Federation of America

The Arc of the US

The National Consumer Voice for Quality Long-Term Care