

April 21, 2021

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

Re: SoonerCare Section 1115(a) Research and Demonstration Waiver Amendment Request (Project Number: 11-W00048/6)

Dear Secretary Becerra,

The Center on Budget and Policy Priorities and the Georgetown University Center for Children and Families appreciate the opportunity to comment on Oklahoma’s “SoonerCare 1115(a) Research and Demonstration Waiver Amendment Request.” The Center on Budget and Policy Priorities (CBPP) is a nonpartisan research and policy organization based in Washington, D.C. Founded in 1981, CBPP conducts research and analysis to inform public debates and policymakers about a range of budget, tax and programmatic issues affecting individuals and families with low or moderate incomes. The Georgetown University Center for Children and Families (CCF) is an independent, nonpartisan policy and research center founded in 2005 with a mission to expand and improve high quality, affordable health coverage for America’s children and families. As part of the McCourt School of Public Policy, Georgetown CCF conducts research, develops strategies, and offers solutions to improve the health of America’s children and families, particularly those with low and moderate incomes.

Under the Oklahoma Medicaid Expansion Initiative, State Question 802, Oklahoma will extend Medicaid eligibility to adults ages 19-64 whose income is at or below 138 percent of the federal poverty line, effective July 1, 2021. In its request, Oklahoma is proposing to amend its current SoonerCare section 1115 demonstration to include this Expansion Adult Group and to waive 3-month retroactive eligibility for this group, effective July 1, 2021. While we strongly support the state’s decision to extend Medicaid eligibility to the Expansion Adult Group, we vigorously oppose the state’s request to waive the entitlement of these beneficiaries to 3-month retroactive eligibility. (We are not commenting on any of the other aspects of the state’s request).

The state’s request has three fatal flaws. First, a waiver of 3-month retroactive coverage is not likely to promote the central objective of the Medicaid program, which is to provide coverage. In fact, waiving 3-month retroactive coverage would by definition *take coverage away* from the Expansion Adult Group, exposing them to medical debt and financial harm. Second, states have been allowed to waive retroactive coverage without a sound hypothesis. Oklahoma’s proposal similarly does not provide any experimental or policy rationale for extending its current SoonerCare waiver of 3-month retroactive coverage beyond the populations to which it currently applies: i.e., parents and caretaker relatives and certain foster care children. Finally, a waiver of 3-month retroactive coverage no longer has a legitimate experimental purpose, if it ever did. It is being tested in at least 14 states (including Oklahoma), and in nine of these states, the demonstrations include Medicaid expansion adults. There is already more than enough operational experience to evaluate this policy as it applies to

expansion adults (though states have been allowed to continue these waivers without an evaluation). We urge you to disapprove this request.

## **Oklahoma’s Proposal Would Increase Financial Harm for Expansion Beneficiaries**

Three-month retroactive coverage has been one of Medicaid’s basic benefits since January 1, 1973. By statute, it applies to “any individual who has been determined eligible” for Medicaid—expansion adults as well as traditional eligibles. The purpose of the coverage is the same today as it was almost 50 years ago: to protect low-income Medicaid beneficiaries from the financial burden of medical debt resulting from the costs of care they need during the three months prior to applying for Medicaid. Waiving 3-month retroactive coverage will leave Medicaid beneficiaries exposed to bills from hospitals and other providers that can be financially ruinous. As Shafter and colleagues note, the risk of crushing medical debt is particularly acute for uninsured low-income Americans during the current coronavirus pandemic.<sup>1</sup>

## **The State Offers No Rationale for Waiving 3-month Retroactive Coverage for Expansion Adults**

Oklahoma’s current SoonerCare demonstration includes a waiver of 3-month retroactive coverage for section 1931 parents and caretaker relatives as well as certain foster care children. Pregnant women, children under 19, and aged, blind, and disabled populations are exempt. The state has conducted one evaluation of the waiver, which examined “the state’s enrollment systems to ensure readiness, eligibility, and timely enrollment.”<sup>2</sup> The state’s evaluation did not address the effects of the waiver on beneficiaries.

In this request, the state is proposing to extend this waiver to the newly eligible expansion adults. The proposal states (at page 15): “The OHCA’s independent evaluator again will include the Expansion Adult Group as a distinct segment within this portion of the evaluation and will stratify all data to produce findings specific to this population.” The proposal does not provide a hypothesis on what the waiver seeks to test or how it would promote the objectives of Medicaid. It does not explain why the addition of the Expansion Adult Group to the current experimental population is necessary. It also does not explain what additional research value this waiver would provide given the existence of waivers of retroactive coverage for expansion adults in nine other states. And it does not address the potential financial harm to those in the Expansion Adult Group who require hospital or other expensive care during the 3-month coverage period but have no other insurance coverage.

## **Waiving 3-Month Retroactive Coverage is No Longer an Experiment**

The purpose of a section 1115 demonstration is to test new approaches to delivering services that have the potential to improve Medicaid coverage for beneficiaries. The Department’s regulations therefore require that an application for a demonstration set forth the research hypotheses and “a

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<sup>1</sup> Paul Shafter, Nicole Huberfeld, and Ezra Golberstein, “Medicaid Retroactive Eligibility Waivers Will Leave Thousands Responsible For Treatment Costs,” Health Affairs, May 8, 2020, <https://www.healthaffairs.org/doi/10.1377/hblog20200506.111318/full/>.

<sup>2</sup> Oklahoma Health Care Authority, “SoonerCare Section 1115 Waiver Evaluation, Demonstration Years 21-23 (CY 2016-2018)”, June 2020, <https://oklahoma.gov/content/dam/ok/en/okhca/documents/a0301/24978.pdf>.

plan for testing the hypotheses in the context of an evaluation.”<sup>33</sup> While we do not believe that there was ever a legitimate research purpose for waiving 3-month retroactive coverage, there are multiple demonstrations already in place that are testing the waiver. As shown in Table 1, there are currently 14 states, including Oklahoma, that have obtained waivers of 3-month retroactive coverage with respect to traditional Medicaid populations, expansion adults, or both.

Table 1 – States with Approved Retroactive Coverage Waivers

State	Initial approval or most recent extension	# of months waived	Evaluation? <sup>3</sup> *	Populations affected
AR	3/5/2018	2	N/A	Expansion adults
AZ	1/18/2019	3	<a href="#">No</a>	All expansion adults and traditional eligibles except pregnant women, infants under 1, and children under 19
DE	7/31/2019	3	<a href="#">No</a>	All expansion adults and traditional eligibles except institutionalized individuals in nursing facilities, QDWIs, pregnant women, infants under 1, and children under 19
FL	1/15/2021	3	Yes	All adult beneficiaries 21 or older except pregnant women or women within 60-days postpartum
GA	10/15/2020	3	N/A	All demonstration populations (childless adults with incomes up to 100% FPL and parents with incomes between 35% and 100% FPL)
IA	11/15/2019	3	<a href="#">No</a>	All expansion adults and traditional eligibles except pregnant and postpartum women, infants under 1, children under age 19 (effective 1/1/20), and individuals eligible for nursing facility services
IN	10/26/2020	3	<a href="#">No</a>	All expansion adults, parent/caretaker relatives, and TMA beneficiaries except pregnant women
MA	7/1/2017	2 months, 21 days	<a href="#">No</a>	All expansion adults and traditional eligibles except HCBS waiver population under age 65 and Kaileigh Mulligan eligible children
MD	1/1/2017	3	<a href="#">No</a>	Individuals eligible for family planning services and optional targeted low-income children except infants under 1 and poverty-related eligible children

<sup>3</sup> 42 CFR 431.412(a)(1)(vii).

NH	1/1/2019	3	N/A	Expansion adults except pregnant women, infants under 1, children under age 19, parents, and individuals eligible for ABD eligibility group (including those applying for LTC)
OK	1/1/2018	3	<a href="#">Yes</a>	Parents/caretaker relatives and Non-IV-E foster care children age 19 and 21 except pregnant and postpartum women (effective 1/1/2019), children under 19 (effective 1/1/2019) and ABD eligibility group
OR	1/12/2017	3	<a href="#">No</a>	All expansion adults and traditional eligibles (including children and pregnant women) except ABD eligibility group
RI	1/1/2019	3	<a href="#">No</a>	All expansion adults and traditional eligibles except pregnant women, infants under 1, children under 19 and the ABD eligibility group
TN	1/8/2021	3	<a href="#">No</a>	All traditional eligibles except pregnant and postpartum women (effective 6/30/2021), infants under 1, and individuals under 21 (effective 6/30/2021)

\*Determination based on review of Medicaid.gov and state websites

Nine states are testing the elimination of 3-month retroactive coverage on expansion adults. Even if eliminating this coverage was considered likely to promote the objectives of the Medicaid program, which it is demonstrably not likely to do, there is simply no research or evaluation justification for adding another state.

## Conclusion

Section 1115 gives the Secretary the authority to waive program requirements to enable states to conduct research on new approaches to improving coverage. It does not authorize the Secretary to conduct repeated tests in multiple states of the same hypotheses—especially when the tests involve the effects of the termination of coverage. And it does not authorize the Secretary to rewrite the Medicaid statute. If the Secretary determines, based on the research to date, that 3-month retroactive coverage should be eliminated from the Medicaid entitlement, the Secretary should ask Congress to do so.

We urge you to reject the state’s request to waive 3-month retroactive coverage for the Expansion Adult Population. We also ask that you not renew the state’s existing waiver of 3-month retroactive coverage when the current SoonerCare demonstration expires on December 31, 2023.

Thank you for your willingness to consider our comments. If you need any additional information, please contact Judith Solomon ([Solomon@cbpp.org](mailto:Solomon@cbpp.org)) or Joan Alker ([jca25@georgetown.edu](mailto:jca25@georgetown.edu)).

Sincerely,

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