

May 22, 2018

The Honorable Alex Azar, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Azar:

The undersigned organizations appreciate the opportunity to comment on Arizona's request to amend the Arizona Health Care Cost Containment (AHCCCS) section 1115 Demonstration Project ("the proposal"). The state is requesting authority to stop providing retroactive coverage for Medicaid beneficiaries who incur medical costs up to three months before they apply if they were eligible for Medicaid during that three month period.

We urge you to reject this proposal because it would create a significant barrier to affordable health care and decrease financial stability for all beneficiaries, and especially for seniors and people with disabilities who need institutional long term services and supports. Eliminating retroactive coverage would also harm hospitals and other safety net providers by increasing uncompensated care costs, jeopardizing their financial stability. Moreover, it's clear from the state's proposed hypotheses that the proposal would not promote the objectives of the Medicaid program. In fact, the hypotheses aren't directly linked to improvements in health or health outcomes but instead are linked to saving money for both the state and federal governments, which courts have found to be an impermissible use of section 1115 authority.¹

Retroactive Eligibility is Crucial for Beneficiaries and Providers

Arizona's proposal would end Medicaid reimbursement for medical costs incurred by Medicaid beneficiaries for up to three months before they apply. Medicaid payments are available for these expenses if the beneficiary was eligible for Medicaid during this period. Retroactive coverage, which has been a feature of Medicaid since 1972, provides financial security to vulnerable beneficiaries, and helps prevent medical bankruptcy. For example, data from Indiana show how important retroactive coverage is for low-income parents in the state, a group that might not be expected to have large medical costs, but in fact incurred significant medical costs prior to enrollment. Medicaid paid \$1,561 on average on behalf of parents who incurred medical costs prior to enrolling in Medicaid.²

The greatest impact of waiving retroactive coverage will most likely be felt by seniors and people with disabilities who need long-term services and supports. Eliminating retroactive coverage will make it harder for this vulnerable population to get the nursing home care when they need it, because they may delay applying due to a lack of familiarity with Medicaid and its eligibility rules. Eligibility rules for people needing nursing home care are complex, often requiring help from family

¹ United States Court of Appeals, Ninth Circuit, "Beno vs. Shalala," July 1994, <https://openjurist.org/30/f3d/1057/beno-v-shalala>,

² July 29, 2016 letter from the Centers of Medicare and Medicaid Services to the state of Indiana, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/in/Healthy-Indiana-Plan-2/in-healthy-indiana-plan-support-20-lockouts-redetermination-07292016.pdf>.

members to assemble information on assets and income needed for an eligibility determination. Moreover, it's often not clear when Medicaid eligibility begins given the need to spend down available assets.

The negative impact of waiving retroactive coverage on the availability of nursing home care for seniors and people with disabilities is not speculative. Nursing homes in Iowa are already making changes in their admission processes as a result of the retroactive coverage waiver the Centers for Medicare & Medicaid Services (CMS) approved in Iowa in 2017. The chief financial officer of an Iowa-based nursing home company wrote to CMS stating that “with the state requesting elimination of (retroactive payment), our nursing homes will no longer admit any prospective resident who is Medicaid-pending, or will become Medicaid-pending shortly after admission.” Denying nursing home admission at the time it is needed prevents seniors and people with disabilities from getting the care they need, potentially leading to unnecessary and lengthy hospital stays.³

In addition to helping vulnerable individuals get the care they need, retroactive coverage supports the financial stability of hospitals and other safety net providers as it allows them to be reimbursed for care they have provided during the three-month period that would otherwise be uncompensated, helping them meet their daily operating costs and maintain quality of care. If retroactive coverage is eliminated, a hospital would no longer get paid for, say, providing an emergency appendectomy or setting a broken bone for adults who are uninsured but Medicaid-eligible at the time of their accident, increasing the hospital's uncompensated care costs. Moreover, the Medicaid beneficiary could end up with significant medical debt, undermining his or her family's financial stability.

Providers in Arizona have also expressed concern over the state's request to eliminate retroactive coverage citing its importance to ensuring the financial health of both Medicaid beneficiaries and safety net providers in the state. For example, the Arizona state chapter of the American Academy of Pediatrics expressed concern that “this proposed provision will put patients and families at risk for medical debt as well as increased uncompensated care costs for hospitals...this could put hospitals...at risk for cuts or closure potentially leaving entire communities with limited or no access to health care.”⁴

Our comments include citations to supporting research and documents for the benefit of CMS in reviewing our comments. We direct CMS to each of the items cited and made available to the agency through active hyperlinks, and we request that these, along with the full text of our comments, be considered part of the formal administrative record on this proposed rule for purposes of the Administrative Procedures Act.

Thank you for your willingness to consider our comments. We urge you to reject the AHCCCS amendment and protect Arizonans who rely on Medicaid. If you need additional information, please contact Judy Solomon (Solomon@cbpp.org) or Joan Alker (jca25@georgetown.edu).

³ Clark Kauffman, “Medicaid Cuts to Roughly 40,000 Iowans Approved By the Feds,” *Des Moines Register*, October 31, 2017, <https://www.desmoinesregister.com/story/news/health/2017/10/31/iowa-medicaid-cuts-for-roughly-40000-iowans-approved-by-federal-government/816993001/>

⁴ Arizona Chapter of The American Academy of Pediatrics, Letter to Arizona Health Care Cost Containment System, February 12, 2018, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/az/az-hccc-pa7.pdf>.

Arizona Chapter of the American Academy of Pediatrics
Center for Law and Social Policy
Center on Budget and Policy Priorities
Community Catalyst
Epilepsy Foundation
First Focus
Georgetown University Center for Children and Families
LeadingAge
National Association of Community Health Centers
National Center for Law and Economic Justice
National Multiple Sclerosis Society
Raising Women's Voices for the Health Care We Need
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