

May 1, 2020

Seema Verma, 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: Oklahoma SoonerCare 2.0 Demonstration Application

Dear Administrator Verma:

We are writing with respect to Oklahoma's application for a Section 1115 Medicaid demonstration, "Sooner Care 2.0," submitted April 20, 2020, which is now under review for completeness. In response to the Healthy Adult Opportunity (HAO), SMD #20-001 (January 30, 2020), the State is requesting a comprehensive, new demonstration that would fundamentally alter federal Medicaid spending in the state, and impose a number of restrictive policies that will result in loss of coverage and impose barriers to access to needed care.

Despite the far-reaching implications of this proposed demonstration, the State's application does not meet all the requirements for completeness set forth at 42 CFR 431.412(a)(1). As a result, the public would not have the information needed to effectively comment during a federal comment period. We therefore request that CMS return the application to the State as incomplete, request that the State modify the application to meet completeness requirements, and direct the State to conduct an additional 30-day comment period as provided under 42 CFR 431.412(a)(2).

CMS regulations identify eight different elements that a demonstration application must include to be determined complete. The Oklahoma application fails to meet two of these elements. The application does not include an estimate of the expected increase or decrease in aggregate annual expenditures, as required by 42 CFR 431.412(a)(1)(iii). And it does not document how the State considered the public comments it received in developing the demonstration application, as required by 42 CFR 431.412(a)(1)(viii).

The application fails to provide annual aggregate expenditure data for the entire waiver period as required by 42 CFR 431.412(a)(1)(iii). The application provides aggregate expenditure data for demonstration year 1, but makes no adjustments to its estimated expenditures for demonstration years 2 through 5, essentially providing no estimates for the final three demonstration years. In addition, the application provides no with- and without-demonstration projections for aggregate expenditures. Among other things, this prevents public from understanding whether federal Medicaid payments to the state will change over the course of the demonstration, and if so, whether

they will increase or decrease and by how much. Since limiting federal expenditures is the very point of the HAO, the absence of annual aggregate expenditure data is a fatal flaw.

During its comment period, the State received over 2,400 comments on its application. Many of these comments, by the State's own admission, expressed concern over restrictive policies the State is proposing. Despite the number and concerns of commenters, the State did not make any changes to the restrictive policies in its application prior to submission. The State's comment period closed April 15, 2020, meaning the State took a mere five days (including a 2-day weekend) to consider the thousands of comments it received. The State does not explain how, in this extremely short turn-around, it "considered those comments when developing the demonstration application," as required by 42 CFR 431.412(a)(1)(viii).

The application should not be certified as complete and should instead be returned to the State so that it may provide projections of annual aggregate expenditures for each of the five demonstration years, and hold a second state public comment period prior to resubmission. If the state resubmits its application to CMS, it should include a description of how it considered the comments it received during both state public comment periods in its revised application.

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