Center on Budget and Policy Priorities

Georgetown University Health Policy Institute
CENTER FOR CHILDREN AND FAMILIES

February 3, 2023

VIA ELECTRONIC SUBMISSION

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

Re: Oklahoma Sooner Care Section 1115 Demonstration Extension Request

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 application to extend its "SoonerCare" waiver (#11-W00048/6) from January 1, 2024 to December 31, 2028. The state is asking to extend approval of the demonstration subject to the same Special Terms and Conditions (STCs), waivers, and expenditure authorities that are currently in effect. Our comments focus on the state's request to extend its current authority to waive retroactive coverage for certain populations.

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.

The currently approved demonstration includes a waiver of retroactive eligibility for all populations other than pregnant and postpartum women, children under 19, and aged, blind, and disabled people. Under the current STCs, parents and caretaker relatives, certain former foster care children, and other adults are all deprived of three months of retroactive eligibility. For the reasons discussed below, we encourage CMS to revoke this authority as retroactive coverage does not promote the objectives of the Medicaid program and is no longer an experiment. Furthermore, we remain strongly opposed to waiving retroactive coverage for the new expansion adult group and continue to urge CMS to deny the state's pending request from March 2021.[1]

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[1] Our previous comments on the still-pending March 2021 amendment are available here: https://ccf.georgetown.edu/wp-content/uploads/2017/10/OK_SoonerCare_Amendment_Comment_CCF_CBPP_FINAL.pdf.

Eliminating retroactive coverage does not promote the objectives of Medicaid and is no longer an experiment.

Under the law, Medicaid payments are available for medical expenses for a full three months prior to the month of application, if the beneficiary was eligible during for Medicaid during this period. The purpose of retroactive coverage is the same today as it was 50 years ago when the benefit was first established: 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, and to ensure the health system is not damaged by uncompensated care. Data from Indiana show how important retroactive coverage is for low-income parents in that state – a group that wouldn't be expected to have large medical costs, but in fact incurred significant medical costs prior to enrollment. In a one-year pilot to test whether retroactive coverage filled gaps in coverage, Medicaid paid $1,561 on average on behalf of parents in Indiana who incurred medical costs prior to enrolling in Medicaid.[2] Waiving retroactive coverage does not promote the central objective of the Medicaid program – to provide coverage – and in fact, by definition takes coverage away from these enrollees. It also exposes them to medical debt and financial harm. Eliminating retroactive coverage does not align with CMS's focus on advancing health outcomes for all enrollees; indeed, as the waiver is more likely to affect people of color who have greater levels of medical debt.[3]

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 plan for testing the hypotheses in the context of an evaluation."[4] Nonetheless, as discussed above, we do not believe that the authorities are consistent with the objectives of the Medicaid program, nor is waiving retroactive eligibility a legitimate experiment at this point. Multiple demonstrations are already in place testing the waiver and there is already more than enough operational experience to evaluate this policy.

Furthermore, we are concerned that Oklahoma's public notice materials do not clearly explain the state's intent to continue the retroactive coverage waiver in language that is accessible to the public, and that there is a lack of clarity regarding the populations that will be impacted by the continuation of this authority. The public notice materials and application include only a technical waiver request. Relying on technical language without explaining the real-world impact of the change makes it nearly impossible for the public to provide meaningful comments on the issue without prior knowledge of what is authorized in the state's existing demonstration. And even if there is knowledge of the existing waiver of retroactive coverage, it is unclear to whom the waiver does and does not apply. The current demonstration's STCs indicate the waiver excludes "children described in Section 1902(l)(4)(A) of the Act, the Tax Equity and Fiscal Responsibility Act (TEFRA)" population as well as pregnant and postpartum people and the aged, blind, and disabled. Relying on citations does not provide the public with a clear understanding of who in the state does or does not

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[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.

[3] Leonardo Cuello, "Retroactive Coverage Waivers: Coverage Lost and Nothing Learned" Georgetown University Center for Children and Families, October 4, 2021, https://ccf.georgetown.edu/2021/10/04/retroactive-coverage-waivers-coverage-lost-and-nothing-learned/.

[4] 42 CFR 431.412(a)(1)(vii).

have retroactive coverage. In addition, the current waiver and expenditure authorities exclude certain other demonstration populations from retroactive coverage, which is not clear in the application or notice materials. To fully appreciate the scope of the waiver, members of the public would need to make reference to current STCs 17 and 18, which explain the populations to which retroactive eligibility does and does not apply.

Finally, CMS should reconsider allowing Oklahoma to continue eliminating retroactive coverage in light of the impending unwinding of the Medicaid continuous enrollment protection. As a recent report from the Assistant Secretary for Planning and Evaluation (ASPE) outlined, unwinding the continuous coverage protection will likely lead to a high volume of procedural disenrollments – estimating that 6.8 million enrollees will lose coverage despite still being eligible.[5] Without retroactive coverage, the state puts beneficiaries at an unnecessary risk for costly periods of uninsurance. *We urge you to deny this part of the state's request.*

Conclusion

Our comments include numerous citations to supporting research, including direct links to the research, for HHS's benefit in reviewing our comments. We direct HHS to each of the studies cited and made available to the agency through active hyperlinks, and we request that the full text of each of the studies cited, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

Thank you for consideration of our comments. If you would like any additional information, please contact Allison Orris (aorris@cbpp.org) or Joan Alker (jca25@georgetown.edu).

Sincerely,

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[5] HHS Assistant Secretary for Planning and Evaluation (ASPE), "Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches," August 19, 2022, https://aspe.hhs.gov/sites/default/files/documents/60f0ac74ee06eb578d30b0f39ac94323/aspe-end-mcaid-continuous-coverage.pdf.