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September 7, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Thomas Price, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

**Re: Amendment to the Iowa Wellness Plan 1115
Demonstration**

Dear Secretary Price:

The National Health Law Program (NHeLP) protects and advances the health rights of low-income and underserved individuals. We appreciate the opportunity to comment on Iowa's request to amend its Wellness Plan Demonstration Project. We support Iowa's decision to accept federal funds to cover low-income adults through Medicaid. However, NHeLP maintains that HHS cannot approve the state's proposed amendment to waive retroactive eligibility. This amendment would be harmful to low-income people who need Medicaid coverage to obtain health care and does not serve a valid demonstration purpose, thus fails to meet the requirements for 1115 demonstration approval.

The Purpose of Retroactive Eligibility

Congress enacted retroactive eligibility in 1972 to ensure that eligible individuals who required medical care but had not yet applied for Medicaid could still obtain coverage for those services. Not everyone eligible for Medicaid enrolls as soon as they become eligible. Income fluctuations are common and Medicaid's eligibility standards are hardly common knowledge. At the time, the Senate Finance Committee acknowledged that some eligible individuals may not be aware of their potential eligibility or may be unable to apply due to the sudden nature of their illness.¹ Someone who suffers a stroke or a car crash may be in no position to apply for Medicaid as they roll into the emergency room. Retroactive eligibility protects such individuals and their families from bearing

¹ Senate Report No. 92-1230, at 209 (Sept. 26, 1972) (discussing section 255 of H.R. 1)

those initial costs of care, or possibly even being denied necessary services due to their inability to pay for lack of coverage. In short, retroactive eligibility is a reasonable policy to address an entirely reasonable and predictable set of circumstances.

The scope of this waiver request exceeds the scope of the Demonstration project it would “amend”

Iowa has requested § 1115 demonstration authority to waive retroactive eligibility across its Medicaid population, including children, people with disabilities, and older adults. This waiver would far exceed the scope and purpose of Iowa’s current Health and Wellness Plan demonstration and is not appropriately construed as an amendment to that demonstration. The Health and Wellness demonstration was designed to target only expansion adults. The recent addition of a healthy behaviors experiment related to dental benefits expands part of that demonstration to other adult Medicaid enrollees. But this proposal seeks to implement an entirely new waiver request, unrelated to the original demonstration purpose, across the State’s entire Medicaid population.

For the new waiver proposal to be appropriate, the State would have to propose a new demonstration that applies across its whole Medicaid population, establish a reasonable hypothesis and experimental purpose for waiving retroactive eligibility, and develop an evaluation plan that adequately tests its hypotheses using viable experimental methods. Instead, the State appears to be tacking on an expansive, harmful provision to a smaller existing demonstration without establishing any experimental purpose or revising its evaluation methodology at all. The scope of Iowa’s current evaluation does not include children, people with disabilities, and older adults who would be directly affected by the so-called amendment.

Waiving retroactive eligibility would harm low-income individuals and families

This policy proposal promises very concrete harms – harms acknowledged by the State’s own analysis that projects an enrollment decline of 3,344 individuals *per month*, which translates to over 40,000 people per year.² Roughly a third would be children. These would presumably be individuals who cannot benefit from the State’s current presumptive eligibility program. Others may experience a medical event that occurs late in the month so their Medicaid application gets filed in the following month and their initial services are not covered. The State acknowledges these concerns (and others) in its responses to public comments – which overwhelmingly opposed the proposed amendment. But Iowa DHS declined to make any revisions to its application, citing State legislation that mandates it to propose the amendment as written.³

The State’s proposal erodes important protections for low-income populations without advancing any reasonable policy goals likely to promote the objectives of the Medicaid program. Section 1115 limits demonstration projects to innovations that are likely to promote the objectives of the Medicaid program. This waiver proposal, coupled with the

² STATE OF IOWA DEP’T HUMAN SERVS., *Section 1115 Amendment: Iowa Wellness Plan*, 11 (Aug 2, 2017).

³ *Id.* At 6.

wholly inadequate response to valid concerns raised during the public comment process, does not satisfy that foundational requirement for 1115 approval.

Waiving retroactive eligibility has no experimental value

The State has not established a demonstration value to its request to waive retroactive eligibility. The entirely predictable result will be: (1) more low-income individuals experiencing medical debt collections and bankruptcy; (2) more providers – especially safety net hospitals – incurring losses; and (3) more individuals experiencing gaps in coverage when some providers refuse to treat them because the providers know they will not be paid retroactively by Medicaid.

The State's only proposed purpose for this policy change is to align Medicaid with commercial market policies.⁴ But Congress did not design Medicaid as a commercial insurance product. Rather, it tailored Medicaid coverage to satisfy the unique needs of low-income individuals and families. For example, Medicaid generally prohibits premiums (below 150% FPL) because premiums – a core feature of commercial insurance – have been shown to depress enrollment for low-income populations. Medicaid also strictly limits cost sharing and provides transportation to needed medical care for people who may lack access to a private vehicle or public transportation. Retroactive eligibility is yet another protection meant to customize Medicaid to the lived experience of low income individuals and families.

Medicaid also differs from commercial insurance in the populations and services it provides. For example, commercial insurance typically does not cover long-term care for older adults and people with disabilities. Retroactive eligibility is particularly important in cases where an older adult or a person with disability needs long-term supports and services (LTSS). She may enter the system after being discharged from a hospital to a nursing facility or after her own (and her family's) resources have been depleted to the point where she become Medicaid eligible. Putting together an application, especially in such circumstances, can be challenging and time-consuming. Retroactive eligibility protects enrollees and their families from undue financial harm from expenses incurred prior to application. There is no reasonable analog here to the commercial insurance industry, and certainly no reasonable hypothesis to waive retroactive eligibility in Medicaid.

Conclusion

CMS rejected Arizona's request to reapprove a retroactive eligibility waiver in its last approval of that state's comprehensive waiver, and we strongly urge CMS to deny this waiver as well. This important Medicaid protection shields Medicaid-eligible individuals from financially devastating medical debts and improves provider's financial stability (and willingness to participate in Medicaid) by reducing uncompensated care claims.

⁴ *Id* at 3.

Thank you for consideration of our comments. If you have any questions, please contact David Machledt, Sr. Policy Analyst (machledt@healthlaw.org) or Jane Perkins, Legal Director (perkins@healthlaw.org).

Sincerely,



Jane Perkins
Legal Director