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September 16, 2021

Ms. Jane Perkins  
Legal Director, National Health Law Program  
1512 E. Franklin Street, Suite 110  
Chapel Hill, NC 27514

Dear Ms. Perkins:

Thank you for your letter in which you expressed concerns regarding the recently enacted Oklahoma state House Bill 2899, which went into effect on July 1, 2021.

The Centers for Medicare & Medicaid Services (CMS) understands that House Bill 2899 places a five-year residency requirement on individuals with intellectual disabilities before they access Medicaid home and community-based services (HCBS) waivers. The U.S. Supreme Court ruled that the Fourteenth Amendment to the United States Constitution requires states to treat individuals who have moved recently to a state the same as individuals who have resided in the state for a longer period of time unless shown necessary to promote a compelling governmental interest. Consistent with this Constitutional prohibition, federal regulations also prohibit state Medicaid agencies from denying eligibility if the individual has not resided in the state for a specified period of time (See 42 CFR § 435.403(j)(1)). Thus, imposition of a 5-year residency requirement for the receipt of HCBS waiver services is not permitted.

The state Medicaid agency is aware of this information and has requested technical assistance on the issue of waiting list concerns.

We greatly appreciate the information you provided. If additional information is needed on this topic, please contact Ralph Lollar at [Ralph.Lollar@cms.hhs.gov](mailto:Ralph.Lollar@cms.hhs.gov). Please share a copy of this response with the cosigners of your letter.

Sincerely,



Daniel Tsai  
Deputy Administrator and Director