



Case Update: *Rose v. Becerra*

Prepared by: [Jane Perkins](#) and [Catherine McKee](#)

On January 31, 2024, Plaintiffs filed a Supplemental Complaint in this case, which was originally filed in September 2019. The case challenges Indiana’s long-standing Section 1115 Medicaid waiver project.

Summary of the Supplemental Complaint

- Section 1115 of the Social Security Act allows the Secretary of Health and Human Services to waive certain Medicaid requirements only for the period of time needed for a State to carry out an experimental project that is likely to assist in promoting the objectives of the Medicaid Act.
- Fifteen years ago, Indiana began implementing a federally approved Section 1115 waiver project, called Healthy Indiana Plan (HIP), to expand health coverage to non-disabled adults who, at the time, were not eligible for coverage under the Medicaid Act. (The Affordable Care Act extended coverage to these adults.) The approval allowed Indiana to impose limits on coverage for this group, including (a) charging monthly premiums and terminating coverage for failure to pay, (b) eliminating retroactive coverage, and (c) eliminating coverage of non-emergency medical transportation (NEMT). When the HIP project was extended again in 2018, CMS allowed Indiana to add work requirements. This lawsuit followed.
- After the case was filed, Indiana suspended implementation of some program features, including the work and premium requirements being challenged by Plaintiffs. Nevertheless, in October 2020, the Secretary approved yet another extension of the project—this time for a remarkable 10-year period. The approval conditioned the work requirements and the lockout penalty for failure to pay premiums on the Supreme Court issuing a decision in *Gresham v. Azar*—a related case challenging approval of Arkansas’s Section 1115 project—“that legally authorizes these elements.” The Supreme Court did not ultimately issue such a decision, so Indiana does not have authority to implement the work requirements or lock outs for non-payment of premiums.
- CMS rescinded its approval of the work requirements in February 2021 and announced that it was commencing a review of the remaining waivers it had approved in October

2020. This case was put on hold during the COVID pandemic and while awaiting the outcome of CMS's reassessment.

- CMS announced the results of its reassessment in a December 22, 2023 decision letter. After extensively discussing the cumulative evidence of the harm caused by premiums, CMS reaffirmed its extension of project, specifically allowing the State to continue to impose premiums and waive retroactive coverage and NEMT.
- CMS justified its decision on grounds that stopping the premiums could cause administrative chaos for the State. However, the State has not imposed premiums for nearly four years and does not plan to reinstate them until July 2024.
- The December 2023 decision was announced just a month after CMS had cited much of the same evidence (including evidence from Indiana) to deny another state's request to continue imposing premiums through Section 1115, having already denied the requests of two other states for the same reasons. In those decisions, CMS concluded that premiums are not likely to promote the objectives of the Medicaid Act.
- Plaintiffs' submitted the Supplemental Complaint to update the Court on the recent developments, in particular the 2020 extension approval and the December 2023 decision letter. Plaintiffs continue to allege that the HIP extension is harming individuals throughout the State who need health care to address a range of health care needs. For example, the Plaintiffs need coverage to address various health conditions, including Long COVID, inner-ear problems, vision and dental needs and to obtain genetic counseling and ongoing primary care. Without access to Medicaid coverage, Medicaid enrollees forgo treatment for their conditions or incur medical debt when they must obtain care.
- The Supplemental Complaint alleges that, in approving the 2020 HIP extension, and in approving the extension for another decade, the Secretary exceeded his authority under Section 1115 and failed to engage in reasoned decision-making. This failure continued with his December 2023 decision to allow Indiana to proceed with the remainder of the project, particularly the premiums and associated penalties for failure to pay and waivers of retroactive coverage and NEMT. Plaintiffs allege violations of the Administrative Procedure Act and Social Security Act and ask that approval be vacated.
- Plaintiffs are three individuals who are enrolled in HIP. Defendants are Xavier Becerra, Secretary of the United States Department of Health and Human Services; Chiquita Brooks-LaSure, Administrator of CMS; the Department of Health and Human Services; and CMS. The State of Indiana has intervened in the case as a Defendant.