



SEP 24 2019

*Administrator*  
Washington, DC 20201

Maureen Corcoran  
Director  
Ohio Department of Medicaid  
50 W. Town Street, Suite 400  
Columbus, OH 43215

Dear Ms. Corcoran:

Under section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services may approve any experimental, pilot, or demonstration project that, in the judgment of the Secretary, is likely to assist in promoting the objectives of certain Act programs, including Medicaid. Congress enacted section 1115 of the Act to ensure that federal requirements did not “stand in the way of experimental projects designed to test out new ideas and ways of dealing with the problems of public welfare recipients.” S. Rep. No. 87-1589, at 19 (1962), *as reprinted in* 1962 U.S.C.C.A.N. 1943, 1961. As relevant here, section 1115(a)(1) of the Act allows the Secretary to waive compliance with the Medicaid program requirements of section 1902 of the Act, to the extent and for the period he finds necessary to carry out the demonstration project. In addition, section 1115(a)(2) of the Act allows the Secretary to provide federal financial participation for demonstration costs that would not otherwise be considered as federally matchable expenditures under section 1903 of the Act, to the extent and for the period prescribed by the Secretary.

For the reasons discussed below, the Centers for Medicare & Medicaid Services (CMS) is approving Ohio’s request for a new section 1115 demonstration project, entitled, “Section 1115 Substance Use Disorder Demonstration” (Project No. 11-W-00330/5), in accordance with section 1115(a) of the Act.

This approval is effective from October 1, 2019 through September 30, 2024. CMS’s approval of this section 1115(a) demonstration is subject to the limitations specified in the attached expenditure authority, special terms and conditions (STCs), and any supplemental attachments defining the nature, character, and extent of federal involvement in this project. The state may deviate from the Medicaid state plan requirements only to the extent those requirements have been specifically listed as not applicable to expenditures or individuals covered by expenditure authority.

### **Objectives of the Medicaid Program**

As noted above, the Secretary may approve a demonstration project under section 1115 of the Act if, in his judgment, the demonstration is likely to assist in promoting the objectives of title XIX. The purposes of Medicaid include an authorization of appropriation of funds to “enabl[e] each State, as far as practicable under the conditions in such state, to furnish (1) medical

assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care,” Act § 1901. This provision makes clear that an important objective of the Medicaid program is to furnish medical assistance and other services to vulnerable populations. But, there is little intrinsic value in paying for services if those services are not advancing the health and wellness of the individual receiving them, or otherwise helping the individual attain independence. Therefore, we believe an objective of the Medicaid program, in addition to furnishing services, is to advance the health and wellness needs of its beneficiaries, and that it is appropriate for the state to structure its demonstration project in a manner that prioritizes meeting those needs.

Section 1115 demonstration projects present an opportunity for states to experiment with reforms that go beyond just routine medical care and focus on interventions that drive better health outcomes and quality of life improvements, and that may increase beneficiaries’ financial independence. Such policies may include those designed to address certain health determinants and those that encourage beneficiaries to engage in health-promoting behaviors and to strengthen engagement by beneficiaries in their personal health care plans. These tests will necessarily mean a change to the status quo. They may have associated administrative costs, particularly at the initial stage, and section 1115 acknowledges that demonstrations may “result in an impact on eligibility, enrollment, benefits, cost-sharing, or financing,” Act § 1115(d)(1); however, in the long term, they may create incentives and opportunities that help enable many beneficiaries to enjoy the numerous personal benefits that come with improved health and financial independence.

Section 1115 demonstration projects also provide an opportunity for states to test policies that ensure the fiscal sustainability of the Medicaid program, better “enabling each [s]tate, as far as practicable under the conditions in such [s]tate” to furnish medical assistance, Act § 1901, while making it more practicable for states to furnish medical assistance to a broader range of persons in need. For instance, measures designed to improve health and wellness may reduce the volume of services consumed, as healthier, more engaged beneficiaries tend to consume fewer medical services and are generally less costly to cover. Further, measures that have the effect of helping individuals secure employer-sponsored or other commercial coverage or transition from Medicaid eligibility may decrease the number of individuals who need financial assistance, including medical assistance, from the state. Such measures may enable states to stretch their resources further and enhance their ability to provide medical assistance to a broader range of persons in need, including by expanding the services and populations they cover.<sup>1</sup> By the same

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<sup>1</sup> States have considerable flexibility in the design of their Medicaid programs, within federal guidelines. Certain benefits are mandatory under federal law, but many benefits may be provided at state option, such as prescription drug benefits, vision benefits, and dental benefits. Similarly, states have considerable latitude to determine whom their Medicaid programs will cover. Certain eligibility groups must be covered under a state’s program, but many states opt to cover additional eligibility groups that are optional under the Medicaid statute. The optional groups include a new, non-elderly adult population that was added to the Act at section 1902(a)(10)(A)(i)(VIII) by the Patient Protection and Affordable Care Act (ACA). Coverage of this new adult group became optional as a result of the Supreme Court’s decision in *NFIB v. Sebelius*, 567 U.S. 519 (2012). Accordingly, several months after the *NFIB* decision was issued, CMS informed the states that they “have flexibility to start or stop the expansion.” CMS,

token, such measures may also preserve states' ability to continue to provide the optional services and coverage they already have in place."

Our demonstration authority under section 1115 of the Act allows us to offer states more flexibility to experiment with different ways of improving health outcomes and strengthening the financial independence of beneficiaries. Demonstration projects that seek to improve beneficiary health and financial independence improve the well-being of Medicaid beneficiaries and, at the same time, allow states to maintain the long-term fiscal sustainability of their Medicaid programs and to provide more medical services to more Medicaid beneficiaries. Accordingly, such demonstration projects advance the objectives of the Medicaid program.

### **Background on Medicaid Coverage in Ohio**

As of May 2019, Ohio has enrolled 2.7 million individuals in the Medicaid and the Children's Health Insurance Program (CHIP). The Medicaid program includes non-mandatory populations, such as optional targeted low income children and independent foster care adults, in addition to the mandatory eligibility groups. The state also covers several categories of non-mandatory services, including prescription drugs, dental services, and clinic services, in addition to mandatory services. In addition, on January 1, 2014, Ohio expanded its Medicaid program to include coverage of the new adult group (also known as Group VIII) described at section 1902(a)(10)(A)(i)(VIII) of the Act.

### **Extent and Scope of Demonstration**

This demonstration will allow Ohio to enhance and broaden the crucial component of residential substance disorder services in the state's current substance use disorder (SUD) benefits to create a full continuum of care for beneficiaries with SUD. Approval of this demonstration will allow Ohio to receive federal financial participation (FFP) for the provision of all Medicaid state plan services, including a continuum of services to treat addictions to opioids and other substances for otherwise eligible Medicaid beneficiaries primarily diagnosed with opioid use disorder (OUD) and/or SUD who are short-term residents in residential and inpatient treatment facilities that meet the definition of an Institution for Mental Diseases (IMD).

In addition, Ohio submitted its SUD Implementation Plan and Health Information Technology Plan (SUD Health IT Plan), as required by the STCs. CMS has completed its review of the SUD Implementation Plan and SUD Health IT Plan, and CMS has determined that both the SUD Implementation Plan and the SUD Health IT Plan are consistent with the applicable requirements set forth in the STCs and is, therefore, concurrently approving the SUD Implementation Plan and the SUD Health IT Plan. These documents are both incorporated as Attachment C of the STCs. With this approval, the state may begin receiving FFP under the terms of the demonstration, effective as of October 1, 2019.

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*Frequently Asked Questions on Exchanges, Market Reforms, and Medicaid* at 11 (Dec. 10, 2012), <https://www.cms.gov/CCIIO/Resources/Files/Downloads/exchanges-faqs-12-10-2012.pdf>). In addition to expanding Medicaid coverage by covering optional eligibility groups and benefits beyond what the Medicaid statute requires, many states also choose to cover benefits beyond what is authorized by statute by using expenditure authority under section 1115(a)(2) of the Act. For example, recently, many states have been relying on this authority to expand the scope of services they offer to address substance use disorders beyond what the statute explicitly authorizes.

### **Determination that the demonstration project is likely to assist in promoting Medicaid's objectives**

For the reasons discussed below, the Secretary has determined that the Ohio section 1115 SUD demonstration is likely to assist in promoting the objectives of the Medicaid program. CMS has determined this because it gives the state expenditure authority to offer the SUD program. Under this initiative, all Medicaid beneficiaries will continue to have access to all current SUD benefits. In addition, all beneficiaries will have access to covered services, authorized under section 1115(a)(2) of the Act, including SUD treatment services provided to individuals who are short-term residents in residential treatment facilities that meet the definition of an IMD. Without approval, these services would otherwise be excluded from federal reimbursement.

CMS also expects that implementation of this demonstration in Ohio is likely to assist in promoting the objectives of the Medicaid program as it is expected to improve health outcomes for Medicaid beneficiaries by increasing access to high quality SUD/ODU care, expanding the SUD/ODU provider networks available to serve Medicaid populations, increasing and supporting independence and recovery, and increasing community integration.

### **Consideration of Public Comments**

To increase the transparency of demonstration projects, sections 1115(d)(1) and (2) of the Act direct the Secretary to issue regulations providing for two periods of public comment on a state's application for a section 1115 demonstration that would result in an impact on eligibility, enrollment, benefits, cost-sharing, or financing. The first comment period occurs at the state level before submission of the section 1115 application, and the second comment period occurs at the federal level after the application is received by the Secretary.

Sections 1115(d)(2)(A) and (C) of the Act further specify that comment periods should be "sufficient to ensure a meaningful level of public input," but the statute imposes no additional requirement on the states or the Secretary to address those comments, as might otherwise be required under a general rulemaking. Accordingly, the implementing regulations issued in 2012 provide that CMS will review and consider all comments received by the deadline, but will not provide written responses to public comments.<sup>2</sup>

CMS received four comments during the federal public comment period. Although CMS is not legally required to provide written responses to public comments, CMS is addressing some of the central issues raised by the commenters and summarizing CMS's analysis of those issues for the benefits of stakeholder.

The four comments CMS received during the federal comment period were generally supportive of the demonstration. However, one comment expressed a lack of satisfaction with stakeholder engagement and concerns around budget neutrality. This comment expressed concern that the drafting of the section 1115 demonstration application occurred without stakeholder engagement prior to the state level public comment period. Stakeholder engagement is important to CMS. We acknowledge that the state completed the 30-day state comment period prior to submitting its

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<sup>2</sup> 42 CFR § 431.416(d)(2); see also Medicaid Program; Review and Approval Process for Section 1115 Demonstrations; Application, Review, and Reporting Process for Waivers for State Innovation; Final Rules, 77 Fed. Reg. 11678, 11685 (Feb. 27, 2012) (final rule).

application to CMS. And, after the state public comment period, Ohio made changes to its application reflecting the comments they received, such as the milestone research questions, hypotheses, and performance measures. We note that stakeholders will have opportunities post-approval to voice concerns and provide comments on the progress of this demonstration, as the state is required to conduct a post award forum within six months of the demonstration's implementation and annually thereafter as set forth in 42 CFR §431.420(c) and the STCs. The commenter's other concern with regard to budget neutrality was focused on Ohio's submission of one quarter of historic data and the accuracy of this data in projecting appropriate budgeting. CMS and the state reviewed the available data for reasonableness, the state made adjustments to its budget neutrality to include more historical data, and CMS determined the historical data was appropriate for use and upon which budget neutrality projections may be calculated for this demonstration.

### **Other Information**

CMS's approval of this demonstration project also is conditioned upon compliance with these STCs and associated expenditure authority that define the nature, character, and extent of anticipated federal involvement in this demonstration project. The award is subject to the state's written acknowledgement of the award and acceptance of these STCs within 30 days of the date of this letter.

Your project officer for this demonstration is Ms. Rachel Nichols. She is available to answer any questions concerning your section 1115 demonstration. Ms. Nichols' contact information is as follows:

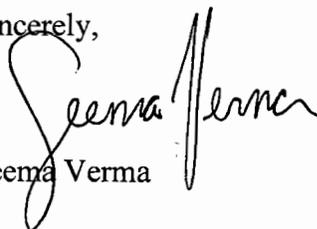
Ms. Rachel Nichols  
Centers for Medicare & Medicaid Services  
Center for Medicaid and CHIP Services  
Mail Stop: S2-25-26  
7500 Security Boulevard  
Baltimore, MD 21244-1850  
Email: [Rachel.Nichols@cms.hhs.gov](mailto:Rachel.Nichols@cms.hhs.gov)

Official communications regarding program matters should be sent simultaneously to your project officer and Ms. Ruth Hughes, Deputy Director of Field Operations North. Ms. Hughes's contact information is as follows:

Ms. Ruth Hughes  
Division of Medicaid Field Operations North  
Regional Operations Group  
Centers for Medicare & Medicaid Services  
233 N. Michigan Avenue, Suite 600  
Chicago, IL 60601-5519  
Email: [Ruth.Hughes@cms.hhs.gov](mailto:Ruth.Hughes@cms.hhs.gov)

If you have questions regarding this approval, please contact Mrs. Judith Cash, Director, State Demonstrations Group, Center for Medicaid and CHIP Services, at (410) 786-9686.

Sincerely,



Seema Verma

Enclosures