

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

February 3, 2020

Acting Secretary Norris Cochran
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Submitted online via [Medicaid.gov](https://www.Medicaid.gov)

Re: Arizona Demonstration Renewal Proposal (2021-2026)

Justice in Aging appreciates the opportunity to comment on Arizona's Section 1115 Medicaid demonstration renewal proposal. Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older Arizonans and older adults nationwide. We use the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources, particularly populations that have been marginalized and excluded from justice such as women, people of color, LGBTQ individuals, and people with limited English proficiency. We have decades of experience with Medicaid and working with advocates who represent low-income older Arizonans.

Our comments focus on our opposition to the proposals to renew the waiver of the federal protection that provides up to three months of retroactive Medicaid coverage for Arizona Health Care Cost Containment System (AHCCCS) members and the authority to implement AHCCCS Works. We support other provisions in the application that promote coverage, including the Tribal Dental Benefit and reimbursements for traditional healing services, extending and expanding the Targeted Investments Program, and continuing to allow for verbal consent in lieu of written signature for all care and treatment documentation for Arizona Long Term Care System (ALTC) members beyond the end of the COVID-19 public health emergency.

Our comments include numerous citations to supporting research, including direct links to the research for HHS' benefit in reviewing our comments. We direct the Centers for Medicare & Medicaid Services (CMS) 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.

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Waiving Retroactive Coverage Deprives Older Arizonans of Necessary Coverage

Since July 1, 2019, AHCCCS has been limiting retroactive coverage to the month of application for nearly all adult AHCCCS members, including older adults needing long-term care. AHCCCS is proposing to continue limiting retroactive coverage for an additional 5 years, through 2026, despite not having evaluated the impact of the current waiver on beneficiaries.

Retroactive coverage is a long-standing safeguard built into the Medicaid program. When Congress established the retroactive coverage guarantee in 1972, the Senate Finance Committee noted that the provision would “protect[] persons who are eligible for [M]edicaid but do not apply for assistance until after they have received care, either because they did not know about the [M]edicaid eligibility requirements or because the sudden nature of their illness prevented their applying.”¹ This statement is just as true now as it was 49 years ago.

Health care needs can be unpredictable. No one can predict a stroke, a car accident, or a fall leading to a broken hip. Once a person ends up in a hospital or nursing home, they may not be healthy enough to file a Medicaid application, or may not understand that a Medicaid application should be filed. The impossibility of instantaneous Medicaid applications is always the case for individuals who become eligible for Medicaid based on needing nursing facility care or other long-term services and supports (LTSS). These applications are complex and cannot be completed until after both the functional and financial eligibility criteria are met and documented. It can take weeks, or even months, for an individual and their loved ones to consider how their care will be paid for, and additional weeks or months to prepare a Medicaid application and be approved because the application requires gathering bank records and other information about assets that may not be readily available. For example, in Iowa, the average application for a nursing home resident takes 71 days to assemble, file and be approved.²

The need for Medicaid services may arise unexpectedly and when the person needing care and their families are already experiencing the stress of dealing with either a sudden or a prolonged illness. In some instances, families provide the bulk of needed services at home up until family caregivers are physically, emotionally, and financially exhausted. Alternatively, individuals may be discharged directly to a nursing facility from a hospital after an emergency, such as a stroke or fall or COVID-19 infection. In either situation, the transition to a nursing facility can be a confusing, overwhelming process for both the nursing facility resident and their family. This is especially true for older adults with dementia, a common reason people need nursing facility care.

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

² Harris Meyer, Medicaid Non-Emergency Medical Transportation: Overview and Key Issues in Medicaid Expansion Waivers, *Modern Healthcare* (Feb. 9, 2019), www.modernhealthcare.com/article/20190209/NEWS/190209936/new-medicaid-barrier-waivers-ending-retrospective-eligibility-shift-costs-to-providers-patients.

In addition, many older adults and their families assume nursing facility care will be covered by Medicare.³ They do not realize that Medicare coverage of skilled nursing facilities is restricted to follow-up of hospital admissions of more than three days, and limited to a maximum of 100 days, though often cut off much sooner.⁴

Without the three-month retroactive coverage protection, Arizonans who need nursing home care are at risk of being denied entry. A nursing facility or other provider requires assurance that payment will be made. Absent retroactive coverage, facilities might very well deny care, as was the case in Iowa after it instituted a waiver of retroactive coverage in 2017.⁵ Delaying nursing facility admission endangers older adults and people with disabilities with fragile health, and in many cases leads to bloated hospital stays because the hospital would be unable to find an alternative placement at time of discharge.

In addition, in asking for this renewal, AHCCCS has not considered the effect the COVID-19 pandemic is having on Arizonans' need and ability to apply for Medicaid as soon as they are eligible. The pandemic is most harshly impacting the communities who are also most likely to need retroactive Medicaid coverage—that is people of color who have limited income and wealth, who are more likely to be uninsured and have medical debt, and who are most at risk of contracting and becoming seriously ill from COVID-19. Arizona's own data shows that people of color account for at least a third of COVID-19 cases in the state, nearly half of hospitalizations, and over 40% of deaths.⁶

Finally, this cut also harms providers and the state by increasing uncompensated care. For example, the Arizona Advisory Council on Indian Health Care commented to AHCCCS that "IHS and Tribal health care facilities noted that they were able to make improvements to their health care facilities and service delivery when they were assured that services provided to eligible beneficiaries during the prior quarter would be reimbursed. When prior quarter coverage was discontinued, they noted a significant decline in revenue."⁷ The strain of uncompensated care is an impossible burden for individuals, hospitals, and the state to bear

³ See, e.g., T. Thompson et al., Associated Press-NORC Ctr. or Public Affairs Research, *Long Term Care: Perceptions, Experiences, and Attitudes Among Americans 40 or Older* 7 (2013) (survey shows Americans "overestimate the long-term care services that Medicare will cover"), www.apnorc.org/PDFs/Long%20Term%20Care/AP_NORC_Long%20Term%20Care%20Perception_FINAL%20REPOR T.pdf.

⁴ 42 C.F.R. §§ 409.30(a), 409.31(b), 409.32, 409.61(b). In 2016, the average length of stay under Medicare was only 27.6 days. Medicare Payment Advisory Commission (MedPAC), *A Data Book: Health Care Spending and the Medicare Program* 112, Chart 8-4 (June 2016), www.medpac.gov/docs/defaultsource/data-book/june-2016-data-book-health-care-spending-and-the-medicare-program.pdf.

⁵ Clark Kauffman, "Medicaid Cuts to Roughly 40,000 Iowans Approved By the Feds," *Des Moines Register* (Oct. 31, 2017), www.desmoinesregister.com/story/news/health/2017/10/31/iowa-medicaid-cuts-for-roughly-40000-iowans-approved-by-federal-government/816993001/.

⁶ <https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php>

⁷ Appendix F to Arizona Demonstration Renewal Proposal, at 794, <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/az-hccc-pa8.pdf>.

amid a public health crisis. Waivers should be used to improve coverage, not to leave Medicaid-eligible individuals without coverage when they have health care needs, especially when those needs are unpredictable during a global pandemic.

AHCCCS Has Not Evaluated the Impact of Waiving Retroactive Coverage

AHCCCS's proposal states that the reason for the extension is "to fully evaluate the Demonstration's progress toward achieving the goals of continuity of care and personal responsibility, and to assess the impact to individuals and providers."⁸ However, it is premature to extend this waiver for 5 years without this full evaluation. While AHCCCS has gathered some limited data on years prior to implementation of the waiver, it has not yet evaluated the waiver's impact. Critically, AHCCCS has not evaluated the most important factor—the impact of eliminating retroactive coverage on individuals' access to care or finances. In fact, the proposed evaluation does not include measures to specifically assess impact on low-income Arizonans' access to nursing home care even though the demonstration is supposedly trying to evaluate whether eliminating retroactive coverage incentivizes people needing LTSS to apply sooner. This is a glaring omission given the unique requirements for LTSS applications, which as discussed above, routinely take weeks or months to complete. Furthermore, AHCCCS's plan to evaluate the impact on individuals through looking solely at reported medical debt is unlikely to capture the impact. When individuals cannot get Medicaid coverage of LTSS, they are likely to forgo it completely because it is simply unaffordable. While the need for LTSS may arise suddenly, the care itself is not delivered in an emergency room or delivered at all without assurance of payment. Therefore, it is critical that the state evaluate the waiver's impact on access to LTSS in the first place and the impact delays in care have on the individual's health and functional ability.

In addition, numerous commenters wrote to the state to oppose continuation of the waiver of retroactive coverage, citing examples of its harms and taking issue with moving forward without completing the evaluation.⁹ However, AHCCCS did not revise its request nor address the concerns raised. Instead, AHCCCS summarily stated that the purported goals of the waiver are true without providing any evidence that it does in fact promote coverage.¹⁰

Waiving Retroactive Coverage Does Not Promote Medicaid's Objectives

Finally, waiving retroactive coverage does not promote Medicaid's objective of providing health coverage to those who cannot afford it. In fact, it does the opposite. AHCCCS's stated objectives for this "demonstration" are to encourage individuals to obtain and maintain health coverage even when healthy and apply for Medicaid expeditiously, to increase continuity of care, to facilitate receipt of preventive services, and to evaluate the financial impacts on the state.¹¹

⁸ AHCCCS, Arizona Demonstration Renewal Proposal (2021-2026), at 18, <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/az-hccc-pa8.pdf>.

⁹ See Appendix F to Arizona Demonstration Renewal Proposal.

¹⁰ AHCCCS, Arizona Demonstration Renewal Proposal (2021-2026), at 48.

¹¹ AHCCCS says it is "evaluating whether waiving retroactive coverage for certain groups of Medicaid members encourages them to obtain and maintain health coverage, even when healthy....whether this policy encourages

Regardless of whether these goals are met, the waiver cuts coverage in violation of Medicaid’s primary objective and is therefore not allowable under federal Medicaid law. Moreover, for the reasons previously given, AHCCCS’s objectives are either inapplicable or impossible to meet for Arizonans who need long-term care.

Work Requirements Would Harm Family Caregivers

We also urge CMS to reject AHCCCS’s request to renew approval of its waiver to implement work requirements on adults under age 50. While older adults themselves would not be subject to these work requirements, their health and wellbeing would be jeopardized by impacting the health and well-being of low-income family members and/or friends who care for them. Many family caregivers, especially women of color, leave the workforce or reduce their hours to provide informal care to their children, aging parents, other family, friends and neighbors. These caregivers are likely to be Medicaid eligible because they are low-income and unlikely to have access to health insurance through a job or spouse.¹² In fact, 34% of non-elderly Medicaid enrollees not receiving SSI in Arizona cite caretaking as their reason for not engaging in the type of work activities the state is proposing to require of them.¹³

The exemption for “Caregivers who are responsible for the care of an individual with a disability” is vague and likely too narrow to account for intermittent caregiving that many older adults rely on to remain healthy and independent. In other words, requiring family caregivers to work or produce evidence that they meet an exemption does not reflect the reality of nor enormous economic value of family caregiving. Many family caregivers who qualify for Medicaid would be forced to choose between providing care for their loved ones and maintaining their own health.¹⁴

Conclusion

Thank you for considering our comments. We strongly urge CMS not to approve the requested extension of the waiver of retroactive coverage and work requirements because doing so would harm the low-income Arizonans that the Medicaid program should be protecting.

individuals to apply for Medicaid expeditiously when they believe they meet the criteria for eligibility for programs such as ALTCS....whether the new policy increases continuity of care by reducing gaps in coverage that can occur when members move on and off Medicaid or enroll in Medicaid only when sick, and facilitates receipt of preventive services when members are healthy. ... [and] the financial impacts of the waiver of retroactive eligibility.” *Id.* at 8-9.

¹² Justice in Aging, Medicaid Work Requirements: The Impact on Family Caregivers and Older Adults (Nov. 2018), www.justiceinaging.org/wp-content/uploads/2018/11/JusticeInAging-Medicaid-IssueBrief-November19-11am-2018.pdf.

¹³ Kaiser Family Found., Understanding the Intersection of Medicaid and Work 10 (App. Table 2) (Jan. 2018), <http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work>.

¹⁴ Justice in Aging, Medicaid Work Requirements: The Impact on Family Caregivers and Older Adults (Nov. 2018), www.justiceinaging.org/wp-content/uploads/2018/11/JusticeInAging-Medicaid-IssueBrief-November19-11am-2018.pdf.

If any questions arise concerning this submission, please contact Natalie Kean, Senior Staff Attorney, at nkean@justiceinaging.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Goldberg". The signature is fluid and cursive, with the first name "Jennifer" being more prominent than the last name "Goldberg".

Jennifer Goldberg
Deputy Director