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June 26, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

RE: SoonerCare 2.0 Healthy Adult Opportunity (HAO) Section 1115 Demonstration Waiver Application

Dear Administrator Verma:

AARP, on behalf of our 38 million members and millions of older Americans nationwide, appreciates the opportunity to submit comments on the SoonerCare 2.0 Healthy Adult Opportunity (HAO) Section 1115 Demonstration Waiver Application.

AARP has supported Oklahoma's pursuit of traditional Medicaid Expansion, under which the state estimates that up to 154,505 currently uninsured Oklahomans could gain health care coverage. We were initially encouraged by the steps taken by the state towards covering so many hard-working Oklahomans, including the many individuals age 50-64 who will gain coverage, and others who have recently lost their jobs in this challenging time or who are employed but have limited options to access health care coverage. However, we are disheartened that those efforts have recently been delayed and we hope to work with the state to find a path forward to increase access to healthcare for Oklahomans.

While we share the state's goal of expanding Oklahoma's Medicaid program to cover individuals with incomes up to 138% of the federal poverty level (FPL), we have concerns about the potential impacts of other policies in the current waiver application. AARP has a long history of advocating for access to high quality care and consumer protections. We appreciate the state's efforts to craft this waiver proposal; however, AARP opposes capped funding mechanisms in Medicaid programs. We are particularly concerned that the most vulnerable low-income and disabled populations could lose access to health and long-term care.

As we continue to battle the coronavirus pandemic, it is even more critical to ensure that individuals are able to obtain and maintain medical coverage and that states have the resources they need to respond to this crisis.

Capped Funding Structure

The per person expenditure cap financing structure proposed by the state for SoonerCare 2.0 enrollees would be unprecedented and could result in cuts to benefits, eligibility, or both. In addition, a capped financing structure, as proposed in the waiver, is not authorized by Section 1115 of the Social Security Act because it is not “likely to assist in promoting the objectives” of the Medicaid Act. 42 U.S.C. § 1315(a). Specifically, this provision is not likely to assist in promoting the objective of enabling the state of Oklahoma “to furnish medical assistance [to individuals and families] whose income and resources are insufficient to meet the costs of necessary medical services and rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care.” 42 U.S.C. § 1396-1.

Moreover, AARP is deeply concerned that the underlying financing model could put SoonerCare coverage for enrollees at risk. As noted in the waiver, the state seeks to impose a capped funding model on its Expansion population, but has no historical data on this population that could be used to determine how much federal funding the state can expect to receive under such a model. While the waiver application includes some suggested projections, the state’s own application notes that, “this projection is based only on American Community Survey (ACS) data, other state experience and OHCA is limited since there is no historical Oklahoma experience”. We ask that CMS require the state to do additional analysis on the potential impacts of this waiver before proceeding with the application process.

We also note with concern that the proposed capped funding structure does not protect against increases in per person spending that exceed medical inflation. When compared to a traditional Medicaid matching structure, this arrangement could leave the state ill-equipped to deal with public health emergencies such as the opioid or other health epidemics, new life-saving and expensive medical treatments, and other circumstances when costs can grow dramatically faster than projected. The result could be added budgetary pressures and cuts to other core services such as education and public safety. The alternative could be a reduction in access to care, further exacerbating Oklahoma’s historically poor health outcomes as reflected in state health rankings.

Community Engagement and Work Requirements

The SoonerCare 2.0 Demonstration Waiver also seeks to impose community engagement and work requirements as a condition of eligibility. Beneficiaries between the ages of 19 and 60, with some exceptions, must work at least 80 hours a month or must participate in qualifying activities, such as at least part-time enrollment in higher education or vocational training and certain volunteer activities. Recent court decisions have found that work and/or community engagement requirements similar to those in the proposed waiver are not authorized by Section 1115 of the Social Security Act because they are not “likely to assist in promoting the objectives” of the Medicaid Act. 42 U.S.C. § 1315(a). Specifically, this provision is not likely to assist in promoting the objective of enabling the state of Oklahoma “to furnish medical assistance [to

individuals and families] whose income and resources are insufficient to meet the costs of necessary medical services and rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care.” 42 U.S.C. § 1396- 1(1).

Moreover, the recent court rulings in the *Stewart v. Azar*, *Gresham v. Azar*, and *Philbrick v. Azar* cases reaffirmed these concerns, stating that work requirements do not help to furnish medical coverage consistent with Medicaid program objectives.¹ Such requirements would also prove challenging for Oklahoma to administer. In fact, a recent report from the United States Government Accountability Office found that Medicaid work requirements have led to increased administrative costs, ranging from an estimated \$6 million to over \$250 million per state in the first five states that received CMS approval.² It is also worth noting that other states with approved 1115 waivers that impose work requirements have opted to discontinue their work requirements during the coronavirus pandemic.

AARP appreciates the inclusion of a list of qualifying exemptions and good cause exemptions, including individuals over 60, caretakers responsible for an incapacitated person, and individuals with certain disabilities. However, we ask for additional clarity regarding the definitions of these exemptions and how they would be determined, in particular the exemptions of those “physically or mentally unfit to” meet the requirements. AARP also strongly supports broader caregiver exemptions so that all beneficiaries who are family caregivers – including all who are caring for adults or children, regardless of a disability or capacity designation – qualify for an exemption.

Conclusion

We strongly urge CMS to address the concerns we have raised and carefully consider the potential adverse impact on many SoonerCare members, the state’s health care providers, and Oklahoma taxpayers. Thank you again for the opportunity to comment on this proposal. If you have any additional questions, feel free to contact me or have your staff contact Amy Kelbick on our Government Affairs staff at akelbick@aarp.org.

Sincerely,



David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

¹ More than 18,000 individuals lost coverage in Arkansas when the state implemented its Medicaid work requirements before the federal court halted the program in that state.
<https://www.aarp.org/content/dam/aarp/ppi/2019/06/the-new-medicaid-waivers-coverage-losses-for-beneficiaries-higher-costs-for-states.doi.10.26419-2Fppi.00066.001.pdf>

² U.S. Government Accountability Office. “Medicaid Demonstrations: Actions Needed to Address Weaknesses in Oversight of Costs to Administer Work Requirements.” (October 2019). Available at:
<https://www.gao.gov/assets/710/701885.pdf>