June 28, 2021

Ms. Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
7500 Security Blvd
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

On behalf of the nation's Medicaid Directors, we respectfully request a pause in CMS's policy of rebasing without-waiver (WOW) baselines in Section 1115 Demonstration waivers.

States acknowledge the federal government's imperative to rationalize the current approach to budget neutrality, including through rebasing. However, states are concerned that the implementation of the rebasing policy as written in SMD 18-009 ("Budget Neutrality Policies for Section 1115(a) Medicaid Demonstration Projects") will impede states' ability to finance longstanding 1115 waiver programs as well as new, innovative initiatives. These concerns are compounded by pandemic-induced changes in enrollment, utilization, and expenditures that have created unprecedented volatility in state Medicaid programs.

While acknowledging that CMS has discretion to approve alternative 1115 waiver Special Terms & Conditions (STCs) on a state-by-state basis, we request that CMS:

- Pause its policy of rebasing states' WOW baseline expenditures for any 1115 waiver renewal taking place after January 1, 2021. (As discussed in greater detail below, NAMD is not requesting a pause in or changes to policies limiting the rollover of waiver savings to those realized during the previous five years and phasing-down newly accrued savings).
- Partner with states through a collaborative workgroup to formulate long-term solutions to ensuring the fiscal integrity of 1115 waiver demonstrations, while also allowing for meaningful state innovation.
- Provide 18 months' notice to states before implementing new policy solutions and offer proactive technical assistance and guidance to ensure states have the time and information necessary to plan for new demonstrations.
- Apply new policy solutions on a prospective basis only; do not apply new policy solutions to waivers approved during the "pause" until that waiver is renewed or extended.

Over the years, Section 1115 demonstrations have allowed states to test and sustain innovative approaches to payment and care delivery in the Medicaid program. Many of these initiatives led to tangible improvements in coverage, access to care, and quality of care, as well as reduced costs. Notable examples include the following:

- Over the past 15 years, Vermont's Global Commitment to Health demonstration has been Vermont's principal vehicle for major expansions of health coverage, helping to drive the State's

uninsured rate from 11.4 percent in 2005 to 4.4 percent in 2019.[1] It has enabled the Medicaid program to closely align delivery system reform efforts with the State's All-Payer ACO model, including allowing it to make infrastructure investments to support the implementation of the model. Vermont has also relied on its waiver to rebalance long-term services and supports (LTSS) in the State by authorizing significant expansions of in-home and community-based services for individuals with LTSS needs. [2,3]

- Oregon used its 1115 waiver to establish a statewide accountable care model through the foundation of Coordinated Care Organizations (CCOs). CCOs are community-based partnerships that integrate payers with primary care providers, specialists, and behavioral health providers and provide a range of care coordination activities (e.g., referrals, appointment scheduling) for Oregon's Medicaid enrollees. Today, there are 16 CCOs operating in the State, overseeing the care of 90 percent of the State's Medicaid enrollees. The program has provided broader access to mental health, addiction, and dental services, as well as reduced inpatient facility spending and avoidable emergency department visits.[4,5]

- Washington has used its 1115 waiver to support the integration of physical and behavioral health services, address the social determinants of health, and improve access to treatment for individuals with behavioral health needs. The waiver authorizes a delivery system reform incentive payment (DSRIP) program which leverages regional organizations comprised of managed care organizations, providers, and other community-based organizations to invest in community projects focused on integrating physical and behavioral health, addressing the substance use disorder crisis, and other issues. The demonstration also authorizes the state's Foundational Community Supports program, which provides supportive housing and supported employment services to high-need Medicaid beneficiaries, including those with behavioral health needs.[6]

Given the past successes of many waiver demonstrations, states are committed to using Section 1115 authority to maintain existing demonstrations and test new initiatives that can increase access, improve care for vulnerable populations, and reduce costs to the Medicaid program. Among other programmatic objectives, states plan to use future waiver demonstrations to address critical issues, such as health equity, the opioid crisis, and social determinants of health. NAMD believes that these types of initiatives are well aligned with the goals and objectives of the Medicaid program and fit squarely within the intended purview of Section 1115 demonstration authority.

States also recognize the need to refine the existing 1115 waiver budget neutrality framework. For example, states believe that the recent policies to limit the rollover of savings to only the savings realized during the previous five years and phase-down newly accrued savings are reasonable approaches to reforming 1115 demonstration financing. However, mandatory rebasing of historical WOW expenditures, as articulated in the 2018 guidance, would create a financial cliff that puts states' ability to finance both existing 1115 waiver programs and innovative new initiatives at significant risk.

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[1] https://humanservices.vermont.gov/sites/ahsnew/files/documents/MedicaidPolicy/GC1115Waiver/VT-GCH-STCs-IMD-Phasedown-Approval-01-13-2021.pdf
[2] https://humanservices.vermont.gov/sites/ahsnew/files/documents/MedicaidPolicy/GC1115Waiver/VT-GCH-STCs-IMD-Phasedown-Approval-01-13-2021.pdf
[3] https://dvha.vermont.gov/sites/dvha/files/documents/Administration/VT%20Section%201115%20Final%20Interim%20Evaluation%20Report%20%232%20CMS%20Resubmission%204-22-2021.pdf
[4] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4939819/
[5] https://www.ohsu.edu/sites/default/files/2019-10/Brief_CCOs_FINAL.pdf
[6] https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/wa/wa-medicaid-transformation-ca.pdf

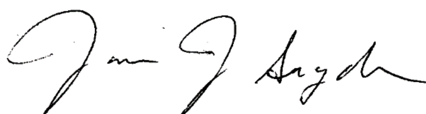
These concerns are amplified by the COVID-19 pandemic, which has significantly impacted Medicaid enrollment, utilization, and expenditures. Given the uncertainty as to when (and the extent to which) expenditures will return to “normal,” implementing rebasing during this period of unprecedented volatility is exactly the wrong time for CMS to require states to set new baselines. Current expenditures are not indicative of any state’s true baseline and could lock states into budget neutrality expenditure limits that constrain their ability to operate meaningful 1115 demonstrations for years to come.

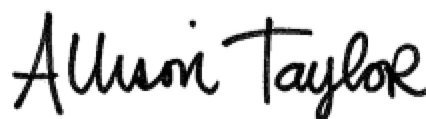
Finally, there is new uncertainty around how CMS will treat enhanced federal matching dollars available through pandemic-relief legislation (such as the increase in federal matching funds for home and community-based services available under the American Rescue Plan Act) in assessments of budget neutrality moving forward. While states welcome the relief and associated opportunities to enhance programming – and states are devoting significant resources to their implementation even as they continue to respond to the pandemic – these policies introduce new volatility to state Medicaid expenditures, underscoring the need for CMS to pause WOW rebasing.

Pausing WOW rebasing and providing states with an opportunity to collaborate with CMS on the best approach to reforming budget neutrality policies will allow CMS and states to arrive at a solution that both rationalizes Section 1115 demonstration financing while also ensuring that states have continued opportunities for meaningful innovation. States would greatly appreciate the opportunity to partner with CMS on this matter and are committed to finding a viable policy solution in collaboration with CMS within a reasonable timeframe.

Thank you for your consideration of this request. We look forward to working with you to ensure Medicaid can continue to test and sustain innovative approaches to payment and care delivery that improve outcomes for the over 80 million people we serve.

Sincerely,





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