
February 12, 2021

Nate Checketts
Director
Division of Medicaid and Health Financing
Utah Department of Health
PO Box 143101
Salt Lake City, UT 84114-3101

Dear Mr. Checketts:

On March 29, 2019, the Centers for Medicare & Medicaid Services (CMS) approved Utah's request for an amendment to its section 1115 demonstration project, entitled "Primary Care Network (PCN)" (Project Numbers 11-W-00145/8 and 21-W-00054/8) in accordance with section 1115(a) of the Social Security Act (the Act). Among other things, that amendment authorized the state to require some PCN beneficiaries ages 19 through 59, with certain exceptions, to participate in and timely document and report completion of specified work supporting activities within a three-month period, as a condition of continued Medicaid eligibility. These activities include registering for work through the state system, completing an assessment of employment training needs, applying for employment, and completing the job training modules. By its terms, the approval of that amendment will expire on June 30, 2022.

Under section 1115 and implementing regulations, CMS has the authority and responsibility to maintain continued oversight of demonstration projects in order to ensure that they are currently likely to assist in promoting the objectives of Medicaid, and CMS may withdraw waivers or expenditure authorities if it "find[s] that [a] demonstration project is not likely to achieve the statutory purposes." 42 C.F.R. 431.420(d); see 42 U.S.C. 1315(d)(2)(D).

The PCN community engagement requirement is not in effect. Although implementation began in January 2020, it was paused in March 2020 due to the COVID-19 public health emergency. The COVID-19 pandemic has made community engagement infeasible. In addition, implementation of the community engagement requirement is currently prohibited by the Families First Coronavirus Response Act (FFCRA), Pub. L. No. 116-127, Div. F, § 6008(a) and (b), 134 Stat. 208 (2020), which conditioned a state's receipt of an increase in federal Medicaid funding during the pandemic on the state's maintenance of its existing Medicaid parameters. Utah has chosen to claim the 6.2 percentage point FFCRA Federal Medical Assistance Percentage (FMAP) increase, and therefore must maintain the enrollment of beneficiaries who were enrolled as of, or after, March 18, 2020. Although that statutory bar will expire after the COVID-19 public health emergency ends, CMS has serious concerns about testing policies that create a risk of a substantial loss of health care coverage in the near term. The COVID-19 pandemic has had a significant impact on the health of Medicaid beneficiaries. Uncertainty regarding the current crisis and the pandemic's aftermath, and the potential impact on economic opportunities (including job skills training and other activities used to satisfy community

engagement requirements, i.e., work and other similar activities), access to transportation and to affordable child care have greatly increased the risk that implementation of the community engagement requirement approved in this demonstration will result in unintended coverage loss. In addition, the uncertainty regarding the lingering health consequences of COVID-19 infections further exacerbates the harms of coverage loss for Medicaid beneficiaries.

Taking into account the totality of circumstances, CMS has preliminarily determined that allowing work and other community engagement requirements to take effect in Utah would not promote the objectives of the Medicaid program. Therefore, CMS is providing the state notice that CMS is commencing a process of determining whether to withdraw the authorities approved in the PCN demonstration that permit the state to require work and other community engagement activities as a condition of Medicaid eligibility. See Special Terms & Conditions ¶ 12. If the state wishes to submit to CMS any additional information that in the state's view may warrant not withdrawing those authorities, such information should be submitted to CMS within 30 days. If CMS ultimately determines to withdraw those authorities, it "will promptly notify the State in writing of the determination and the reasons for the amendment and withdrawal, together with the effective date, and afford the State an opportunity to request a hearing to challenge CMS' determination prior to the effective date." *Id.*

The Utah PCN demonstration project also includes various other authorities that CMS approved in the demonstration. CMS will also review those other authorities and will follow up with the state when that review is complete.

If you have any questions, please contact Judith Cash, Acting Deputy Director, Center for Medicaid and CHIP Services, at (410) 786-9686.

Sincerely,

A solid black rectangular box redacting the signature of Elizabeth Richter.

Elizabeth Richter
Acting Administrator

cc: Mandy Strom, State Monitoring Lead, Medicaid and CHIP Operations Group