

# Congress of the United States

Washington, DC 20510

November 28, 2017

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Verma:

We write to express our profound concern regarding the Centers for Medicare and Medicaid Services' (CMS) recent approval of an amendment to Iowa's Health and Wellness Plan 1115 Demonstration that will eliminate Medicaid's guarantee of retroactive coverage for the majority of Medicaid beneficiaries in the state. This policy could have devastating consequences for tens of thousands of Iowans, particularly those who are disabled or elderly and require long-term care services and supports. By jeopardizing access to critical services for many of the most vulnerable individuals in the state, Iowa's amendment contravenes the fundamental objectives of the Medicaid statute and congressional intent.

Section 1902(a)(34) of the Social Security Act allows beneficiaries to receive three months of retroactive Medicaid coverage from the date of their application to the program as long as these beneficiaries were eligible for Medicaid when they received treatment.<sup>1</sup> As articulated by Congress in 1972, Congress enacted this provision to 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."<sup>2</sup> In passing retroactive eligibility, Congress decided to cover those eligible for but not enrolled in Medicaid to protect these individuals' access to care and insulate them from medical bankruptcy—all in recognition of the fact that circumstances sometimes force individuals to find treatment for themselves or loved ones before they can find adequate insurance.

On August 2, 2017, Iowa submitted an application to CMS to amend its existing 1115 Demonstration by eliminating the retroactive eligibility period for nearly all Medicaid applicants,

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<sup>1</sup> 42 U.S.C. 1396a(a)(34).

<sup>2</sup> Senate Report No. 92-1230, 92d Congress, 2d Session, p. 209 (1972) (<https://www.finance.senate.gov/imo/media/doc/Rpt92-1230.pdf>).

with exceptions only for pregnant women and infants under one year of age.<sup>3</sup> This waiver was approved by CMS on October 26, 2017.<sup>4</sup> To support its approval, CMS stated that the waiver fulfilled the objectives of Title XIX by encouraging individuals to obtain and maintain coverage “even when healthy.” This reasoning applied equally to “those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid.” As CMS explained, “this waiver will encourage [those] beneficiaries to apply for Medicaid expeditiously when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services if the need arises.”

We believe that this waiver recklessly ignores the very problem Congress sought to remedy in passing the retroactive eligibility provision. Instead of seeking to test new or innovative delivery system models that improve access to care, this amendment would threaten the medical and financial wellbeing of thousands of individuals, including seniors and individuals with disabilities who rely on Medicaid for essential long-term care such as nursing and home-based care.<sup>5</sup>

Under the Medicaid statute’s retroactive eligibility protections, individuals in need of long-term services and supports such as nursing home care can rely on these protections to ensure they can get the care they need while they or their family members navigate the complex Medicaid long-term care application process. This process can often take weeks or months to complete due to complicated rules regarding asset tests and medical need requirements. For these individuals, the idea of obtaining Medicaid long-term care coverage when they are “healthy” is simply not an option, as individuals must meet stringent criteria such as requiring an institutional-level of care before they can even become eligible for this type of Medicaid coverage.<sup>6</sup> Further, many older individuals mistakenly believe Medicare covers long-term care, and may only realize the urgency of applying for Medicaid after their health significantly deteriorates or after experiencing a traumatic injury that requires medical attention.<sup>7</sup> CMS’s approval of Iowa’s waiver would pull the rug out from these individuals and families during this already stressful and often extremely financially burdensome time and put access to needed services as nursing home care at serious risk.

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<sup>3</sup> State of Iowa, Department of Human Services, Iowa Wellness Plan, Project #11-W-00289/5, Section 1115 Demonstration (Aug. 2, 2017) (<https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ia/ia-wellness-plan-pa4.pdf>).

<sup>4</sup> Letter from Brian Neale, Director, Center for Medicaid and CHIP Services to Mikki Stier, Medicaid Director, Iowa Department of Human Services (Oct. 27, 2017) (<https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ia/ia-wellness-plan-ca.pdf>).

<sup>5</sup> Clark Kaufman, *Proposed Iowa Medicaid Change Would Eliminate Months of Retroactive Benefits*, Des Moines Register (Aug. 31, 2017) (<http://www.desmoinesregister.com/story/news/2017/08/30/iowa-medicaid-change-would-eliminate-months-retroactive-benefits/618435001>).

<sup>6</sup> Mary Beth Musumeci and Robin Rudowitz, Kaiser Family Foundation, *Medicaid Retroactive Coverage Waivers: Implications for Beneficiaries, Providers, and States* (Nov. 10, 2017) (<https://www.kff.org/medicaid/issue-brief/medicaid-retroactive-coverage-waivers-implications-for-beneficiaries-providers-and-states>).

<sup>7</sup> *Id.*

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In light of the consequences, CMS's approval of Iowa's amendment to eliminate retroactive eligibility contravenes the central goal of Section 1115 of the Social Security Act, which aims to give states the flexibility to test new strategies to increase access to care for low-income individuals and families.<sup>8</sup> Rather than advancing this directive, Iowa's proposal all but guarantees that fewer people will have access to the coverage they need, including seniors and individuals with disabilities in need of long-term care services like nursing and home-based care. Approval of proposals with these types of ramifications undermines Congress's longstanding intent for the Medicaid program and runs counter to the goals of Section 1115 waivers. Accordingly, we urge you to reject this and any similar future proposals.

Sincerely,



Ron Wyden  
Ranking Member  
Senate Finance Committee



Frank Pallone, Jr.  
Ranking Member  
House Energy and Commerce Committee

cc: Brian Neale  
CMS Deputy Administer and Director for the Center for Medicaid and CHIP Services  
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<sup>8</sup> 42 U.S.C. § 1315.