DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services 7500 Security Boulevard Baltimore, Maryland 21244-1850



January 4, 2021

Maureen Corcoran Medicaid Director Ohio Department of Medicaid 50 West Town Street, 4th Floor Columbus, OH 43215

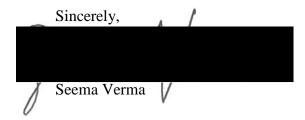
Dear Ms. Corcoran:

Your state currently operates at least one Medicaid section 1115 demonstration. These demonstrations have proven to be a cornerstone of state innovation from which now best practices can emerge and next generation program design be fostered. They express, one of the most critical elements of our commitment to state flexibility and building a state any federal partnership centered on accountability and results.

By their nature, section 1115 demonstrations represent a contract between the state and federal government, governed by established terms and conditions and only approved after a determination by the Secretary of the Department of Health and Human Services (HHS) that such a demonstration would advance the objectives of the Medicaid program. In the rare event that CMS makes a determination that it must terminate, amend, or without waiver authority, the standard terms and conditions in each demonstration generally provide for a process in which CMS will notify the state in writing and afford the state an opportunity to Equest a hearing prior to effective date.

Your terms and conditions describe this process at only a high level, without describing the advance notice or the specific timeline in when such an opportunity to be heard would occur. While a decision to terminate or windraw waive authority would likely only be made as a last measure, states have the right to die process over that decision as well as adequate notice to prepare to transition their programs to new date of authority. That is why I am sending to you today a letter of agreement outlying didition a details of the process, which CMS commits to applying prior to the effective date of a variable and the results of a demonstration.

By signing the letter of agreement, you are agreeing to abide by this process should CMS in the future take any such relevant action against an existing 1115 demonstration operating in your state. If you would like to commit to adhering to this process, I ask that you return this agreement, signed by the state Medicaid director or appropriate authority, as soon as possible. Please send to me directly or email the signed agreement to 1115demorequests@cms.hhs.gov.



Enclosure

CENTERS FOR MEDICARE & MEDICAID SERVICES

PROCEDURES FOR WITHDRAWING OR MODIFYING A SECTION 1115 DEMONSTRATION

CMS regulations state that each Section 1115 demonstration's Terms and Conditions "will detail any notice and appeal rights for the State for a termination, suspension or withdrawal of waivers or expenditure authorities." 42 CFR § 431.420(d) (3). While the precise language in each demonstration's Terms and Conditions varies slightly, these documents set forth only a general outline of the procedure to apply, for example: "CMS 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 with determination prior to the effective date." This letter agreement sets forth the procedures that CMS commits to applying prior to the effective date of any amendment or withdrawal of a comportation.

If CMS determines that it will either (1) suspend or terminate a de postration in whole or in part because the State has materially failed to comply with the torns of the domonstration project, or (2) withdraw waivers or expenditure authorities based on a fading that the demonstration project is not likely to achieve the statutory purposes, see 42 CFR § (131, 20(d)(1)–(2), CMS will promptly notify the affected State in writing of its determination and the based of the suspension, termination, amendment, or withdrawal. CMS will also provide an affect of the determination and a schedule for a hearing to challenge CMS' determination.

In order to ensure that affected states have adequate votice and opportunity to be heard, CMS shall make the effective date for its determination no soner than 9 months after the date on which CMS transmits its determination to the affected state. The hearing and associated briefing shall adhere to the following schedule:

- Within 15 days of the date of C'A' determination, the affected State shall provide notice in writing to CMS that it disagrees with CMS' determination and plans to invoke its right to a hearing as part of a reliminary appeal.
- Within 9 days of the date of CMS' determination, the affected State shall submit a written brief to CM, outlining the bases for its disagreement.
- Within 90 days of the date the State submits its written brief, CMS shall send a written response to the affected State responding to the major arguments raised by the State.
- Within 60 days of the date that CMS sends its written response, the State shall submit a written rebuttal responding to the major arguments raised by CMS.
- Within 45 days of the date that the State sends its written rebuttal, CMS shall hold a hearing
 and provide the State with an opportunity to be heard regarding its disagreement with CMS'
 determination.
- Following the hearing, CMS shall issue a written decision either modifying or finalizing its initial determination.

The decision resulting from this preliminary appeals process shall be appealable to the Departmental Appeals Board using the procedures at 45 CFR Part 16. See Appendix A to 45 CFR Part 16, C. (b). Monetary damages cannot remedy a breach of this preliminary appeals process. Any breach constitutes irreparable harm and final agency action.

The preliminary appeals process set forth above applies to the following demonstrations:

Ohio Group VIII Work Requirement and Community Engagment Section 1115 Demo Waiver for SUD Treatment

