



Department of
Medicaid

Mike DeWine, Governor
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March 11, 2021

Ms. Elizabeth Richter, Acting Administrator
Department of Health and Human Services
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

EMAIL SUBMISSION ONLY

Dear Ms. Richter,

The Ohio Department of Medicaid (ODM) respectfully submits this response to CMS's correspondence dated February 12, 2021, which invited ODM to provide information relevant to CMS's deliberation about whether to revoke ODM's approved 1115 demonstration community engagement waiver.

Ohio believes that individuals' active engagement in their own economic wellbeing is consistent with the Medicaid program and furthers Medicaid's objectives. As discussed in this response, the Ohio community engagement program is supported by academic research that shows individual engagement is associated with improved health outcomes. The program encourages individuals onto a path of self-sufficiency, free of government assistance. And separate from Medicaid, the program is consistent with our economic and workforce goals; helping to satisfy Ohio's unmet need for more entry-level workers, and encouraging skills development, training and education on a path to higher paid positions.

In 2017, the Ohio General Assembly established the statutory requirement for the Ohio community engagement program. *See* O.R.C. 5166.37. Subsequent to passage of the legislation, ODM invested hundreds of hours of thoughtful and detail-oriented research, planning, and design into preparing the program and presenting the program to CMS for approval. The approved program is narrowly tailored. It applies to only a modest subset of individuals who are within the Group VIII expansion category of Medicaid. This expansion occurred in 2014, when Ohio chose to expand the Medicaid program to individuals in a higher income bracket from what the federal program otherwise requires. Within this expansion category, the Ohio program identifies individuals who can and are positioned to transition into more meaningful work experience and community engagement opportunities. Importantly, Ohio is also pursuing programs and policies designed to connect prospective workers to jobs and job training opportunities. Qualifying activities go beyond paid employment and include the pursuit of education, job training, and community volunteer activities, among other options.

To address a threshold comment in CMS's letter, Ohio is not pursuing this program during the COVID pandemic—nor is Ohio permitted to do so under its Maintenance of Eligibility obligations that apply during the pandemic. Instead, the program would be implemented following the pandemic, after a return to more normal economic times. Also, the Ohio community

engagement program is starkly different from the work requirement programs in most other States, and it differs from the programs that are currently being examined by the United States Supreme Court.

ODM respectfully requests that CMS not rescind the waiver permitting Ohio’s community engagement program.

This response is divided into three sections. The first section explains that the design of the Ohio community engagement program addresses and eliminates the concerns raised by CMS in its letter. The second section further explains the benefits associated with Ohio’s program. And the final section briefly discusses the history of federal Medicaid legislation and the place of Ohio’s program within this legislative framework.

1. Ohio’s program includes flexibilities that eliminate the stated concerns in CMS’s letter

CMS’s letter raised several valid concerns associated with the COVID pandemic and state work requirement programs generally. In the letter, CMS expressed concerns associated with activity reporting by individuals, lack of economic opportunities caused by the pandemic, transportation, childcare, and health consequences of COVID-19. Ohio’s community engagement program differs from the description in CMS’s letter, which appears to be more directed to the programs designed by States other than Ohio. CMS’s concerns do not exist in the Ohio community engagement program or are otherwise resolved by the program’s design.

- **The Ohio program resolves CMS’s concern over activity reporting by individuals**

CMS stated that the Ohio demonstration “authorizes the state to require all demonstration beneficiaries” to “timely report 80 hours per month of community engagement activities . . . as a condition of continued Medicaid eligibility.” This statement is incorrect. The approved Ohio waiver does not include any weekly, monthly, quarterly, or other periodic reporting requirement regarding community engagement. The only reporting requirement consists of reporting a change in circumstances that may affect eligibility. This, as CMS is aware, is a requirement for all Medicaid members, regardless of the demonstration program. Thus, if any Medicaid member receives a raise or relocates to a different State, the member must report the change. *See* Ohio’s approved demonstration waiver, p. 4.¹

- **The Ohio program resolves CMS’s concern about lack of economic opportunities due to the pandemic**

¹ <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/oh/oh-work-requirement-community-engagement-pa.pdf>

CMS referred to “[u]ncertainty regarding the current crisis and the pandemic’s aftermath, and the potential impact on economic opportunities.” First, Ohio recognizes that it is unable to implement the program during its Maintenance of Eligibility obligations that apply during the pandemic. Second, Ohio’s program closely mirrors the program requirements of the federal Supplemental Nutrition and Assistance (SNAP) program. Like SNAP requirements, the Ohio program accounts for lack of job opportunities when those exist. Medicaid members in counties that have SNAP work requirement waivers due to high unemployment will be exempt from the work requirement as well.

In addition, the expansion group individuals who qualify for the program can meet the requirement in ways other than through paid work. *See* Ohio’s approved demonstration waiver, pp. 3, 7, 10. The requirement can be met through community engagement activities which include: self-employment, work in exchange for goods and services (“in kind” work), unpaid formal and informal volunteer, community service and public service activities, education and training activities, formal and informal job search or job readiness programs, and participation in and compliance with SNAP and/or Temporary Assistance for Needy Families (TANF) work registration or employment and training (E&T) requirements. The program requires 20 hours of qualifying activities per week, or 80 hours per month.

- **The Ohio program resolves CMS’s concern about lack of transportation**

CMS expressed concern that “[u]ncertainty regarding . . . access to transportation” has “greatly increased the risk that implementation of the community engagement requirement approved in this demonstration will result in unintended coverage loss.” Under the Ohio waiver, lack of transportation is a good cause exception for not meeting the work requirement and will not result in loss of Medicaid coverage. *See* Ohio’s approved demonstration waiver, p. 13.

- **The Ohio program resolves CMS’s concern about lack of access to childcare**

CMS also expressed concern about “access . . . to affordable childcare.” Under the Ohio waiver, parents and caretakers are exempt from participating in the community engagement program. *See* Ohio’s approved demonstration waiver, p. 7.

- **The Ohio program resolves CMS’s concern about health consequences of COVID-19**

CMS lastly noted that “the uncertainty regarding the lingering health consequences of COVID-19 infections further exacerbates the harms of coverage loss for Medicaid beneficiaries.” Again, Ohio’s waiver accounts for health concerns. Under the Ohio program, any person who cannot work due to self-attested medical conditions, including lingering health consequences of COVID-19 infections, are exempt from community engagement requirements under Ohio’s program. *See* Ohio’s approved demonstration waiver, pp. 10-11.

In sum, the concerns raised by CMS are not present in the Ohio community engagement program. Indeed, the Ohio program is starkly different from the programs of many other States. It is narrowly tailored to encourage a return to the work force for those individuals who are positioned to make that change. The Ohio program allows for paid and unpaid qualifying activities. The Ohio program's design also incorporates flexibility and responds to changes in individual circumstances and overall economic conditions. It identifies a modest subset of individuals within the expansion group and encourages actions that will help lead to improved individual circumstances and better health outcomes.

2. The benefits of the Ohio waiver program

In its approval of the Ohio program, CMS determined that the Ohio program “promotes beneficiary health and financial independence” and is “designed to lead to higher quality care at a sustainable cost.” See CMS letter approving Ohio community engagement program.²

Ohio's program builds on the expanded and established policy that economic well-being and health status are directly associated. Ohio's program implements policies that drive improvements in economic status to address a host of social needs that directly impact a person's health. Specifically, Ohio's programmatic engagement of individuals at the time of eligibility application or renewal is optimal for presenting job training or community engagement activities in concert with the process of engagement for signing up for health coverage.

- **Increased personal engagement is linked to improved health**

A growing body of academic policy research demonstrates that patient and family engagement in health care is associated with improved health outcomes. Having the skills, knowledge, and confidence to effectively manage care is associated with improved self-rated health,³ increases in preventive health behaviors and decreases in health risk behaviors,⁵ and reductions in cost of care.⁶

² Available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/oh/work-requirement-and-community-engagement/oh-work-requirement-community-engagement-demo-appvl-20190315.pdf>

³ Simmons, L. A., Wolever, R. Q., Bechard, E. M., & Snyderman, R. (2014). *Patient engagement as a risk factor in personalized health care: A systematic review of the literature on chronic disease*. *Genome Medicine*, 6(2), 16.

⁴ Harvey L, Fowles JB, Xi M, Terry P. *When activation changes, what else changes? the relationship between change in patient activation measure (PAM) and employees' health status and health behaviors*. *Patient Educ Couns*. 2012 Aug;88(2):338-43. doi: 10.1016/j.pec.2012.02.005. Epub 2012 Mar 27. PMID: 22459636.

⁵ Hibbard, J. H., and J. Greene. *What the Evidence Shows About Patient Activation: Better Health Outcomes and Care Experiences; Fewer Data on Costs*. *Health Affairs*, vol. 32, no. 2, 2013, pp. 207–214. doi:10.1377/hlthaff.2012.1061

⁶ Hibbard, J. H., J. Greene, and V. Overton. *Patients with Lower Activation Associated with Higher Costs; Delivery Systems Should Know Their Patients' 'Scores.'* *Health Affairs*, vol. 32, no. 2, 2013, pp. 216–222. doi:10.1377/hlthaff.2012.1064.

CMS has recognized that economic well-being goes hand in hand with health status and CMS officially and actively encourages States to develop programs that support and encourage employment. This was the officially stated position of CMS in 2011 under the administration of President Obama:

Work is a fundamental part of adult life for people with and without disabilities. It provides a sense of purpose, shaping who we are and how we fit into our community. Meaningful work has also been associated with positive physical and mental health benefits and is a part of building a healthy lifestyle as a contributing member of society. Because it is so essential to people's economic self-sufficiency, as well as self-esteem and well-being, people with disabilities and older adults with chronic conditions who want to work should be provided the opportunity and support to work competitively within the general workforce in their pursuit of health, wealth and happiness. All individuals, regardless of disability and age, can work – and work optimally with opportunity, training, and support that build on each person's strengths and interests. Individually tailored and preference-based job development, training, and support should recognize each person's employability and potential contributions to the labor market.⁷

In 1996, under the administration of President Clinton, CMS developed the Person and Family Engagement (PFE) Strategy. The goals of the PFE strategy include enhancing person and family engagement, serving as a guide to support meaningful, intentional application of person and family engagement principles to all policies and programs addressing health and well-being, and creating a foundation for expanding awareness and enhancing person and family engagement.⁸ This broader trend towards engagement has taken a variety of programmatic forms at the state level.

A further mechanism more directly focused on engagement in care is 1915(j) waivers for "Self-Directed Personal Assistant Services," which empower individuals who already receive section 1915(c) waiver services to engage in a person-centered and directed planning process regarding care. Provisions within this framework allow for the involvement of friends and family in the care planning process, if the participant so chooses.⁹

Many Medicaid managed care plans today already provide incentives and education, incentivize healthy behavior, and/or improve financial involvement and health literacy related to

⁷ <https://www.medicaid.gov/federal-policy-guidance/downloads/CIB-09-16-2011.pdf>

⁸ Center for Medicare and Medicaid Services. Person and Family Engagement Strategy: Sharing with Our Partners. <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/Person-and-Family-Engagement-Strategy-Summary.pdf> Accessed 2-22-2021.

⁹ Center for Medicare and Medicaid Services. <https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-authorities/self-directed-personal-assistant-services-1915-j/index.html>

the cost of care. Such operations include completing an annual Health Risk Assessment (HRA) and attending an annual wellness exam or routine dental exams.¹⁰ Some have taken the next step—along with the state of Ohio—to add employment related services which includes job training and employment connections.^{11, 12, 13}

Ohio has developed and continues to refine and improve robust programs to support job training and employment opportunities for the Medicaid expansion group and others. One example is the Ohio Means Jobs program, which offers job-searching, upskilling, and career-pathing activities. Below is only a partial list of the aggressive programs that Ohio is undertaking by itself or in connection with the federal government to promote and foster work and job training opportunities:

- Eligible training providers use the Ohio Workforce Inventory of Education and Training system to list their training services to individuals who can also search for approved training programs.
- Employment Services, through the Wagner-Peyser Act, provides labor exchange services, such as job search assistance, job referral, and placement assistance for job seekers and recruitment services for employers with job openings.
- The Ohio Labor Market Information site has tools and information on wages, expected openings, and training options for occupations in Ohio.
- The Ohio Migrant and Seasonal Farm Worker services initiative has information for those working or interested in agricultural jobs
- OhioMeansAccessibility.com offers links to resources for individuals with disabilities. OhioMeansJobs.com is a free site where individuals can post their resume for employers to review, and where individuals can search for job openings, internships, and apprenticeships, view job fairs, and register for workshops.
- The Reemployment Services and Eligibility Assessment Program provides intensive reemployment assistance to individuals receiving unemployment and likely to exhaust their benefits before becoming reemployed.
- The Ohio trade program helps workers who have lost or may lose their jobs as a result of foreign trade, with opportunities to obtain the skills, credentials, resources, and support to become reemployed.

¹⁰ <https://www.ohiomh.com/Documents/OhioMedicaidComparisonChart.pdf>

¹¹ <https://www.caresource.com/oh/members/tools-resources/life-services/medicaid/>

¹² <https://www.caresource.com/oh/members/tools-resources/life-services/members/medicaid/>

¹³ <https://www.buckeyehealthplan.com/community-outreach/grant-program.html>

- Veterans' workforce services alleviate unemployment and underemployment for veterans and other eligible persons.

There are many more examples. Ohio's Aspire Adult Education and Literacy Program provides free services for individuals who need assistance with acquiring the skills to be successful in post-secondary education, training, and employment. The Ohio Office of Workforce Development offers a variety of services, provided by county, state, and various partners to people seeking employment. And, Ohio Means Jobs centers offer access to computers, office equipment, job-related workshops, supportive services, individual training accounts, and other activities to assist with work force development. In addition to Ohio, the federal government recognizes the need for improved training and education through such programs as Pell Grants and the Workforce and Innovation Opportunity Act, which authorizes federal funds to be invested in skill development, employment, and training services for adults, dislocated workers, and youth.

- **Ohio's waiver program is narrowly tailored and designed to foster personal engagement**

Ohio's demonstration waiver is narrowly tailored to identify the individuals, through data available to the state, who are positioned to transfer back into the work force. Importantly, the Ohio program is limited to the Group VIII expansion Medicaid population—individuals whom Ohio (and some other States) have voluntarily chosen to include in the Medicaid program. The Group VIII expansion broadened Medicaid eligibility to most Ohioans age 19 through 64 with incomes at or below 138% of the federal poverty level. Prior to January 1, 2014, Medicaid eligibility for adults was limited to those with certain qualifying characteristics such as parenthood or disability, and the income limitation for most Medicaid eligibility groups was at or below 90% of the federal poverty level.

Within this already limited subset of Medicaid members, the Ohio program further excludes any individual who:

- is already working,
- is already in job training,
- is receiving treatment for a substance use disorder
- cannot work due to underlying medical conditions,
- are in counties exempt from work requirements under SNAP due to high unemployment rates in a county, or
- are a parent or caretaker of a minor child

The Ohio community engagement program does not require any of the above groups to report activities, fill out forms, or take any action beyond the standard reporting of changes required of any Medicaid member. In addition, any individual who is not in one of these exempt categories can complete a simple self-appraisal form, which by attestation alone can exempt the

individual based on a medical condition, employment status, job training status, education status, childcare status, or county residence status not already noted in state records. No medical or other verification is required for this, and these individuals would also be exempt and not reviewed until their next eligibility renewal.

After these reductions, county caseworkers will appraise the remaining individuals who appear to be qualified for the program. If the caseworker observes any circumstance that would exempt the individual, the person would likewise be excluded. Finally, the remaining individuals who can benefit from economic and job opportunities, in concert with a county caseworker, will have the opportunity to choose a work or other qualifying activity. That activity would be in place until their next eligibility renewal. No periodic reporting of work activity or other activity is required except changes in circumstances. They would be re-evaluated at their next annual renewal.

Ohio's community engagement program differs from other States, particularly States that have had their programs challenged in courts. For example, the Arkansas program requires monthly reporting, includes eligibility lock out periods for noncompliance, and requires medical certifications. In contrast, the Ohio program requires only annual reporting unless there is a change in circumstance, does not have lock out periods, and does not require medical validations.

Ohio's 1115 waiver is closely aligned to the SNAP and TANF work and community engagement requirements and targeted to identify individuals who can most benefit from employment activities and support. It seeks to engage and empower the identified individuals, rather than to penalize them.

3. The Ohio waiver fits within the legislative history and framework of Medicaid

The Medicaid program was created as a support system and a means to self-sufficiency. The Medicaid program was one part of The War on Poverty. The War on Poverty was social welfare legislation introduced in the 1960s by the administration of President Lyndon B. Johnson to end poverty in the United States. The legislation included education, job training, medical care, and housing.¹⁴ President Johnson offered Medicaid as a support for people who were seeking to improve their economic situation:

The war on poverty is not a struggle simply to support people, to make them dependent on the generosity of others. It is a struggle to give people a chance. It is an effort to allow them to develop and use their capacities, as we have been allowed

¹⁴ President Lyndon B. Johnson, Annual Message to the Congress on the State of the Union, Jan. 8, 1964. Available online by Gerhard Peters and John T. Woolley, The American Presidency Project: <https://www.presidency.ucsb.edu/documents/annual-message-the-congress-the-state-the-union-25>.



to develop and use ours, so that they can share, as others share, in the promise of this nation.¹⁵

Medicaid both at the federal level and the state level has evolved over the past 50 years to provide more flexibility for states to create a supportive structure for individuals and families. Employment supports the Medicaid Buy-In for working disabled individuals and continuous eligibility (CE) for youth who are enrolled in Medicaid, which enables parents and households with modest incomes from having to immediately find replacement health care coverage for their children. It includes home and community based “waiver” programs to cover the cost of health care for family members with challenging medical conditions so that working parents’ income is not counted as part of a physically or mentally challenged child’s eligibility for Medicaid.

ODM continues to evolve in a supportive role with the aim of enabling those who can, to achieve and maintain independence, and for those who cannot, to maintain a quality of life through comprehensive health care coverage. That is the central pillar of Ohio’s community engagement 1115 demonstration waiver.

The Ohio community engagement program was carefully designed and is intended to promote and foster independence—and the associated health outcomes—with increased community engagement. The Ohio program falls squarely within the purpose of Medicaid and it does not include the areas that CMS has identified as problematic in its February letter.

For all the foregoing reasons, ODM respectfully asks CMS to uphold its approved waiver. In addition, ODM requests a meeting on this matter, to further dialogue with CMS about the structure and benefits of the Ohio program.

Sincerely,

Maureen M. Corcoran
Director

CC: Judith Cash, Acting Deputy Director, Center for Medicaid and CHIP Services
Christine Davidson, State Monitoring Lead, Medicaid and CHIP Operations Group

¹⁵ President Lyndon B. Johnson, *Special Message to the Congress Proposing a Nationwide War on the Sources of Poverty*, March 16, 1964. Available at <https://www.presidency.ucsb.edu/documents/special-message-the-congress-proposing-nationwide-war-the-sources-poverty>.