For Immediate Release: Wednesday, February 22, 2012
Contact: CMS Office of Public Affairs
202-690-6145

IMPROVED REVIEW AND APPROVAL PROCESS FOR SECTION 1115 MEDICAID DEMONSTRATION PROJECTS

Overview

On February 22, 2012, the Centers for Medicare & Medicaid Services (CMS) issued a final rule to establish a process to promote State and Federal transparency for Medicaid and Children's Health Insurance Program (CHIP) Demonstrations. The rule is designed to ensure public input in the development, review, and approval (or extension) of Medicaid and CHIP demonstration projects under section 1115 of the Social Security Act. This final regulation codifies the provisions of section 10201(i) of the Affordable Care Act of 2010.

Section 1115 permits the Secretary of Health and Human Services to waive selected provisions of the Social Security Act to enable States to test new approaches to delivering Medicaid and CHIP services and to pay for coverage or services that otherwise would not be paid for under Medicaid and CHIP. These projects, known as demonstrations, can be used by States to modernize these programs and improve the value of health care provided by health care providers to consumers.

Background

The Affordable Care Act requires CMS to issue regulations establishing processes to ensure meaningful public input into the development of State demonstration projects, as well as in the Federal review and approval of State demonstration applications and extensions. The proposed rule was published on September 17, 2010. This final rule incorporates comments obtained from States, provider advocacy groups, and community stakeholders.

This final rule sets standards to make information about Medicaid and CHIP demonstration applications and approved demonstration projects publicly available at the State and Federal levels. It also makes sure that the public will have an opportunity for comment. At the same time, the final rule also ensures that the development and review of demonstration applications will proceed in a timely and responsive manner.
**Public Input at the State Level**

To promote consistent processes for soliciting public input, this rule establishes that States will provide for public notice by publishing online the demonstration application, public hearing announcements, a description of the objectives of the demonstration, and key program features, as well as estimated impact on enrollment and spending. States will also publish the public notice in either the State’s administrative record or in newspapers with the widest circulation and maintain an email mailing list or similar mechanism in order to notify interested parties of the demonstration application. The public notice period must be for at least 30 days. These new procedures will apply to both new demonstration approvals and to extensions of existing demonstrations.

As part of the public comment process, States that are considering demonstrations must convene at least two public hearings. The hearings can be convened through the State’s Medical Care Advisory Committee, a State legislative process, or any other similar process for public input that would allow an interested party to learn about and comment on the demonstration application. In order to facilitate Statewide participation, the State must provide teleconferencing and/or web-conferencing capability for at least one of the public hearings. To preserve an opportunity for the State to consider the comments received, public hearings need to take place at least 20 days before a State submits its application to CMS. Many States already have similar processes in place.

Consistent with other provisions of law, the rule also requires that States must notify Indian tribes in accordance with the timelines approved in their Medicaid State plan prior to submitting their demonstration application. This requirement codifies previous CMS guidance implementing tribal consultation provisions of the American Recovery and Reinvestment Act. The final rule also includes a good cause exception under which CMS can waive all or part of the public notice requirements in case of an emergency, such as a natural disaster. Finally, the rule establishes processes for evaluation, reporting, and monitoring which largely codify existing practice.

**Public Input at the Federal level**

To enable meaningful public input at the Federal level, and to facilitate the demonstration application process for States, the final rule standardizes demonstration application and renewal requirements. Receipt of a complete application triggers the Federal public comment period, which includes posting the State’s application on Medicaid.gov for public comment. To further facilitate the review process, CMS is developing an electronic application that will allow States to apply for or extend existing demonstrations, on the Medicaid.gov website. As CMS continues to develop this electronic application, CMS is finalizing an interim demonstration application template for States to use at their option. Upon submission of a State’s demonstration application, CMS will, within 15 days, formally notify the State whether its application is complete. A notice of a complete application will begin the 30-day Federal public comment period.

CMS will publish on www.Medicaid.gov the State’s application and associated documents and it will receive public comments through this website. CMS will also post all public comments and maintain an electronic mailing list to notify interested parties that a State’s demonstration application is available on the website.

In order to provide time for CMS to consider all written public comments, CMS will not render a final decision on a demonstration application until 45 days after the State’s application is complete. This process ensures that CMS has at least 15 days to take into account public comments before rendering a decision. After approval, CMS will also maintain and publish on its website an administrative record which will include the demonstration application, public comments sent to CMS and, if the application is approved, the final special terms and conditions, and the State’s acceptance letter. This rule is final, and will be effective 60 days after publication.

Finally, the Medicare-Medicaid Coordination Office (MMCO) is testing two financial alignment models, which in some cases may entail 1115 authorities, to support State efforts to coordinate care for Medicare-Medicaid enrollees. Public notice processes carried out under this initiative will align with those advanced by this rule today.

The final rule was placed on display at the Federal Register today, and can be found at:

https://www.federalregister.gov/public-inspection

For more information, please see:

http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/Section-1115-Demonstration.html