

Section 1115 Demonstration: Michigan - Healthy Michigan Plan (Childless Adult Waiver)

Public Comments

Title	Description	Created At
<p>Comments from the National Health Law Program</p>	<p>This is just an excerpt of our comments. The full comments are available on our website: www.healthlaw.org.</p> <p>The National Health Law Program (NHeLP) is a public interest law firm working to advance access to quality health care and protect the legal rights of low-income and underserved people. We appreciate the opportunity to provide comments to Michigan’s proposed § 1115 Demonstration Application, the Healthy Michigan Plan (HMP).</p> <p>While NHeLP supports the efforts to expand Medicaid in Michigan, we recommend that HHS not approve the HMP proposal exactly as requested. The application includes provisions that clearly or arguably are not authorized by any law. We urge HHS to address these problems and require Michigan to bring the proposal to a legally approvable form. We urge HHS to work with Michigan to achieve a Medicaid Expansion that will serve future Medicaid enrollees well, including those inside Michigan benefiting from these proposals and those in other states that may pursue similar proposals. We request that HHS zealously enforce its stated policies and the legal limits of Medicaid § 1115 demonstration law, to ensure progress in Michigan without opening the door to policies that ignore the fundamental tenets of Medicaid as an entitlement program.</p> <p>Second, we ask that before HHS takes action on this request, it take steps to address its own “stewardship of federal Medicaid resources.” GAO, Medicaid Demonstration Waivers: Approval Process Raises Cost Concerns and Lack of Transparency, 32 (June 2013). As the GAO recently concluded, “HHS’s [budget neutrality] policy is not reflected in its actual practices and, contrary to sound management practices, is not adequately documented....[T]he policy and processes lack transparency regarding criteria.” Id.</p> <p>I. Comments on Public Process for the HMP Proposal</p> <p>Before addressing the content of Michigan’s proposal, we would like to address serious legal problems with the public stakeholder process of this proposal. Namely, Michigan submitted this proposal to HHS as an “amendment” to an existing 1115 waiver for childless adults, and on that basis, may have concluded that the § 1115 transparency requirements (in particular a state comment period and two public hearings) do not apply, because those requirements are explicitly applied in law and regulations only to new and extension applications. We believe this conclusion is wrong for two reasons.</p> <p>First, simply put, Michigan’s proposal is not an amendment; it is a new demonstration proposal. Among other things it includes a new eligibility threshold, a new monthly contribution and personal account system, a new service delivery mechanism, a new benefit package, and a new cost sharing structure. On its face, this is an entirely new demonstration, not the amendment of the existing demonstration, and, if HHS were to allow this to pass as an “amendment” then virtually any new demonstration could be cloaked as an “amendment,” and the transparency requirement would be eviscerated. As such, this proposal should adhere to the transparency</p>	<p>2013-12-18 14:01</p>

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	<p>requirements for new § 1115 demonstrations set forth in 42 C.F.R. § 431, Subpart G.</p> <p>Second, even if the proposal is not construed as a new demonstration, it is then clearly an extension of the current program and not an “amendment.” Any extension of a § 1115 demonstration is subject to the same transparency requirements set forth in 42 C.F.R. § 431, Subpart G. The current Michigan demonstration expires on September 30, 2014, while this “amendment” does not even take effect until April 1, 2014. Clearly, Michigan is not undertaking this entire demonstration effort to “amend” the current demonstration for its final six months. Nor have we understood that HHS will require Michigan to file an extension application before August 2014 and go through the full transparency process prior to the currently scheduled expiration date. Indeed, Michigan’s application features numerous descriptions of the demonstration over the course of multiple years, and thus Michigan clearly intends for this “amendment” to in fact extend well beyond the current end date of September 2014. Any “amendment” which, like this one, in fact operates as an extension must comply with the legal transparency requirements for an extension. In light of this, we believe that HHS must proceed with extreme caution in reviewing the substantive flexibilities requested in this application; approval of waivers which harm consumers may create legal problems given the underlying procedural violation.</p> <p>We urge HHS to not interpret demonstration applications in ways that will subvert the new public process rules. States should not be able to avoid transparency by calling a new project or an extension an “amendment.” Allowing this to happen would be to create an exception that swallows the rule. Nor is there particular urgency in this case to justify an expedited process, as Michigan will not implement Medicaid expansion until at least April 2014. In recent § 1115 Medicaid expansion demonstration proposals, both Iowa and Arkansas followed the transparency rules – including a formal 30 day state and federal comment process – despite having less time prior to implementation. Finally, we also recommend that HHS update its Special Terms and Conditions template (which currently refers to 1994 guidance in the Michigan demonstration) to require that any “extension” comply with current transparency law (including 42 C.F.R. § 431, Subpart G), and that the new transparency standards also apply to any amendment that significantly changes the demonstration or extends the demonstration beyond the current expiration date.</p> <p>II. Limits of § 1115 Waiver Authority</p> <p>Prior to addressing specific features of the requested waivers, we believe it is important to address one repeated misapplication of § 1115 authority within this demonstration application. Section 1115 explicitly circumscribes waiver authority in Title XIX to requirements contained in § 1902. Provisions outside of § 1902 may not legally be waived through the § 1115 demonstration process. Despite this legal fact, Michigan requests waiver of requirements that lie outside of § 1902. These waiver requests include provisions in §§ 1916 and 1916A. None of these waiver requests are permissible because the substantive provisions rest outside of § 1902 and independently require state compliance. Any reference to the provisions in § 1902, which could be waived, does not and cannot also waive the independent, freestanding requirements of these Medicaid Act provisions.</p> <p>III. Comments on the Healthy Michigan Program</p>	

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	<p>NHeLP supports states implementing Medicaid expansion and adapting the program to fit the needs of their population. However, Medicaid law already permits states substantial flexibility to structure their programs. Among other things, states may add or remove optional eligibility categories, adjust benefits, implement and target cost sharing, or develop alternative delivery systems. Given this flexibility already in the law, HHS should restrict § 1115 demonstration authority to its original intent – a mechanism for states to test and evaluate truly innovative and limited Medicaid pilot projects consistent with the objectives of the Medicaid Act. As proposed, the HMP includes several features that NHeLP supports and that should improve healthcare access for new enrollees. Principal among these is the decision to align the alternative benefit plan (ABP) for expansion adults with Michigan’s state plan benefits, including a “plus-up” for certain dental, vision, behavioral health and home and community-based services (HCBS). This decision not only provides new adult enrollees with a robust service package, but it eliminates the administrative burden of tracking separate benefit packages and identifying individuals exempt from the ABP.</p> <p>However, the proposal includes two central features that raise serious legal concerns. First, the state’s proposal requires monthly contributions (henceforth “premiums”) of 2% of household income for individuals from 100-138% FPL. This is not permissible under Medicaid law. While the proposal includes several important protections, like a six-month delay in contributions and no disenrollment for nonpayment, these serve to reduce potential harm to enrollees; they do not cure the illegality of charging a premium below 150% FPL.</p> <p>The second major problematic provision is Michigan’s proposal to create a “MI Health Account” for each enrollee to pay cost sharing (and, if applicable, monthly premiums). However this “cost-sharing” is not tied to an actual service utilized by an individual, as cost-sharing must be by definition. Such a cost-sharing system is illegal by design, and as implemented will also run afoul of numerous other Medicaid restrictions. To cure the illegality of the Michigan proposal, the state must eliminate the monthly premium charged to enrollees below 150%, and significantly modify the cost-sharing system. Under the law, HHS should not approve the demonstration without these changes.</p>	
<p>Michigan Consumers for Healthcare Comments on the Healthy Michigan Plan proposal</p>	<p>December 18, 2013 The Honorable Kathleen Sebelius Secretary, U.S. Department of Health and Human Services 200 Independence Avenue, S.W. Washington, DC 20201 Re: Section 1115 Demonstration: Healthy Michigan Plan (Childless Adult Waiver) Dear Secretary Sebelius: We write to comment on and support the State of Michigan’s Healthy Michigan Plan waiver proposal. We also thank you sincerely for providing this public comment opportunity for all stakeholders. Michigan Consumers for Healthcare (MCH) is a statewide, non-partisan and non-profit organization serving as the largest consumer health advocacy coalition in Michigan. Our more than 200 member organizations work to ensure a consumer-friendly implementation of the Affordable Care Act (ACA). To</p>	<p>2013-12-18 14:01</p>

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	<p>that end, our coalition has worked tirelessly with many diverse stakeholders to expand our Medicaid program.</p> <p>As you know, between 400,000 and 500,000 Michigan residents are eligible for coverage under the ACA’s provisions for Medicaid Expansion. These individuals represent some of the most vulnerable populations in the state, and include those with disabilities, the homeless, the working poor, and many others who lack resources or eligibility for insurance through any other means provided by the ACA. Of the state’s estimated 1.2 million uninsured Michigan residents, those who would be eligible for coverage under the Healthy Michigan Plan represent nearly half the state’s uninsured population. Bringing them into coverage is essential if Michigan is to reduce its healthcare costs and lower the amount of uncompensated care delivered each year, as well as improve the health of our residents.</p> <p>For this reason, MCH supports the Healthy Michigan Plan waiver, and commends the Michigan Department of Community Health (DCH) for its efforts to balance consumer needs with the legislature’s requirements in the law. The department has heard advocates’ concerns about provisions in the law that could, if not carefully considered, create great uncertainty for and potential barriers to consumers who will be eligible for the Healthy Michigan Plan. Fortunately, DCH has addressed many of these concerns in its proposal design. We ask that CMS work with the State of Michigan to resolve any outstanding barriers to its approval as quickly as possible, while continuing to take advantage of opportunities to improve the proposal for consumers.</p> <p>MCH is particularly pleased to see that DCH has designed a plan that will allow nearly the same benefits package as our state’s current, traditional Medicaid program. This will simplify administration and reduce consumer and provider confusion, while ensuring a level of benefits that brings meaningful coverage to enrollees. We are also pleased with DCH's intent to avoid harsh penalties for non-compliance with cost sharing requirements, while developing other opportunities to reduce cost sharing payments.</p> <p>While we applaud DCH’s waiver proposal in general, we are concerned that some of the provisions that were included in the law to obtain legislative support could present barriers to enrollment or service utilization. It is not clear that the legislature carefully considered how such requirements can function as disincentives or penalties that would impede the stated goal of reducing the number of low-income, uninsured individuals. MCH will work with the legislature to identify and address provisions in law that serve as barriers to the state’s goal of full enrollment and cost-effective utilization for all eligible Michigan residents, as well as to reduce unnecessary and burdensome bureaucratic processes for the state’s workforce, which is already overloaded with work on existing programs.</p> <p>For example, the Healthy Michigan Plan, as passed, requires the use of HSA-like accounts to enable cost sharing for individuals enrolled in the program. It is unclear how “unbanked” consumers in the state will interact with the necessary formal financial systems to ensure timely payment of their required costs. Further, many consumer wellness requirements make assumptions about low-income consumers' abilities to access transportation and other resources that enable more healthy behaviors, such as better nutrition. The success of these requirements depends upon access to many services that are inadequate or simply not readily available in Michigan, such as mass transit. We are also concerned that public</p>	

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	<p>policies at the national level, such as the cuts being considered by Congress (e.g., SNAP and termination of the Unemployment Insurance extension) could make it even more difficult for low-income consumers to meet cost sharing requirements and pursue healthy behaviors to minimize their cost sharing responsibilities. We look forward to working with DCH to design innovative approaches that acknowledge the needs and limitations of this low-income population.</p> <p>Despite concerns about some provisions of the legislation, MCH is a strong supporter of the Healthy Michigan Plan waiver proposal. DCH is to be commended for its innovative work on behalf of the state's eligible residents. We again thank you for this opportunity for public comment and especially look forward to working with you and the Department as the terms and conditions of the waiver are developed, where we hope continued efforts can further improve the program to ensure the best outcomes for consumers.</p> <p>Sincerely, Don Hazaert Michigan Consumers for Healthcare</p>	
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Comments from Community Catalyst	Community Catalyst greatly appreciates the opportunity to comment on Michigan's Proposed Amendments to its Section 1115 Demonstration Project.	2013-12-17 10:50

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	<p>Our full comments are available here: http://www.communitycatalyst.org/resources/comment-letters/document/Community-Catalyst-comments-Michigans-Proposed-Amendments-Section-1115-Demonstration-Project.pdf.</p> <p>The key points in our comments are: Thank you for ensuring that the public gets an opportunity to weigh in on this important proposal. We enthusiastically support Michigan’s decision to accept federal Medicaid funding to move forward with the extension of coverage to low-income parents and adults. We urge you to ensure that the proposal is not amended to increase cost-sharing requirements above levels allowed by law, or to deny services or Medicaid eligibility for enrollees who fail to make their monthly contributions. We also recommend that you require a careful review and evaluation of the new account structure and monthly contribution requirements. We recommend you work with Michigan to eliminate the additional contributions on those above 100% FPL. We recommend you require Michigan to provide further detail about the healthy behaviors they intend to incent among beneficiaries, and that you place strict parameters on the Healthy Behaviors program. We urge you to encourage the state to take up the streamlined enrollment options you outlined last spring. Thank you for considering our comments.</p>	
<p>Healthy Plan Michigan needs to be approved for the good of Michigan</p>	<p>Michigan has a lot of adults without children that are without medical coverage. This not only affects medical care, but has in many cases been preventing individuals with access to mental health services due to inadequacy of general fund monies to serve those without insurance. As a result, more people are untreated, more ER visits are utilized and more crimes are committed all while people suffer. Healthy Plan Michigan will provide coverage for many individuals who are in need, for example my mother in law. Currently has no insurance and cannot afford the premiums available under the Affordable Care Act, as her only income is that of her Husbands Social Security Disability. She has gone years without medical treatment and will continue to do so, unless Healthy Plan Michigan is passed.</p>	<p>2013-12-16 12:07</p>
<p>Please pass the Healthy Michigan Plan</p>	<p>The Healthy Michigan Plan is one of the most needed and most humane acts to ever come out of congress. It abolishes many of the previous restrictions to healthcare that have kept people locked in a perpetual cycle of poor health, poverty, and despair. Please approve the Healthy Michigan Plan waiver amendment for the following people: A 53 year old woman with a M Ed, not hired within the system because her advanced degree makes her too expensive, and therefore working as a substitute teacher for a privatized company. She is not eligible for health insurance and couldn't afford it on her income were it available. Presented this past summer with a cancer scare and the possibility of suggested hysterectomy, this woman was faced with a terrible choice. She could risk her family's fragile financial stability (home equity is her only financial asset), or give up and let treatable disease take her because to pursue treatment would throw her family into a spiral of financial depression. Thank goodness she was spared that decision.</p>	<p>2013-12-03 08:10</p>

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	<p>A 60 year old man unable to further perform the manual labor which had supported him for years, due to back and shoulder degeneration. He doesn't have a diagnosis and isn't receiving treatment for his debilitating conditions, because he has no health insurance and therefore no PCP. A trip to the emergency room after spending 18 hours upright due to the pain of sitting or lying down yielded a few pain pills and an MRI from which he received no information or followup care, because he doesn't have a PCP.</p> <p>An unemployed 21 year old who hasn't seen a doctor or dentist for a few years and who desperately needs preventative care to keep him healthy.</p> <p>An 18 year old, soon to turn 19 and lose his current Medicaid coverage. If there isn't healthcare available to him he will soon join the masses who are told that they don't matter; their lives and health are peripheral and expendable.</p> <p>Multiply my family's scenario exponentially and you'll have all the evidence you'll need to support passage of the Healthy Michigan Plan. CMS's approval of this waiver amendment will not only address a symptom, but more importantly a fundamental cause of some of our society's biggest divides and dysfunctions. Passage of the Healthy Michigan Plan is a crucial step toward a healthier and more civilized society. Please don't let this opportunity pass.</p>	
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