

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-25-26
Baltimore, Maryland 21244-1850



State Demonstrations Group

May 20, 2020

Melody Anthony
State Medicaid Director
Chief Operating Officer
Oklahoma Health Care Authority
4345 N. Lincoln Blvd.
Oklahoma City, OK 73105

Dear Ms. Anthony:

Thank you for your request for a new section 1115 demonstration entitled, “SoonerCare 2.0.” The Centers for Medicare & Medicaid Services (CMS) received Oklahoma’s new application request on May 6, 2020. We have completed a preliminary review of your request in accordance with the requirements of 42 CFR 431.412(a), and have determined, for the reasons set forth below, that the state’s application meets these requirements for a complete application.

With respect to the requirement for public hearings, we note that the state had scheduled two public hearings for March 18 and March 24 in accordance with 42 CFR. 431.408(a)(3). On March 17, 2020, the Governor issued an Executive Order providing social distancing guidelines and the state legislature was acting on legislation to amend state public notice procedures in order to avoid the risks that COVID-19 could be spread in such a forum. As a result, you consulted with CMS on whether you could instead hold four “virtual hearings” on the SoonerCare 2.0 demonstration online and via teleconference. In response, CMS acknowledged its authority under 42 CFR 431.416(g)(2) to permit a state to depart from the normal public notice procedures described in section 431.408. Specifically, under section 431.416(g)(2), CMS may “exempt” a state from the “normal public notice process” when an “unforeseen . . . public health emergency. . . warrant[s] an exception to the normal public notice process.”

Under section 431.416(g)(3), in order for a state to receive an exemption under section 431.416(g)(2), the state must meet three criteria: (i) the state must be acting in good faith, and in a diligent, timely, and prudent manner; (ii) the circumstances must constitute an emergency that could not have been reasonably foreseen; and (iii) it must be the case that a delay would undermine or compromise the purpose of the demonstration and be contrary to the interests of beneficiaries.” CMS has determined that the state has met these criteria.

CMS determined that Oklahoma acted in good faith and responded in a timely manner to the Governor’s announcement by making the prudent decision to avoid hosting large, in-person

meetings in order to minimize the risk of transmission of COVID-19. We also determined that the circumstances of the COVID-19 national emergency declared by President Trump on March 13, 2020 constitute an emergency, and the Governor's above referenced announcement could not have reasonably been foreseen when the state initially scheduled those in-person meetings. Finally, we determined that a delay in the public hearings would undermine the purpose of the demonstration, which includes the state's goals to improve access to high quality health services for eligible Oklahomans, for which delay in our consideration of this application would not be in the interests of beneficiaries. The state also took steps to offer alternative mechanisms to participate in virtual public forums, and all groups still had opportunity to provide written comment. Oklahoma held four virtual hearings, on March 18, 20, 24 and 26, twice the number of planned in-person forums. Oklahoma publicized the hearings on its website, in social media posts, and in press releases that were carried in stories by the media, and the hearings were accessible both online and via telephone, including closed captioning for the disabled. Based on these facts, we determined that the waiver authority in section 431.416(g)(2) applied to the state's request to hold virtual hearings, that an exemption from the in-person hearing requirement was warranted, and that the state thus had the flexibility use virtual hearings.

We also made this completeness determination after careful review of all elements of the application, including information provided by Oklahoma on estimated annual enrollment and per-capita spending changes, as well as evidence of how the state responded to duly received public comments. As part of its application, Oklahoma provided state plan enrollment and expenditure projections for the new adult group as well as projections for how demonstration policies would affect those projections for each year of the demonstration. In addition, the state responded in writing to all 2,420 comments received on a rolling basis as they were received, which can be found on the state's SoonerCare 2.0 demonstration website and are included in the SoonerCare 2.0 application. The state's application includes a review of major themes observed in comments and notes specific changes made to the demonstration as a result of the feedback received.

Oklahoma's application will also be posted on Medicaid.gov for a 30-day federal comment period as required by 42 CFR 431.416(b). The state's application will be available at: <https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/index.html>.

We look forward to working with you and your staff on the proposed demonstration project. If you have questions regarding the section 1115 application process, please contact your CMS project officer, Ms. Kelsey Smyth, at Kelsey.Smyth@cms.hhs.gov.

Sincerely,

5/20/2020



Signed by: Andrea J. Casart -A

Andrea J. Casart
Director
Division of Eligibility and Coverage
Demonstrations

cc: Deborah Read, State Monitoring Lead, Medicaid and CHIP Operations Group