



Children and Adults Health Programs Group

June 14, 2023

Stephen Smith
Director
Division of TennCare
310 Great Circle Road
Nashville, TN 37243

Dear Mr. Smith:

This letter is in response to Tennessee's request, received April 29, 2022, for a waiver under section 1902(e)(14)(A) of the Social Security Act (the Act) that will protect beneficiaries in addressing the challenges the state faces as part of a transition to routine operations following the end of the continuous enrollment condition described under section 6008(b)(3) of the Families First Coronavirus Response Act (FFCRA). Section 1902(e)(14)(A) allows for waivers "as are necessary to ensure that states establish income and eligibility determination systems that protect beneficiaries." Such waivers are time-limited and are meant to promote enrollment and retention of eligible individuals by easing the administrative burden states may experience in light of systems limitations and challenges.

The COVID-19 pandemic and implementation of federal policies to address the PHE disrupted routine Medicaid and Children's Health Insurance Program (CHIP) eligibility and enrollment operations. Medicaid and CHIP enrollment grew to historic levels due in large part to the continuous enrollment requirements that states implemented as a condition of receiving a temporary 6.2 percentage point federal medical assistance percentage increase under section 6008 of the Families First Coronavirus Response Act (P.L. 116-127).

Consistent with the March 3, 2022 Centers for Medicare & Medicaid Services (CMS) State Health Official (SHO) letter #22-001, "*Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID-19 Public Health Emergency,*" Tennessee has requested that CMS provide authority under section 1902(e)(14)(A) of the Act to temporarily extend the timeframe permitted for the state to take final administrative action on fair hearing requests should certain conditions described below occur in the state. The state anticipates severe operational and systems challenges in the timely completion of eligibility and enrollment actions, potentially including conducting fair hearings timely, in large part due to an unprecedented caseload of renewals that the state will need to process, coupled with significant staffing shortages that the state currently faces. The state specifically expressed need for this authority related to fair hearings due to the state's challenges retaining and hiring additional staff. Given these staffing limitations and the unprecedented number of eligibility actions that the state will need to process during the unwinding period, the state anticipates the potential for an extraordinary volume of fair hearings that will exceed the state's capacity to take final administrative action on all fair hearing requests within the 90-day time limit allowed under 42 C.F.R. § 431.244(f)(1).

Under section 1902(e)(14)(A) of the Act, your request for the authority to temporarily extend the timeframe permitted for the state to take final administrative action on fair hearing requests is approved, as described and subject to the conditions below.

Implementation Conditions

The authority provided in accordance with this letter will only be implemented by Tennessee when at least one of the following conditions is met:

- The state receives more than 900 requests for a fair hearing per day;
- The state is unable to complete an initial review of all fair hearing requests within 40 days of receipt of a request (this condition is met when the state begins seeing trends indicating the state is unable to complete an initial review within 40 days); or
- The state has fair hearing requests in the scheduling queue which were received 70 or more days ago and which cannot be scheduled due to full dockets. This does not include instances when a hearing request has been continued at the appellant's request.

If at least one of these conditions is met, the state will update its public website to document which condition has been met and notify the public of the implementation date for the authority provided in accordance with this letter. The state also must notify CMS in writing that a condition is met and the date that this authority will be implemented.

Extended Timeframe to Take Final Administrative Action on Fair Hearing Requests

The authority provided in accordance with this letter will enable Tennessee, during the period of time specified below, to temporarily extend the timeframe permitted for the state to take final administrative action on fair hearing requests. As a condition of the authority provided in this letter, Tennessee assures that once it implements this authority it will:

- Not delay resolving expedited fair hearings described in 42 C.F.R. § 431.224(a);
- Provide benefits pending the outcome of a fair hearing decision to all beneficiaries who request a fair hearing within the reasonable time provided by the state under 42 C.F.R. § 431.221(d) and regardless of whether the beneficiary has requested benefits pending the outcome of their fair hearing;
- If a beneficiary requests a fair hearing after the date of action and within the reasonable time provided by the state, reinstate benefits back to the date of action;
- Reinstate benefits for all fair hearing requests in process at the time of implementation, and provide notice to the beneficiary describing the reinstatement of benefits;
- Take final administrative action within the maximum 90 days permitted under the regulations for fair hearing requests where benefits cannot be provided pending the outcome of the fair hearing, such as a fair hearing challenging a denial of eligibility for an applicant;
- Not recoup from the beneficiary the cost of benefits provided pending final administrative action, even if the agency's action is sustained by the hearing decision;
- Update communications to beneficiaries regarding fair hearing rights covered by this authority to remove any mention of the possibility of recoupment or recovery of benefits provided while the fair hearing is pending; ; and

- Not use this authority as a justification to delay taking final action, and only exceed the 90 days permitted for taking final agency action under 42 CFR § 431.244(f)(1) to the extent to which the state is unable to take timely final agency action on a given fair hearing request.

The authority provided in accordance with this letter applies to all Medicaid fair hearings governed by the rules at 42 CFR § 431 subpart E, excluding requests for an expedited fair hearing in accordance with 42 C.F.R. § 431.224(a) and any fair hearing request where benefits cannot be provided pending the outcome of the fair hearing. The authority provided in accordance with this letter applies to the Medicaid population in the state.

The authority provided in this letter is effective June 14, 2023, and remains effective until 23 months after the end of the Medicaid continuous enrollment condition (i.e., February 28, 2025). The state will not implement this authority until at least one of the implementation conditions occurs and the state has notified the public and CMS, as described above.

The authority provided in this letter is subject to CMS receiving your written acknowledgement of this approval and acceptance of this new authority and the terms described herein within 30 days of the date of this letter.

We look forward to our continuing work together as part of a transition to routine operations. If you have questions regarding this waiver approval, please contact Melissa McChesney in the Division of Medicaid Eligibility Policy, at melissa.mcchesney@cms.hhs.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah deLone".

Sarah deLone, Director,
Children and Adults Health Programs Group