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December 30, 2015

The Honorable Sylvia Mathews Burwell
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue, SW
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The Honorable Orrin G. Hatch
Chairman, Committee on Finance
U.S. Senate
219 Dirksen Senate Office Building
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The Honorable Ron Wyden
Ranking Member, Committee on Finance
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The Honorable Fred Upton
Chairman, Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
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The Honorable Frank Pallone, Jr.
Ranking Member, Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
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RE: HHS Report to Congress on Section 1115 Demonstration Transparency

The Medicaid and CHIP Payment and Access Commission (MACPAC) is pleased to comment on the U.S. Department of Health and Human Services (HHS) report to Congress released in October 2015: *Transparency in the Review and Approval of Medicaid and Children's Health Insurance Program (CHIP) Section 1115 demonstrations*. MACPAC is required by statute to review HHS reports to Congress and provide written comments to the Secretary and appropriate committees of Congress.

The Commission supports HHS's efforts to improve the transparency of Section 1115 demonstrations, which are currently used by 38 states to make a wide variety of changes to Medicaid or CHIP eligibility, benefits, and delivery systems. The Commission offers comments in the following areas:

- documenting federal responses to public comments;
- improving access to monitoring and evaluation reports;
- improving the transparency of budget neutrality projections; and
- reducing administrative barriers for states.

Medicaid and CHIP Payment and Access Commission

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Report Summary

Section 1115 of the Social Security Act provides broad authority for the Secretary of HHS to approve almost any demonstration that is likely to assist in promoting the objectives of the Medicaid or CHIP program. Demonstration requests are negotiated on a state-by-state basis, and each demonstration must be renewed at least once every five years.

Section 10201(i) of the Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended) required HHS to establish formal processes for public notice, monitoring, and evaluation of Section 1115 demonstrations. HHS is also required to report annually on its implementation of these requirements.

In this first annual report, HHS provides historical context and focuses on its efforts to improve public notice through new regulations finalized in 2012. In these regulations, HHS added several new public notice requirements for Section 1115 demonstrations, including:

- requiring states to hold at least two public hearings at least 20 days before submitting a demonstration application or extension request;
- establishing a minimum 30-day public comment period for federal review; and
- requiring many demonstration application documents to be posted online.

HHS reports that states have largely complied with the new rules. The Centers for Medicare & Medicaid Services (CMS) has been posting all Section 1115 demonstration applications and amendment requests on its website for public comment. Since April 2012, HHS has received more than 1,500 public comments, some of which have prompted follow-up with stakeholders to further explore their concerns.

The report also describes actions that HHS has taken since 2012 to improve the transparency of its review and approval process. For example, earlier this year CMS published general criteria for its review of new demonstration expenditures and announced a new fast-track process intended to expedite the review of certain demonstration renewal requests.

MACPAC Comments

The Commission supports HHS's efforts to promote meaningful public input before the approval of Section 1115 demonstrations and encourages increased transparency after such approvals in order to shed light on whether demonstrations are successful and what program innovations should be replicated in other states or permissible under other authorities. While transparency is important for all aspects of the Medicaid program, Section 1115 demonstrations merit additional scrutiny because of the broad flexibility they provide and their use in testing new program innovations.

The Commission offers the following comments to HHS and Congress about opportunities to build on HHS's progress in improving the transparency of Section 1115 demonstrations:

1. **Document federal responses to public comments.** The Commission is encouraged by the large number of public comments that HHS has received on Section 1115 demonstrations, but notes that the actions HHS has taken in response to these comments are not always clear. Better documentation of any changes to a demonstration that HHS makes (or chooses not to make) in response to public comments could help stakeholders understand how their comments are being addressed, in the same manner that agency responses to comments on proposed regulations help ensure meaningful public input and agency accountability. States are currently required to summarize their responses to public comments that they received prior to the submission of a demonstration request to HHS, and HHS could employ a similar process to document its own response to public comments received during its federal review period.

2. **Improve access to monitoring and evaluation reports.** MACPAC previously highlighted the importance of Section 1115 monitoring and evaluation reports for tracking the progress of demonstrations and evaluating whether they should be expanded to other states in its June 2015 report to Congress. However, because evaluations are not regularly posted online, they can be difficult to obtain. The Commission is encouraged by HHS's progress in posting demonstration application documents online and supports regular posting of monitoring and evaluation reports as well. Public access to other external evaluation findings is also important, particularly the findings from CMS's current cross-state evaluation of four types of Section 1115 demonstrations.

3. **Improve the transparency of budget neutrality projections.** In order to evaluate whether demonstrations achieve their cost saving potential, the Commission notes that greater access to HHS's budget neutrality projections would be helpful. HHS currently requires all demonstrations to be budget neutral, meaning that projected costs of the demonstration are less than projected costs in absence of the demonstration. However, HHS does not regularly make available the components of its cost projections, such as projected enrollment, projected costs per enrollee, and other assumptions, which could help evaluators assess whether demonstrations meet their cost saving goals.

4. **Reduce administrative barriers for states.** The Commission is encouraged by CMS's new fast track process for demonstration renewal requests and by its efforts to provide additional technical assistance to states through its new Innovation Accelerator Program. HHS could build on its efforts by also providing standardized templates and review criteria for other types of demonstrations, particularly those that have already been implemented in other states.

MACPAC appreciates the opportunity to provide comments on the important policy issues raised in this report.

Sincerely,

Diane Rowland, ScD
Chair