Medicaid Work Req Lawsuit Details How CMS' Direction Derailed From H.R. 1

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CMS' guidance to states on implementing new Medicaid work requirements went off the rails about a month before the interim final rule was released in June, according to the lawsuit 25 states recently filed against the Trump administration over its interim final rule on how to implement H.R. 1's new Medicaid policy.

The initial filing, plus a nearly 650-page packet of state officials' declarations, outlines how states say the IFR violates the Administrative Procedure Act as well as constitutional limits on federal spending authority due to its "unclear and shifting requirements" on states, which have spent significant time and resources preparing for the new requirements based on prior federal guidance.

States had been scrambling for months before the interim final rule was released on its statutory deadline of June 1, the lawsuit says. They had prepared outreach materials for members, began hiring and training new staff, entered into new contracts, expanded existing call center contracts and worked with various stakeholders to identify who would count as a medically frail individual. States have also had to work with third-party vendors to prepare their Medicaid eligibility systems to use new data sources -- a change that can take six to 12 months to complete, the lawsuit notes.

The states' lawsuit emphasized that CMS never told states during its multiple stakeholder calls and weekly check-ins that the administration would add an extra-statutory test to the medically frail exemption and limit a beneficiary's ability to self-attest to having an exemption.

But in May, the states say the Trump administration told them to ignore previous guidance on medically frail individuals.

“Fearing a disruptive last-minute change in policy direction, several Plaintiff States contacted CMS to express concerns and reiterate their reliance on the statute as well as earlier sub-regulatory and preliminary guidance,” the suit says.

Oregon, Maine, Michigan, New York, New Mexico and Washington governors wrote a joint letter on May 29 telling HHS Secretary Robert F. Kennedy Jr. states have made a good-faith effort to comply with CMS’ verbal and written guidance in the absence of official guidance, and that when that final guidance is released, they asked for it to align as closely as possible with states’ working assumptions.

California and Massachusetts each wrote similar letters to Kennedy. While Massachusetts pushed CMS to continue its stance that clinical data and self-attestation should be enough to declare an exemption, California said narrowing the medically frail exemption could keep the state’s Medicaid agency from meeting the 2027 deadline as well as result in more beneficiaries losing coverage and introducing more administrative barriers.

Despite state’s concerns, the lawsuit says the interim final rule “departs significantly” from H.R. 1 and from CMS’ previous guidance.

“[T]he IFR, and CMS’s pre-IFR guidance and the language of H.R. 1 differ from each other and contradict themselves in ways that render the States’ obligations unclear,” the lawsuit says. “But making a mistake in the face of these unclear obligations carries high stakes for States -- errors expose them to the risk of corrective action under the Payment Error Rate Management (PERM) regulations.”

The most notable issue states raise is with the medically frail exemption process, which they say runs contrary to the law, lacks workable verification methods and doesn’t include “*any* guidance addressing how they must evaluate whether an individual’s experience of a given condition ‘significantly impairs’ their ability to comply.”

CMS has not provided guidelines or a standard of proof, the states allege. It also hasn’t explained how the determination could change based on the types of jobs available to a particular Medicaid beneficiary.

Meanwhile, the lawsuit notes CMS’ limit on self-attestation will create an arbitrary loophole because there’s no lockout period or other prohibition on letting someone

reapply for Medicaid after they were disenrolled for not verifying compliance or proving their medically frail status. This changes on Jan. 1, 2028, when states can only accept self-attestation if documentation isn't reasonably available.

"The IFR thus irrationally permits self-attestation in some instances, but bars it in others, and otherwise significantly limits States' abilities to conduct verifications using auditable self-declarations, limiting flexibility that H.R. 1 explicitly preserved for the States," the lawsuit says.

The lawsuit takes also issue with CMS Administrator Mehmet Oz's comments that the work requirements will be a "path to prosperity" and that millions of able-bodied people on Medicaid aren't working.

"Neither Administrator Oz in his press statements, nor CMS in its rulemaking gave plausible support for these assertions or explained why they believed such assertions justified their approach to implementation," the lawsuit said. "Nor did they address well-documented evidence that the majority of Medicaid members who will be subject to work requirements are already engaged in their communities or in the workforce."

These decisions in the interim final rule also run counter to what the administration approved with Nebraska's early implementation on May 1, the lawsuit says. While Nebraska wasn't part of the lawsuit, the filing pointed out the state has a nearly 300-page list of diagnoses that beneficiaries can claim for exemptions and guidance that lets beneficiaries self-attest to having those conditions.

"Though Nebraska's DHHS previewed a future 'move from self-declaration to more automated verification methods consistent with federal guidance,' in the context of its guidance on the 'medically frail' exception, it did not preview future categorical prohibitions on self-attestation," the lawsuit said. "It also did not link its determination of whether an individual is 'medically frail' or has 'special medical needs' to a consideration of that individual's ability to comply with the work requirements." -- *Dorothy Mills-Gregg* (dmillsgregg@iwpnews.com)