



October 29, 2020

Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, DC 20201

Dear Secretary Azar,

On behalf of the nation's Medicaid Directors, NAMD is writing to express our appreciation for the early announcement of the renewal of the COVID-19 Public Health Emergency (PHE), announced on October 8 and effective on October 23, and to encourage the Department to take additional steps to provide states with longer term certainty around the duration of the PHE. Doing so will allow states to work more effectively with state policy makers charged with budgeting, planning, and decision making.

Specifically, we are requesting HHS work with states and stakeholders to develop a set of publicly reported metrics which will inform future decisions around the PHE. This action would mitigate the substantial uncertainty around the future availability of Medicaid funding and flexibilities that attach to the PHE, which have significant impacts on each state's Medicaid program. These metrics could include, but not be limited to:

- The availability of an effective COVID-19 vaccine approved by the Food and Drug Administration, and the extent to which the vaccine has been administered.
- COVID-19 testing positivity rates across the nation.
 - We note that the Centers for Medicare and Medicaid Services is currently using county-level positivity rates as a metric for the frequency of testing required in nursing facilities.

A number of Medicaid flexibilities and statutory resources depend on the PHE declaration. These include:

- Regulatory flexibilities secured through 1135 waivers,
- Medicaid and Children's Health Insurance Program Disaster State Plan Amendments,
- Appendix K modifications to home- and community-based service 1915(c) waivers, and
- COVID-19 section 1115 demonstration waivers.

These authorities have allowed states to modify Medicaid benefits for members in order to maintain ongoing access to care, rapidly expand telehealth service availability, modify payment rates to support vulnerable providers at risk of closure, quickly enroll new providers to support COVID response, and make many other critical changes. Just as important is the 6.2 percentage point increase in the federal contribution for Medicaid programs, available for any quarter in which a PHE is declared, which is paired with maintenance of effort and continuous enrollment requirements.

While the October 8 announcement of the extension of the PHE came three weeks in advance of the October 23 expiration, providing states with welcome advance notice, fundamental challenges with the quarterly nature of the PHE remain. Without a mechanism to gauge when the PHE will be lifted, states must assume only short-term availability of federal flexibilities and enhanced Medicaid funding. This creates an untenable situation for Medicaid programs and state policy makers who are faced with revising caseload growth and program expenditures projections with each PHE extension. The cost of assuming that the enhanced match will be available for a quarter(s) beyond the existing PHE creates a level of risk that most states simply cannot accept.

This uncertainty also influences critical delivery system decisions. The assumption that flexibilities and resources will expire at the end of a given PHE declaration has real-world impacts on Medicaid provider rates, new benefit programs or covered populations, and available administrative and staff resources in the state, to name only a few areas where states can generate savings.

HHS can mitigate these impacts by providing states with more certainty around the future of the PHE. We recognize that statute requires the PHE to be authorized only in 90-day increments, and thus there will be a need to issue a new declaration on a quarterly basis. However, by developing a set of metrics, as discussed above, and tying PHE renewals to those metrics, HHS could provide certainty for states while continuing to adhere to statutory requirements. This approach would be consistent with state-level public dashboards that inform policymaking.

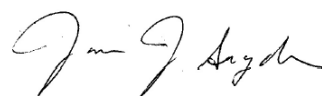
A collaborative discussion between HHS, states, public health experts, and other stakeholders could inform the specific metrics adopted for this purpose. NAMD and our members would welcome the opportunity to participate in such a forum.

We appreciate your consideration of this request. Steps to provide states with certainty around financing enhancements and regulatory flexibilities tied to the PHE will promote sound planning for the Medicaid program and provide stability in a time of significant need.

Sincerely,



Beth Kidder
President, NAMD
Deputy Secretary for Medicaid
Florida Agency for Health Care Administration



Jami Snyder
President-elect, NAMD
Director
Arizona Health Care Cost Containment System