



Congress of the United States

February 24, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Chiquita Brooks-LaSure
Administrator
U.S. Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, M.D. 21244

Dear Administrator Brooks-LaSure:

Thank you for engaging with the Kansas Department of Health and Environment (KDHE) and our offices in reviewing the technical amendment to Kansas' Section 1115 Demonstration waiver before the U.S. Centers for Medicare and Medicaid Services (CMS).¹ Based on recent conversations between CMS and KDHE, we are hopeful that it will soon be approved, but this has now become a timing issue further compounded by other financial challenges hospitals and physicians have faced due to the COVID-19 pandemic. We are concerned over the time delay as managed care organizations need to begin work on implementing the provider assessment into its plans no later than May 1, 2022. To this end, we strongly urge CMS to prioritize Kansas' application and any other approvals necessary to implement the program by July 1, 2022.

As you know, the technical amendment to Kansas' 1115 Waiver (KanCare) is to implement a change to the Health Care Access Improvement Program. The provider assessment, paid by PPS hospitals, is matched with federal funds and distributed to all providers who serve Medicaid patients. In 2019, the state legislature and Governor approved an increase to the provider assessment from 1.83 percent to three percent to maintain and improve access to care in rural areas and underserved populations. Of the 104 rural hospitals across the state, it is estimated that 76 are at risk of closing, 48 are at immediate risk of closing, and 28 are at high risk of closing.² Moreover, seven hospitals have closed in the last decade. On average, Kansas hospitals lose

¹ Kansas Department of Health and Environment (KDHE), Requested Amendment to Kansas (KanCare) 1115 Demonstration Waiver, July 26, 2019, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ks/ks-kancare-pa4.pdf>.

² Center for Healthcare Quality and Payment Reform, Rural Hospitals at Risk of Closing, January 2022, https://chqpr.org/downloads/Rural_Hospitals_at_Risk_of_Closing.pdf.

more than \$400 million per year on services provided to Medicaid patients and then an additional \$275 million on providing non-Medicaid charity care.

Kansas has worked to mitigate funding shortfalls by increasing the provider assessment rate. The increase, while modest compared to the 3.5 percent rate of most states, will have a positive impact on our safety net hospitals, especially rural hospitals.³ Kansas Medicaid reimbursement rates continue to be low, covering far less of the cost of care than the Medicare program. The additional dollars generated by this change in the provider assessment will be an important part of maintaining the health care safety net across the state.

The state invested a significant amount of time and resources in establishing KanCare with appropriate management processes and accounting for the non-federal share of payments to health care providers. State health care officials and the provider community have been working with your staff for the past two years to fashion a favorable conclusion to this process for all parties involved. They have provided various supplemental documents to substantiate its compliance with the budget neutrality clause and have thoroughly addressed questions on the waiver's implementation. Responding to CMS' initial concerns in 2020, Kansas' actuary made appropriate adjustments to the approved rebased amounts and were submitted. Following additional discussions with our offices, we were pleased CMS allowed KDHE to provide supplemental information.⁴ After reviewing and considering the application in its entirety, we do not see how the Center for Medicaid and CHIP Services can continue to withhold its approval or deny it. To be clear, Congress has not placed certain limitations on the budget neutrality clause that would preclude the State Demonstrations Group at the Center for Medicaid and CHIP Services from approving this amendment, as it satisfies the requirement.

If CMS does not approve the waiver, Kansas will have to make some difficult decisions to its Medicaid program. It will serve as a catalyst in putting more safety net providers at risk of closure and damage the safety net of underserved communities. Specifically, to make up for spending, we're hearing discussions on reducing physician reimbursement by upwards of 30 percent. The percentage of physicians accepting new patients with Medicaid coverage is 75 percent and the reimbursement cuts will only cause that rate to drop.⁵ In addition, CMS would stand to exhaust more Kansan taxpayer dollars to go through the legislative process again and make modifications which we all know are costly and complex to achieve. This will also place further strain on hospitals as they will need to provide a high volume of data and counsel throughout the legislative process.

We know that in approving the technical amendment, CMS would take a huge step in ensuring that the most vulnerable Kansans continue to have access to high quality health care. And this comes at a time when our nation's hospitals and other health care providers have faced and

³ Kaiser Family Foundation, States and Medicaid Provider Taxes or Fees, June 27, 2017, <https://www.kff.org/medicaid/fact-sheet/states-and-medicicaid-provider-taxes-or-fees/>.

⁴ KDHE, Requested Amendment to Kansas (KanCare) 1115 Demonstration Waiver: Supplemental Information in Support of the State's Request, December 2, 2021.

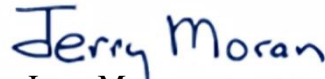
⁵ Medicaid and CHIP Payment and Access Commission, Physician Acceptance of New Medicaid Patients: Findings from the National Electronic Health Records Survey, June 2021, <https://www.macpac.gov/wp-content/uploads/2021/06/Physician-Acceptance-of-New-Medicaid-Patients-Findings-from-the-National-Electronic-Health-Records-Survey.pdf>.

continue to face unprecedented financial and public health challenges. We appreciate your attention to this matter and respectfully request you approve the application and any other approvals necessary to implement the program by July 1, 2022.

Sincerely,



Roger Marshall, M.D.
U.S. Senator



Jerry Moran
U.S. Senator



Tracey Mann
U.S. Representative



Jake LaTurner
U.S. Representative



Sharice L. Davids
U.S. Representative



Ron Estes
U.S. Representative