Trump Administration Encourages States to Implement Medicaid Work Requirements

Jan 12, 2018

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Blogs
Health Law Matters

Authors:

Rhonda B. Schechter

Policy analysts immediately began to speculate how Ms. Verma, if confirmed, might influence President Trump's promised overhaul of the U.S. healthcare system. Ms. Verma had helped several states, including Indiana, apply to CMS for a Medicaid "waiver" that would allow them to develop Medicaid programs with experimental elements such as requirements that Medicaid recipients work or volunteer for a certain number of hours each month. It was predicted that under Ms. Verma's direction, CMS would become increasingly supportive of state programs that impose participation requirements on Medicaid recipients.

Ms. Verma won Senate confirmation in mid-March of 2017. On January 11, 2018, CMS announced a new policy designed "to assist states in their efforts to improve Medicaid enrollee health and well-being through incentivizing work and community engagement." CMS issued a guidance document for State Medicaid Directors on how to design a Medicaid program that requires work or community engagement and is likely to receive a CMS "waiver" of the standard rules for Medicaid programs (which do not allow for work requirements). According to that guidance document, states may not impose work or community engagement requirements on Medicaid beneficiaries who are elderly or pregnant or on those individuals who qualify for Medicaid due to a disability. States must provide "reasonable modifications," including exemption from participation, for individuals who are eligible for Medicaid on a basis other than a disability but who also qualify as disabled under the Americans with Disabilities Act. In particular, CMS points that out that, due to the current opioid epidemic, a significant number of Medicaid recipients are unable to work because they have a substance abuse disorder, not because they qualify as disabled for Medicaid purposes. "Reasonable modifications" for these individuals could include counting time they spend in substance abuse treatment programs towards their work or community engagement

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requirements. CMS also suggests that states consider identifying other activities such as "caregiving, education, *[and]* job training" that would promote the health and well-being of Medicaid enrollees. The reference to "caregiving" is a passing one made by CMS in a footnote, but it will be interesting to see if any states propose Medicaid programs that grant "work" credit to Medicaid enrollees who spend their days caring for their own children or for sick relatives. One thing is certain — Medicaid will continue to be a major battleground in the ongoing and highly-politicized struggle to overhaul the U.S. healthcare system.

Frost Brown Todd's health law service team continuously monitors healthcare developments and will follow state implementations of the Medicaid work requirements. For more information on this topic, or anything healthcare related, please contact Rhonda Schechter at rschechter@fbtlaw.com or any member of the health law service team.

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