



CMCS Informational Bulletin

DATE: November 21, 2016

FROM: Vikki Wachino, Director
Center for Medicaid and CHIP Services

SUBJECT: Section 1115 Demonstration Opportunity to Allow Medicaid Coverage to Former Foster Care Youth Who Have Moved to a Different State

Former foster care youth are youth under age 26 who were in foster care under the responsibility of the state when they turned 18 (or such higher age as the state has elected for termination of federal foster care assistance under title IV-E of the Act), and were enrolled in Medicaid at that time or at some point while in such foster care. The purpose of this Center for Medicaid and CHIP Services (CMCS) Informational Bulletin is to inform states how they can pursue a Medicaid demonstration project under section 1115 of the Social Security Act (the Act) to continue to provide Medicaid coverage to former foster care youth who aged out of foster care under the responsibility of another state (and were enrolled in Medicaid while in foster care), and are now applying for Medicaid in the state in which they live. States can provide such coverage through a Medicaid demonstration project under section 1115 of the Social Security Act (the Act). This bulletin also encourages states that do not currently provide Medicaid coverage to youth who were in foster care in other states to pursue section 1115 Medicaid demonstration authority to do so. For states that are considering pursuing this coverage option under section 1115 authority, the Centers for Medicare & Medicaid Services (CMS) has provided guidance documents that are available on Medicaid.gov at <https://www.medicaid.gov/medicaid/section-1115-demo/how-states-apply/index.html>.

Background

Title IV-E foster care youth have been a mandatory eligibility category since the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272). On March 23, 2010, the Affordable Care Act (ACA) was signed into law, making a number of changes to Medicaid eligibility effective, January 1, 2014. To further the overall goal of the ACA to expand health coverage, it included a new provision to allow youth to maintain coverage under their parents' or guardians' health insurance plan until age 26 (to the extent that such plan extends coverage to dependents). In addition, section 2004 of the ACA added a new mandatory Medicaid eligibility group at section 1902(a)(10)(A)(i)(IX) of the Act to provide a parallel opportunity for former foster care youth to obtain Medicaid coverage until age 26 from the state responsible for the individual's foster care.

On January 22, 2013, CMS issued a notice of proposed rulemaking, "Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange

Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing,” that proposed to implement the former foster care eligibility group in regulations at 42 CFR 435.150. As part of that provision, CMS proposed to provide states the option to cover youth who were in foster care under the responsibility of another state, and enrolled in Medicaid, upon turning 18 or “aging out” of foster care in the other state.

On November 21, 2016, CMS published a final rule, entitled “Medicaid and Children’s Health Insurance Programs: Eligibility Notes, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP Final Rule,” that clarified that, after further review, the Department of Health and Human Services (HHS) had determined that the state option to cover youth who were in foster care under the responsibility of another state was not available under section 1902(a)(10)(A)(i)(IX) of the Act. That section provides that, to be eligible under this group, an individual must have been “in foster care under the responsibility of the state” and to have been “enrolled in the state plan under this title or under a waiver of the plan while in such foster care [.]” Because the provision requires coverage specifically for youth in foster care under the responsibility of “the state”—not “a” or “any” state—we do not believe the provision provides states with the option to cover youth who were not under the responsibility of the state while in foster care under the former foster care eligibility group. However, states can cover such youth pursuant to other statutory provisions, specifically through section 1115 demonstration authority.

Currently, 14 states have an approved Medicaid state plan to cover former foster care youth who were in Medicaid and foster care in any state. In this bulletin, we explain in detail what states must do to change from state plan authority to section 1115 demonstration authority to continue covering these individuals. We also explain how states that did not elect to cover this population under the state plan can initiate a demonstration authority to do so.

CMS is committed to assisting states that have approved state plans to continue coverage of these former foster care youth via section 1115 demonstration authority. In the Frequently Asked Questions that were published along with the notice of proposed rule-making (available at: <https://questions.medicaid.gov/faq.php?id=5010&faqId=9568>), we noted that we would approve state plan amendments (SPAs) that provided coverage to former foster care youth who were in foster care and Medicaid in another state, and are now applying for Medicaid in the state in which they live. We noted that, if the provision changed in the final rule, states would be able to continue to receive federal financial participation (FFP) until the state (within a reasonable period of time) submitted a SPA and modified its policies and procedures to comply with such a change in federal policy. Therefore, states will continue to receive FFP for their approved state plans while they work with CMCS on the section 1115 demonstration vehicle, if they choose to pursue this option. If a state with an approved state plan to cover former foster care youth from any state does not apply for a section 1115 demonstration proposal within 6 months of the publication of this CIB (May 21, 2017), the state is at risk of losing FFP associated with the SPA authority for this population. States should contact CMS by January 21, 2017, if they do not expect to be able to submit a section 1115 demonstration proposal within 6 months. We will be contacting the 14 states that have approved state plans to provide the technical assistance needed to pursue the section 1115 Medicaid demonstration.

CMCS eligibility and section 1115 Medicaid demonstration subject matter experts are available to provide technical assistance to any state interested in pursuing the section 1115 Medicaid demonstration opportunity. We expect to process these section 1115 demonstration applications within 90 days of receipt assuming there are no issues with budget neutrality (if applicable). As part of CMS' commitment to process these section 1115 demonstration applications within 90 days of receipt, we have developed guidance documents to assist states in drafting their applications.

There are two different guidance documents—one for states that provide Medicaid coverage under the new adult group and one for states that do not provide coverage under the new adult group. There are two different guidance documents because different authorities are needed depending on whether the state has taken up the new adult group. The guidance documents are structured so that states can be sure to include the necessary programmatic elements for providing coverage of former foster care youth under a section 1115 demonstration. States must also ensure that any section 1115 application meets all federal transparency requirements as outlined later in this Informational Bulletin.

CMCS recommends that states track the enrollment of former foster care youth and that state Medicaid and child welfare agencies share appropriate information about these enrollments, in order to ensure that as many former foster care youth are enrolled as possible. CMCS also encourages states to consider actions to increase and strengthen overall coverage of former foster care youth. (See Attachment A.)

Streamlined Process for States That Have Approved State Plans Extending Coverage to Former Foster Care Youth from Other States

Currently, 14 states (CA, GA, KY, LA, MA, MI, MT, NM, NY, PA, SD, UT, VA, and WI) have approved state plans to cover former foster care youth who were in foster care under the responsibility of another state. These state plan pages were submitted through, and can be viewed in, the Medicaid Model Data Lab (MMDL) electronic repository. These state plan provisions are not consistent with the statutory authority or final rules, and must be withdrawn through the state plan amendment process. To maintain such youth in a separate former foster care group, these 14 states must submit an amendment to their existing section 1115 demonstration project or a new section 1115 demonstration application and submit a SPA to update their current state plan page (S33 in MMDL). The state must follow the standard section 1115 demonstration transparency requirements, such as conducting state public notice and tribal notification. Such states should first submit a section 1115 demonstration amendment or new demonstration and then the SPA withdrawing its current state plan authority indicating that the proposed effective date of the SPA will be the effective date of the approved new section 1115 demonstration or demonstration amendment. States will be at risk of losing FFP if these processes are not timely completed.

Demonstration Project Applications for States That Provide Medicaid Coverage under the New Adult Group – Request for Waivers

States that provide coverage under the new adult group can cover former foster care youth who were in Medicaid and foster care in a different state with income up to 133 percent of the federal poverty level (FPL) under the new adult group and receive the enhanced Federal Medical Assistance Percentage (FMAP). Section 1115 demonstration authority is not needed for these former foster care youth who were in foster care under the responsibility of other states with income up to 133 percent of the FPL.

Demonstration authority would be required to provide coverage for former foster care youth who were in foster care under the responsibility of other states and have income higher than 133 percent of the FPL. States that provide coverage under the new adult group have the option of covering former foster care youth with MAGI-based income above 133 percent of the FPL, under the eligibility group described in section 1902(a)(10)(ii)(XX) of the Act and implementing regulations at 42 CFR 435.218 (the “XX” group). States would receive their standard Federal Medical Assistance Percentage (FMAP) for coverage of the “XX” group. The streamlined 1115 would authorize states to limit eligibility for the “XX” group to former foster care youth and services will be provided under the state plan; therefore, no budget neutrality test is needed (expenditures will be reported under the state plan).

States that provide coverage under the new adult group, should do the following:

1. Submit to CMS a section 1115 demonstration application no later than six months after the publication of this CIB and final eligibility rule (May 21, 2017), and;
2. Submit a SPA to extend coverage to the optional group for individuals above 133 percent of the FPL under 42 CFR 435.218 using the appropriate state plan page (S50 in MMDL) at the same time the state submits the section 1115 demonstration amendment or new application and no later than May 21, 2017. The effective date of the SPA will be the effective date of the new section 1115 demonstration or amendment.

States That Do Not Provide Medicaid Coverage under the New Adult Group – Request for Expenditure Authority

States that have elected not to provide Medicaid coverage under the new adult group can provide coverage to former foster care youth who were in Medicaid and foster care in a different state by requesting section 1115(a)(2) expenditure authority. The Medicaid state plan option to cover adults with income above 133 percent of the FPL under the state plan is not available, since the new adult group and the optional group at section 1902(a)(10)(A)(ii)(XX) are linked; and, a state cannot elect the optional group without covering the new adult group. States that use the expenditure authority vehicle must demonstrate budget neutrality. However, CMS will allow the costs to be treated as “pass-through” costs for purposes of budget neutrality.

Transparency Requirements for Demonstration Projects

All new section 1115 demonstration requests must meet the transparency requirements outlined in 42 CFR Part 431. States must also comply with federal tribal consultation requirements. Please note that while states submitting amendment requests to their approved section 1115 demonstrations are not required to comply with the state public notice and comment process in

42 CFR Part 431, states must continue to meet the public notice requirements outlined in the September 27, 1994 Federal Register notice (59 FR 49249) for section 1115 demonstrations. Additionally, states must assure that their section 1115 application also includes the below elements as listed in the federal transparency requirements at 42 CFR 431.412:

1. A comprehensive program description of the demonstration, including the goals and objectives to be implemented under the demonstration;
2. A description of the proposed health care delivery system, eligibility requirements, benefit coverage and cost-sharing requirements for individuals who will be impacted by the demonstration;
3. An estimate of the expected increase or decrease in annual enrollment, and in aggregate expenditures, including historic enrollment or budgetary data, if applicable;
4. Current enrollment data (for the former foster care youth), if applicable, and enrollment projections expected over the term of the demonstration;
5. The specific waiver and expenditure authorities that the state believes to be necessary to authorize the demonstration;
6. The research hypotheses that are related to the demonstration's proposed changes, goals, and objectives, a plan for testing the hypotheses in the context of an evaluation, and, if a quantitative evaluation design is feasible, the identification of appropriate evaluation indicators; and,
7. Written documentation of the state's compliance with the public notice requirements set forth in 42 CFR 431.408 or in the September 27, 1994 Federal Register notice (59 FR 49249), as applicable. The report must also identify the issues raised by the public during the comment period and how the state considered those comments when developing the demonstration application.

Additional resources regarding transparency can be found at <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/1115/section-1115-demonstrations.html>

We hope this information will be helpful. Questions and comments regarding this approach may be directed to Kim Howell, Director, Division of State Demonstrations and Waivers, CMCS, at Kimberly.Howell@cms.hhs.gov.

**Attachment A –
Best Practices for Enrolling Former Foster Youth**

The Administration for Children and Families will be issuing an Informational Memorandum on this topic as well. Below are best practices for enrolling former foster youth.

Best Practices for Enrolling Former Foster Youth

CMCS encourages states to consider a number of potential actions to increase and strengthen overall coverage of former foster care youth and improve health outcomes for these individuals:

- **Child Welfare and Medicaid Collaboration and Leadership.** In order to ensure a high percentage of foster youth enroll, a joint, collaborative effort by the child welfare and Medicaid agencies in each state is necessary. It is important for both agencies to communicate frequently—especially when setting up and designing their procedures.
- **Coordinating Data Systems and Forms.** States should continue their efforts to make their systems as automated as possible. Recommendations include designing an interface between the Medicaid and child welfare data systems, so that Medicaid can identify when a youth had aged out of care or the child welfare agency would know when it was time to initiate the youth’s Medicaid enrollment.
- **Training Administrators and Front-Line Staff.** Youth aging out of foster care represent a very small proportion of the Medicaid population. For Medicaid agencies, this may mean that few staff members are knowledgeable about the foster youth option. This also means that child welfare staff have fewer people they could contact with questions. Providing ongoing training to Medicaid and child welfare administrators and staff is encouraged.
- **Educating Youth.** Regardless of how well the Medicaid and child welfare agencies collaborate or how seamless or automatic the enrollment process, providing coverage to youth formerly in foster care will have limited utility if youth learn to access providers or seek care. It is important to educate youth about maintaining health insurance coverage and keeping up with application forms and necessary documentation.
- **Automatic Enrollment & Automatic Recertification.** In order to make it as easy as possible for former foster youth to maintain coverage and access to health care, states may want to consider automatic enrollment and automatic recertification. Some states have already implemented these practices. For example, in some states, youth retain their Medicaid coverage from their time in foster care beyond their 18th birthday. At any time, youth may contact the Medicaid office to notify them of a change in address or to ask for a replacement card; however, they are never required to contact the Medicaid office. The state’s Medicaid office will indicate that the youth are eligible until their 26th birthday. For more information about how states have implemented automatic enrollment and automatic recertification processes, please review a document issued by the U.S. Department of Health and Human Services in November 2012 entitled, “Providing Medicaid to Youth Formerly in Foster Care Under the Chafee Option: Informing the Implementation of the Affordable Care Act.” Available here: <https://aspe.hhs.gov/sites/default/files/pdf/76721/rpt.pdf>.
- **Helping Youth Maintain Coverage.** Helping youth formerly in foster care maintain coverage may present some challenges for states. One challenge has been determining

how to assist youth once they are no longer involved with the child welfare agency (i.e., after they have turned 18, or up to 21 in some states); a second challenge has been finding ways to ensure youth know they are eligible as former foster youth, even if they are initially enrolled under a different coverage category (which is important if they lose coverage for any reason); and a third challenge has been devising procedures for maintaining coverage among a highly mobile population characterized by frequent moves and unstable living arrangements. It is encouraged to keep service providers from other systems aware of these provisions (mental health and substance use providers, TANF providers, criminal justice providers, etc.) It is also recommended that states keep youth aware of their eligibility with youth-oriented flyers and social media. Many examples of youth-friendly materials and other best practices can be found through links within the following issue brief issued by the Children's Bureau's Information Gateway: https://www.childwelfare.gov/pubPDFs/health_care_foster.pdf