

United States Senate

WASHINGTON, DC 20510

March 13, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator Verma:

Today the United States of America faces a public health crisis. We implore you to utilize your authority under the Medicaid program to empower states and health officials to fully respond to this pandemic by notifying states that Medicaid waiver authority should be used to protect against the spread of the virus and in an effort to ensure treatment. We cannot afford to be timid in confronting this pandemic.

Medicaid gives the CMS Administrator authority to aggressively respond to a public health emergency. Under Section 1115 of Title XIX of the Social Security Act, states are allowed to provide or expand coverage and services already offered without delay. Additionally, under Section 1135, the administration is permitted to waive certain authorities to ensure health care supplies are services are available. This has been done by prior administrations as events demanded.

In the aftermath of the events of September 11, 2001, New York was able to offer coverage under Medicaid to impacted individuals for up to four months through a simplified one page application. In 2005, when Hurricane Katrina wreaked havoc in Mississippi and Louisiana President George W. Bush used Medicaid authorities to allow states to provide coverage to individuals who had to been evacuated to other states for up to five months. During the 2009 H1N1 flu crisis, the Department of Health and Human Services (HHS) encouraged states to seek waivers that allowed providers to quickly see patients. In response to the lead contamination crisis in Flint, Michigan, in 2016, President Barak Obama declared a state of emergency, allowing Michigan to receive a five year waiver under Section 1115 to expand coverage for pregnant women and children up to age 21 and with incomes up to 400 percent of the federal poverty level (FPL). This action enabled women and children to access earlier interventions and help mitigate the impacts of lead exposure.

Now is the time for you to take similar action. In order to signal to states that you are serious about protecting at-risk populations from the spread of the virus, we urge you to rescind the November 12, 2019 Medicaid Fiscal Accountability Regulation (MFAR). This regulation, if finalized, would significantly change state Medicaid program financing and supplemental payments, cutting reimbursements to hospitals and nursing homes, two areas hardest hit by the

COVID-19 pandemic, and putting lives at risk. Second, you must rescind the Healthy Adult Opportunity guidance to states. This guidance targets the Medicaid expansion population and puts coverage and access to care for millions of Americans at risk. Both policies must be withdrawn. CMS should be using its authority to aggressively respond to the current and future public health emergencies – not making it harder for states to do so. We urge you to utilize the flexibilities already provided under sections 1115 and 1135 to expand access to health care services and make it abundantly clear that states should take efforts to, for example, encourage Medicaid enrollment, waive out-of-pocket costs for testing and treatments related to COVID-19 and allow for access to early prescription refills and longer fills.

In a time of national crisis, public officials have a responsibility to do all they can to help the American people. There is no such thing as being over prepared in the face of a pandemic. We should not have to be asking our government to take these steps. The Trump Administration should be using every existing authority possible to ensure that Americans are protected from this virus.

Sincerely,



Robert P. Casey, Jr.
United States Senator



Sherrod Brown
United States Senator