



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

February 7, 2012

The Honorable Kathleen Sebelius
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue, S.W., Room 120-F
Washington, D.C. 20201

Dear Secretary Sebelius:

The Commonwealth of Pennsylvania is requesting a waiver from the "maintenance of effort" ("MOE") requirements of the Patient Protection and Affordable Care Act.¹ Last year, funding for the Department of Public Welfare accounted for 40% of the entire Commonwealth's General fund budget. Services provided by the Department's Medical Assistance ("Medicaid") Program consumed 58% of the Department's Budget (or 23% of the entire Commonwealth's budget). Pennsylvania currently ranks second in the nation in Medicaid spending as a proportion of state budgets. Medicaid spending now outstrips spending on K-12 education in Pennsylvania. Because Medicaid spending is projected to increase and enhanced federal reimbursements related to the 2009 American Recovery and Reinvestment Act ("stimulus") legislation have ended, Pennsylvania needs immediate relief from the MOE requirements. The failure to grant Pennsylvania a waiver from the MOE will only serve to exacerbate this state's already precarious fiscal situation, with devastating impact on the most vulnerable individuals the Commonwealth serves.

As you are aware, federal law requires Pennsylvania to cover certain population groups who fall into specific categories and who meet certain income and resource limits. Historically, however, Pennsylvania has maintained relatively broad Medicaid eligibility requirements, covering many optional groups, above minimum federal requirements. Besides the programs for which we receive federal matching funds, Pennsylvania also maintains multiple state-funded safety net programs such as covering childless adults with income under 47% of the federal poverty limit.

Resulting, in part, from Pennsylvania's relatively generous program, enrollment in Medicaid in Pennsylvania has steadily increased over the last five years and has consistently been higher than the national average. For example, the national average Medicaid enrollment population in 2010 was 15.3%; yet, Pennsylvania's enrollment population stood at 16.7%, an increase from 16% in 2009.

¹ Pub.L. 111-148, § 2001(b)(2), codified at 42 U.S.C. § 1396a(a)(74).

As with many other states, Pennsylvania finds itself confronting a revenue shortfall of \$728 million in 2011-12 fiscal year and mandated cost increases of over a billion dollars in fiscal year 2012-13. Given its generous design and unsustainable expansion, Pennsylvania's Medicaid Program is simply no longer affordable. Yet, without relief from the onerous MOE requirements, we are forced to maintain our expansive Medicaid status quo as it existed in 2008 or jeopardize all federal matching funds. As a result, we cannot implement many common-sense reforms that would contain both state and federal costs without sacrificing the quality of care.

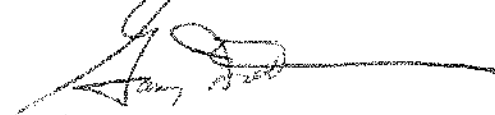
Under its initial design, Title XIX of the Social Security Act granted states substantial discretion in designing and administering their Medicaid programs. Although there is no question that Congress may impose new requirements on states, the MOE, as interpreted by CMS, alters the fundamental nature of the Medicaid program as originally enacted by eliminating state flexibility to operate and control the program—a result we question whether Congress ever intended. Because the MOE prevents Pennsylvania from implementing common-sense reforms, the only practical and legal choices that remain are to eliminate or substantially curtail state-funded safety net programs or to reduce provider payment rates. We are concerned that these options could have a profound effect on the quality of services provided in our Medicaid program and are likely to result in protracted and costly litigation regardless of the legality of the changes.

Fears that a waiver of MOE requirements will adversely impact the Commonwealth are unfounded. First, state governments, like ours in Pennsylvania, are accountable to their citizens. Our elections result in the appointment of public officials who are responsible for and capable of overseeing and administering the Medicaid program. Our officials are not only close to our citizens, but also know best how to serve them through the Medicaid system. Second, even with a waiver, the Commonwealth would have to comply with all other federal rules that govern the Medicaid program.

Finally, perhaps the strongest argument in favor of a waiver is that the MOE requirements, in essence, penalize Pennsylvania for having established expansive and generous programs that other states do not have. Virtually all of these programs were instituted prior to 2009, in more economically robust times. With the economic downturn, the citizens of Pennsylvania should not be expected to have to continue to shoulder the costs of such expansive programs. The citizens of Pennsylvania have the right not only to expect us to be good stewards of their tax dollars but also to demand that we live within our means – and temper the unsustainable expansion of the Medicaid program. Living within our means requires state-based flexibility that is precluded by the MOE requirements, flexibility to leverage our limited Medicaid resources so that Medicaid can remain a safety net for the truly poor and severely disabled.

Thank you for your consideration. Your acceptance of our waiver request would go a long way to providing the Commonwealth of Pennsylvania with the flexibility it needs to adjust to the new budget and economic realities of the last few years and the foreseeable future.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary D. Alexander", with a long horizontal flourish extending to the right.

Gary D. Alexander
Secretary

cc: Cindy Mann, Deputy Administrator, Centers for Medicare & Medicaid Services