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State Plan Amendments and Approval Time Frames

There are various ways that states can change their Medicaid program. A change that complies with Medicaid law, such as a straight Medicaid expansion like those approved in recent ballot initiatives in Idaho, Nebraska, and Utah, can be made through a state plan amendment (SPA).

IN SUMMARY

- Changes that comply with the Medicaid program (like a straight Medicaid expansion) can be submitted through a SPA at any time.
- No cost or budget estimates are required for Medicaid expansion SPAs. While states typically do not have to submit information on how they will pay for the change or how it will impact Medicaid spending, CMS has recently requested this information.
- No hearings or public comment periods are federally required.
- A sate Medicaid agency must submit the requested change to the governor before it is sent to the Centers for Medicare & Medicaid Services. Comments from the governor must be submitted to CMS with the amendment request. An exception to this rule is that submission to the governor is not required if the governor's designee is the head of the Medicaid agency or if the change is one that CMS requires.[1]
- SPAs are submitted to the CMS regional office.
- Approval time once submitted to CMS is no more than 90 days per federal statute. If CMS submits formal questions to the state about the request, the 90-day clock is suspended. (This is not expected for a simple change to eligibility such is the case with a SPA for Medicaid expansion.) The clock begins again when the state has answered CMS' questions. If the state has not heard from the regional office within 90 days, the SPA is deemed approved.
- SPAs are approved indefinitely. A state can change an SPA at any time, but the approval is not time-limited.
- The Trump administration has issued informational bulletins about steps it is taking to speed SPA processing times.[2] In 2018, approval of Virginia's Medicaid expansion SPA was timely. CMS questions did not delay the process.

In 2016, the median time from SPA submission to CMS approval was 82 days. In the first quarter of 2018, 84 percent of SPAs were approved within the first 90 days of review.[3]

Where Delays Might Occur in the SPA Process

While the federal approval of SPAs has gone smoothly for new Medicaid expansion applications to-date, there are points in the approval process where delay tactics could be used to slow down the approval of the SPA. Below is an overview of those tactics, as well as suggestions for how to identify deliberate delays and how to respond.

- **Delays in preparing the SPA.** The state must adhere to any SPA filing deadlines that are part of any passed ballot initiatives or legislation.
- **Delays from the governor.** The governor could delay signing the SPA or add comments that would make it less likely that CMS would approve the request. As an extreme example, when Maine Gov. Paul LePage was compelled under court order to sign the SPA for the state's ballot-approved Medicaid expansion, he included a letter urging CMS to reject the request.[4]
- **Delays at CMS or the state post-filing.** CMS can delay approval by asking a lot of sequential questions that suspend the approval clock. The Trump administration approved Virginia's expansion SPA quickly indicating that it wants to improve SPA processing times, and shorten review times. Similarly, the state can delay the approval process by not promptly responding to questions CMS asks.

Here are some rules of thumb to determine whether or not delay tactics are being used:

- In the first quarter of 2018, 84 percent of SPA applications were approved within 90 days.
- When delays stretch beyond 90 days post-submission, it is appropriate to contact Medicaid officials or other key state contacts to understand the cause of the delays. Depending on the justification provided, it may be appropriate to alert the media of potential deliberate efforts to delay approval to help increase the pressure on the state to move the process forward.

Endnotes

[1] 42 C.F.R. § 430.12 (2016).

[2] Hill, B. (2018, Aug. 16). CMCS informational bulletin: Update on state plan amendment and Section 1915 waiver process improvements. Baltimore, MD: Center for Medicaid & CHIP Services. Available online at https://www.medicaid.gov/federal-policy-guidance/downloads/cib081618.pdf; Neale, B. (2017, Nov. 6). CMCS informational bulletin: State plan amendment and Section 1915 waiver process improvements to improve transparency and efficiency and reduce burden. Baltimore, MD: Center for Medicaid & CHIP Services. Available online at https://www.medicaid.gov/federal-policy-guidance/downloads/cib110617-2.pdf.

[3] *Ibid.*

[4] https://www.pressherald.com/2018/09/04/lepage-files-plan-to-expand-medicaid-but-asks-feds-to-reject-it/.

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