



E. SCOTT PRUITT  
ATTORNEY GENERAL

June 25, 2013

Department of Health & Human Services  
Attn: Cindy Mann  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 212-44-1850

Re: May 7, 2013 Letter Denying Oklahoma's SoonerCare Section 1115 waiver  
Demonstration (No. 11-W-00048/6).

Ms. Mann,

I write to express my concerns with the legality of your recent decision to deny the State of Oklahoma's request for an extension of the Medicaid section 1115 waiver for the Insure Oklahoma program.

As we explained in our waiver application, as of April 2013, Insure Oklahoma provided 29,984 low income Oklahomans with health insurance that was otherwise beyond their financial reach. Beginning with the initial waiver application in 2005, your agency never had difficulty concluding that the Insure Oklahoma program furthered the purposes of Medicaid and was thus entitled to a waiver. Your abrupt decision to kill this program is disconcerting precisely for this reason: nothing about the program has changed, and nothing about the Oklahoma's section 1115 waiver application has changed—as it had in past years, that waiver application met all the requirements of the law.

Instead, it appears your reversal of course was driven by a desire to coerce Oklahoma into implementing the Medicaid expansion that is part of the Affordable Care Act. Your letter in fact offers *only* the Affordable Care Act as a reason for denying the Insure Oklahoma waiver:

The Affordable Care Act provides significant federal support to ensure the availability of coverage to low-income adults. Enrollment caps limit enrollment in coverage on a first come, first serve basis...[and]...do not further the objectives of the Medicaid program, which is the statutory requirement for allowing section 1115 demonstrations. As such, we do not anticipate that we would authorize enrollment caps or similar policies through section 1115 demonstrations for the new adult group or similar populations.

Letter at p.1, *citing* <http://medicaid.gov/State-Resource-Center/FAQ-Medicaid-and-CHIP-Affordable-Care-Act-ACA-Implementation/FAQ-Medicaid-and-CHIP-Affordable-Care-Act-ACA-Implementation.html>.

In other words, despite the fact that Insure Oklahoma has included an enrollment cap since its inception, and despite the fact you have in the past readily concluded that Insure Oklahoma “furthers the objectives of the Medicaid program” even with this enrollment cap, you have now reversed course, and you have done so based *solely* on the Affordable Care Act’s Medicaid expansion. This despite the fact that the Affordable Care Act did not change section 1115, nor did it change the criteria you must apply in deciding whether to grant a section 1115 waiver. Rather, it appears that you simply decided to link section 1115 waiver decisions to the Affordable Care Act when no such link exists in the law.

But of course just last year, the Supreme Court ruled that attempts by the federal government to coerce states like Oklahoma into implementing the Affordable Care Act’s Medicaid expansion violate the Constitution:

The States...argue that the Medicaid expansion is far from the typical case. They object that Congress has “crossed the line distinguishing encouragement from coercion,”...in the way it has structured the funding: Instead of simply refusing to grant the new funds to States that will not accept the new conditions, Congress has also threatened to withhold those States’ existing Medicaid funds. The States claim that this threat serves no purpose other than to force unwilling States to sign up for the dramatic expansion in health care coverage effected by the Act.

Given the nature of the threat and the programs at issue here, we must agree...In light of the Court’s holding, **the Secretary cannot apply §1396c to withdraw existing Medicaid funds for failure to comply with the requirements set out in the expansion.**

*Nat'l Fed'n of Indep. Bus. et al. v. Sebelius*, — U.S. —, 132 S.Ct. 2566, 2603-07(2012)(emphasis added).

It appears that your decision to withdraw the \$79 million in existing Medicaid funds that Oklahoma has in the past received for Insure Oklahoma unless Oklahoma implements the Affordable Care Act's Medicaid expansion is a thinly-veiled attempt to do exactly what the Supreme Court has forbidden you from doing: strong arm Oklahoma into expanding Medicaid.

But as we explained when we declined to implement the Medicaid expansion, the enrollment cap on the Insure Oklahoma program ensures that the State's spending (approximately \$50 million per year) on that program will remain within our means. Unlike the federal government, which has no limitation on its ability spend money it does not have, Oklahoma's constitution has a balanced budget requirement, which requires the State to operate on a pay-as-it-goes basis. Because of this fiscal responsibility requirement, the State simply cannot lift the enrollment cap on Insure Oklahoma without risking incurring spending obligations that it cannot meet.

And if the purpose of the Affordable Care Act's Medicaid expansion is to make Medicaid available to *more* low income Americans, stripping 30,000 low income Oklahomans of their Insure Oklahoma benefits as a punishment for Oklahoma's commitment to fiscal responsibility is cutting off one's nose to spite one's face.

Because surely you recognize the illogic of such an approach, we hope that you will reconsider the legality of your decision, and as you have in the past, evaluate Oklahoma's waiver request solely based on the section 1115 waiver criteria. If you do so, I am confident that, just as you have done since 2005, you will once again grant the request.

Sincerely,

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

E. Scott Pruitt