

July 16, 2019

NH Medicaid Granite Advantage Program Update: Work and Community Engagement Requirement Temporarily Suspended¹

DHHS Notice:

On July 8, 2019, NH DHHS Commissioner Meyers under the authority granted to him through the new [Senate Bill 290](#) suspended the work and community engagement requirement until September 30, 2019.ⁱ DHHS sent a [letter](#) to all Granite Advantage members notifying them of the suspension.ⁱⁱ

What Does this Mean for Granite Advantage Beneficiaries?

This action impacts [Medicaid Granite Advantage Health Care Program](#) (sometimes referred to as Medicaid Expansion and formerly NH Health Protection Program) beneficiaries who are subject to the work and community engagement requirement.ⁱⁱⁱ The suspension **temporarily** waives the program requirements and means no beneficiaries will be at risk for suspension during July, August, or September due to not meeting work and community engagement requirements. DHHS has advised that during the suspension period, beneficiaries **do not need to report** the hours they spend engaged in qualifying activities.

What Does this Mean for Providers?

The full implications of this temporary suspension are still being sorted out, but here are some implications for providers and best practice recommendations:

- No Granite Advantage beneficiary will have his or her coverage suspended in July, August or September 2019.
- During the temporary suspension it remains important for providers to help educate beneficiaries about the work and community engagement requirement.
- It is best practice to help beneficiaries apply for exemptions during the temporary suspension period. Providers, therefore, should continue to certify [medical frailty forms](#) and [exemption request forms](#) as appropriate.
- The prohibition on retroactive eligibility for Granite Advantage beneficiaries remains in effect. Currently, the only Granite Advantage beneficiaries who may qualify for retroactive eligibility are those who are pregnant or 60 days or less postpartum; infants or children under the age of 19; parents and other caretaker relatives; or individuals who are determined eligible under aged, blind, or disabled eligibility groups. Senate Bill 290 requires the Commissioner to seek approval from CMS to permit retroactive eligibility for Granite Advantage beneficiaries for the 45-day period immediately preceding the eligibility determination, but CMS has not yet granted that approval.

¹ ** *This Technical Assistance summary is not intended as legal advice to you or the entity you work for. This Technical Assistance summary is intended to provide a general regulatory outline of issues for your compliance and legal team to use as may be helpful and informative.* **

Why Was the Work Requirement Suspended?

June 2019 was the first month that Granite Advantage beneficiaries should have complied with the program's work and community engagement requirement, meaning that beneficiaries were expected to complete 100 hours of qualifying activities during the month unless they were exempt or could show good cause for the failure to comply. Failure to comply without reporting an exemption or showing good cause would jeopardize the beneficiary's continued eligibility for coverage through the Granite Advantage program.

On July 8, 2019, however, the Commissioner of DHHS temporarily suspended the work and community engagement requirement for a period of 120 days, from June 1, 2019 through September 30, 2019. The Commissioner identified several reasons for the temporary suspension:

1. *DHHS Needs More Time to Effectively Communicate with Beneficiaries:*

DHHS has undertaken considerable efforts to notify beneficiaries and explain the work and community engagement requirement. Nevertheless, of the **24,766** Granite Advantage beneficiaries who were subject to the requirement in June, DHHS had no information on the compliance status of **approximately 17,000** of them as of July 8, 2019. If by early August DHHS still had no information on their compliance status, these approximately 17,000 individuals would be at risk for suspension from the Granite Advantage program for failure to comply with the work and community engagement requirement. DHHS plans to continue with outreach and education efforts, including, as required by Senate Bill 290, "directly counsel[ing]" Granite Advantage beneficiaries who must comply with the work and community engagement requirement. DHHS has begun a campaign to knock on doors^{iv} and will continue to rely on community providers to educate and reach out to clients.

2. *DHHS Needs Time to Implement the Changes made by Senate Bill 290:*

On July 8, 2019, the Governor signed Senate Bill 290.^v The bill affects administration of the work and community engagement requirement by making changes to the program's exemptions and the qualifying activities. For example, prior to Senate Bill 290 parents or caretakers of a dependent child under 6 years of age were eligible for an exemption. After the bill, parents or caretakers of a dependent child "through 12 years of age" are eligible for an exemption.^{vi} The bill also exempts all beneficiaries who have a disability as defined by the ADA and any beneficiary who is homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. § 11301 et seq. In addition, the bill adds participation in recovery activities and mental health treatment to the list of activities that qualify as work or community engagement.

DHHS explained that it needs to update its software to properly code beneficiaries as exempt or recognize them as in compliance in order to implement these changes. DHHS also plans to amend its administrative rules to reflect updates in [Senate Bill 290](#) and to apply for an amended waiver from the Centers for Medicare and Medicaid Services (CMS). Temporarily waiving the program requirements will permit DHHS to pursue these steps.

What is the Status of the Federal Lawsuit, *Philbrick v. Azar*?

Federal litigation challenging the work requirement is pending in the United States District Court for the District of Columbia. This lawsuit, *Philbrick v. Azar*, challenges the legality of New Hampshire’s federal waiver authorizing the elimination of retroactive eligibility and the creation of the work and community engagement requirement. The case is before the same judge who [previously ruled against HHS](#) when it approved similar work requirements for Kentucky and Arkansas. The court will hear argument in *Philbrick v. Azar* on July 23, 2019.

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ⁱ Letter from Commissioner Meyers to Governor Sununu, President Soucy, and Speaker Shurtleff (July 8, 2019) <https://www.dhhs.nh.gov/medicaid/granite/documents/ga-ce-findings.pdf>

ⁱⁱ Letter from DHHS to Granite Advantage Beneficiaries (July 9, 2019) <https://www.dhhs.nh.gov/medicaid/granite/documents/ce-delay-letter-07112019.pdf>

ⁱⁱⁱ Granite Advantage Health Care Program Website <https://www.dhhs.nh.gov/medicaid/granite/>; NH Easy Website <https://nheasy.nh.gov/#/granite-advantage>

^{iv} June 2019 Community Engagement Report <https://www.dhhs.nh.gov/medicaid/granite/documents/ga-ce-report-062019.pdf>

^v Senate Bill 290, (July 8, 2019) http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2019&id=895&txtFormat=pdf&v=current

^{vi} Senate Bill 290 also clarifies that this exemption “shall only apply to one parent or caretaker in the case of a 2-parent household where responsibility for the child the exemption is based on is shared by the 2 parents or caretakers.” http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2019&id=895&txtFormat=pdf&v=current