May 1, 2017

Director Michael Heifetz
Division of Medicaid Services
P.O. Box 309
Madison, WI 53707-0309

Dear Director Heifetz,

Thank you for this opportunity to comment on the proposed Section 1115 demonstration waiver.

The Community Advocates Public Policy Institute advocates for policies that improve access to quality and affordable coverage; break down barriers to stable and effective use of the health system, especially for substance use and mental health treatment; and policies that treat mental illness and substance use as a public health issue instead of a criminal justice issue.

While we know the Department of Health Services (DHS) is required by law to submit this waiver, we share these comments in a larger context of full opposition to the underlying policies themselves. The policies were passed as part of the 2015-2017 state biennial budget, and we opposed their passage. As a result of being part of the budget, the policies received little scrutiny and there were no separate hearings on the topic.

Specific to the waiver, it is our opinion that this application is in violation of the requirements and spirit of Section 1115 waivers to be demonstrations of innovative ways to expand eligibility and Medicaid services to improve access to care and reduce costs. This waiver will dramatically increase administrative costs for taxpayers, and reduce enrollment in BadgerCare by this vulnerable childless adult population.

The stated objectives of this waiver are not consistent with the likely outcomes of the waiver. The first stated objective of the application is ensuring "that every Wisconsin resident has access to affordable health insurance to reduce the state's uninsured rate." Wisconsin's outlier health coverage system already has large affordability gaps, and this waiver will create even more. The second stated objective of the application is creating "a medical assistance program that is sustainable so a health care safety net is available to those who need it most." Those who need it most, including those who have trouble finding work, those struggling with substance use and mental illness, and those struggling in cycles of poverty, are put at risk by this waiver application of not having a health coverage safety net.

Was this waiver drafted in consultation with stakeholders, including providers, BadgerCare HMOs, patients, and advocates?

The cost of this waiver is not included in the application, and the Department of Health Services has not made cost data publicly available. Implementing the provisions of this waiver will be extraordinarily complicated and, thus, expensive. How can advocates, taxpayers and the federal government properly evaluate this proposal without specific data on the cost of implementing and operating this waiver?

There is ample evidence that charging fees and premiums to low-income participants in benefits programs reduces enrollment. In this case, that would violate the intent of Section 1115 waivers. No state charges premiums to enrollees below 100% of the federal poverty level and then disenrolls a participant for non-payment. Other states have either a reduced benefit package, or exceptions to the premium. We encourage DHS to implement options other than full disenrollment from the program for non-payment. Doing so simply shifts the cost of that individual's care to those who pay more for coverage.

Additionally, DHS proposes that individuals who do not pay the premiums will accumulate arrears on the non-payment that must be paid before BadgerCare can compensate providers. Asking an individual to pay such arrears could be burdensome. Evidence from other programs, including utility assistance programs, show that arrear forgiveness leads to more revenue in the long run because the low-income individual may potentially make small monthly payments over time, but cannot make a large lump sum payment at one time. We encourage DHS to consider including arrear forgiveness, or not accumulating arrears in the first place (i.e. a participant must pay that month's premium only to get benefits).

We encourage DHS to consider changing the healthy behavior incentive from reducing the premium by 50% to reducing the premium entirely. The 50% incentive is simply not enough to achieve the desired result. Nor is the halved premium worth the administrative hassle. The payoff of more individuals taking part in healthy behaviors will likely outweigh the payoff of halved premiums.

We agree that BadgerCare participants should be educated on seeking health care in appropriate settings, and not simply defaulting to the emergency room. However, the waiver application does not distinguish between visits to the emergency room that are appropriate and not. We encourage DHS to ask providers to collect the co-pay only if the emergency room visit was clearly inappropriate according to a set of criteria established by DHS in consultation with providers and patient advocates. The co-pay amount should be significantly less than $8 for the visit and $25 for subsequent visits. Further, this co-pay should not apply to individuals below a certain income threshold. It is simply unrealistic and wrong to expect an individual making such small amounts per month ($200 per month at 20% of FPL) to pay $25 for necessary health care.

The application states that the 48-month limit on coverage will not accrue when an individual is working or participating in job training. Work should be encouraged, work should be available, work should pay, and obstacles to work should be reduced. However, applying any work requirement to BadgerCare is backwards rationality. One must be healthy to work, not work to get health care. How many current BadgerCare childless adult participants enrolled in the program at any time and have been enrolled in BadgerCare without any? What is the average duration of enrollment in BadgerCare by childless adults since this population became eligible in April of 2014? There is an inaccurate and unfortunate perception that this population is not actively seeking work. What does the data actually show?

The application does not define "job training" or "employment training" and uses the terms seemingly interchangeably, despite their being distinct. What is DHS' precise intent with these distinct terms and what is the definition of these terms?

The application does not explicitly state that a participant who is exempt from the work requirement will not accrue time towards the 48-month limit. We encourage DHS to explicitly exempt those same individuals from the 48-month limit. In addition, those exemptions should be expanded to include individuals with two or more chronic conditions, and individuals experiencing homelessness. Furthermore, DHS should establish a process for individuals to apply for an exemption to be given at the discretion of DHS.

The assumption that every participant needs training to obtain work is incorrect. Proactively seeking employment ought to halt the accrual of the 48 months.

The 48-month limit is also inconsistent with the stated objective of the waiver to align BadgerCare with commercial health insurance design. Private insurers are prohibited from implementing lifetime or annual limits on coverage. The purpose of BadgerCare, as stated in the application, is to ensure access to affordable health insurance, and ensure that all Wisconsinites are eligible for some "affordable" coverage. The 48-month limit will force people off of BadgerCare. Instead of disenrollment at the end of the 48 months, DHS should establish a program in which participants are contacted, assessed, and assisted in a case management type of approach with barriers and challenges to obtaining income via work, then restarting the 48-month accrual.

We share with DHS the view that illegal drug use "is a significant public health risk and a barrier to the health, welfare, and economic achievement of residents." We reject, however, the presumption by the state that this is an effective way to help those who struggle with substance use. We believe that requiring applicants to submit to drug assessments without suspicion or probable cause violates Wisconsinites' Fourth Amendment rights. Providers should administer those health risk assessments, and DHS should give providers the option of working it into their existing assessments instead of requiring a separate form that would potentially be duplicative for the patient.

The application does not detail the test results that can be used to satisfy this requirement. We suggest these programs include other drug tests that may be submitted to the state now or in future policy implementation, including FoodShare, work experience programs, and any other state-mandated testing. DHS should also provide an exemption for individuals who are employed in a job that requires a drug test. The effect of these changes would be to limit the burden and frequency of tests on the individual.

An individual who is subject to the screen may answer questions that indicate drug use, but test negative. In these cases, DHS should offer the individual the option of referral to treatment and not having to get in line behind those who tested positive. The waiver should explicitly state that an individual assessing as a drug user but not testing as a drug user should not be disenrolled from the program.

The application also does not specify how long a test result is valid. It does not say what the test costs or who pays for the test, who would administer the test, what notice the applicant would receive, how an applicant could appeal, what is the treatment requirement and could its parameters jeopardize a job or put a family at risk of further problems, etc. More details are needed.

As stated at the beginning, we opposed the adoption of these policies by the Legislature and Governor Walker, but because DHS is compelled to submit this waiver, we offer the above comments, suggestions, and questions, and would appreciate their full consideration before the waiver application is finalized.

Thank you again for the opportunity to comment on the waiver application.

Sincerely,

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