

May 16, 2017

Director Michael Heifetz
Division of Medicaid Services
P.O. Box 309 Madison, WI 53707-0309
Wisconsin1115CLAWaiver@dhs.wisconsin.gov

Re: Proposed Changes to State BadgerCare Program for Childless Adults

Dear Director Heifetz,

The Wisconsin Alliance for Women's Health (WAWH) appreciates the opportunity to provide comments and feedback on the proposed Section 1115 demonstration waiver that would affect "childless adult" participants in the BadgerCare program.ⁱ As an organization that advocates for policies that promote the optimal health, safety, and economic security of women and girls in Wisconsin, WAWH has serious concerns that the Department's proposed waiver will undermine the health and wellbeing of those who rely on BadgerCare for health insurance.

Just as important as the substantive policy concerns we have regarding this proposed waiver, WAWH believes this proposal runs contrary to the requirements of Section 1115 of the Social Security Act regarding how demonstrative projects must promote the objectives of the Medicaid statute.

Finally, WAWH believes that the Department's proposal to require certain BadgerCare applicants and participants to submit to suspicionless drug screenings, and if the screen is positive require the applicant to participate in mandated substance use disorder treatment, raises serious Constitutional concerns under the Fourth Amendment.

By creating unnecessary and counterproductive administrative hurdles for the low-income adults that rely on BadgerCare for health insurance coverage, these proposed changes will likely reduce the number of Wisconsin residents that are covered by health insurance and generate substantial administrative costs that will fall to the Wisconsin taxpayers. While the goals of the waiver include providing "access to affordable health insurance" and "improved health care value", the likely outcome of the waiver is contrary to these goals.ⁱⁱ The proposed waiver would instead adversely affect thousands of childless adults in Wisconsin who rely on BadgerCare for health insurance who will likely lose their access to health care services if these changes are approved.

Require Monthly Premiums for Majority of Childless Adults Enrolled in BadgerCare

The first stated objective of this waiver is to, "Ensure that every Wisconsin resident has access to affordable health insurance and reduce the state's uninsured rate."ⁱⁱⁱ The proposition that requiring an economically vulnerable population of childless adults to pay a monthly premium will increase the number of Wisconsin residents with access to affordable health insurance is counterintuitive. Even small premiums will likely lower participation in BadgerCare.^{iv} Childless adults on BadgerCare, by definition, earn wages below the poverty line. The introduction of even small premiums potentially represents both a financial and administrative barrier that will prove insurmountable for many enrollees. The Department's proposal to sanction enrollees with periods of ineligibility for failure to pay monthly premiums will increase the number of Wisconsin residents that are uninsured, as most BadgerCare participants cannot afford to purchase private health insurance.

A foreseeable result that should be expected from a lower participation in BadgerCare is a higher number of uninsured Wisconsin residents who will rely on emergency room visits instead of preventive or primary care that would have been covered by BadgerCare.^v This not only increases long-term costs for Wisconsin in the form of more expensive and often uncompensated care, but also leads to worse health outcomes for those in our communities who often most need access to health care.

Finally, these changes would also have a high administrative cost to both state and local governments. This would include complicated tasks such as tracking each individual on BadgerCare based on their status in regard to the work requirements (discussed below) and un-enrolling participants based on that status.^{vi} If the state attempts to collect monthly premiums and enforce ineligibility periods, this process will pose a large burden on the local agencies that help implement the BadgerCare program.

Eligibility Limit of 48-Months

The waiver request also proposes a 48-month limit on eligibility for BadgerCare for some enrollees who are not working or participating in job training. This unprecedented change would eliminate access to health insurance after an arbitrary amount of time and likely take away the health care safety net from those who need it most. BadgerCare enrollees will be ineligible for BadgerCare benefits for six months if they fail to meet the employment or job training requirements. While the time limit eligibility includes exceptions, patients that suffer from chronic conditions and substance abuse disorders could lose coverage at a time when that coverage and treatment is critical to staying in the work force. It would be counter-productive to put a hard limit on eligibility and deny access to BadgerCare for a group of people that most likely will have no other option for accessing health insurance coverage in order to receive care for serious health issues.

A time constraint of this type does not support the goals that the Department purports to achieve with the proposed waiver. Enforcing a sanction of ineligibility for six months, in which an enrollee cannot receive health insurance, ensures that many of the affected low-income adults will have no access to health insurance for that time. This will only serve to undermine health outcomes in Wisconsin and force these former enrollees to rely on emergency hospital visits for access to care.

Required Substance Abuse Screening/Testing

The requirement that childless adults be subjected to suspicionless drug screening, and subsequently submit to drug testing if the screen is positive, will lead to results that are contrary to the stated goals of the waiver. Requiring drug testing would not only decrease the willingness of Wisconsin residents to enroll in BadgerCare, but is a counterproductive approach to the problem of substance abuse disorders (SUD).^{vii} Wisconsin already has a waiting list of residents that are seeking and need SUD treatment. This requirement will only serve to add residents to the waiting list without providing adequate resources to ensure that those suffering from these SUD's have access to treatment.

WAWH is also under the impression that these proposed drug screening and testing processes are a violation of the Fourth Amendment to the United States Constitution. Requiring Wisconsin residents to submit to universal, suspicionless drug screening is likely a violation of the Constitutional rights of Wisconsin citizens who wish to participate in BadgerCare.^{viii} The penalty of not submitting to these drug screenings and tests are severe, as those who refuse to submit would be ineligible for likely the only form of health insurance they could feasibly afford.

The proposed screening and testing processes are vague and unclear.^{ix} There are troubling, unanswered questions about the proposed system, such as uncertainty as to how affected BadgerCare enrollees could

appeal the results of a positive test. Such questions will need to be answered in order to fully understand whether the required screening and testing processes pass Constitutional muster.

The enforcement of this drug policy would also be an inefficient solution to addressing SUD's due to the high administrative cost that it would require in comparison to the benefits that it would accrue. The waiver does not specify how much the testing will cost, who will pay for the testing, or how the testing will be administered. All of these costly screening and testing processes will only lead to putting Wisconsin residents on a waiting list for treatment. A better allocation of resources would be to simply fund existing treatment programs, for which there is already significant demand and inadequate supply.

Referral to Treatment Program

Under the proposed changes, a positive drug test would result in referral to a SUD treatment program. Refusal to participate in an SUD treatment program would result in ineligibility for a period of six months. Much like the sanction for failure to pay premiums or the job training/work requirements, this approach is completely counterproductive. Wisconsin residents who struggle with substance abuse and participate consistently in the work force are a group that acutely relies on the benefits associated with having access to the safety net of BadgerCare coverage. It is hard to reconcile the Departments stated objective of ensuring that a sustainable "health care safety net is available to those who need it most" with enforcing an ineligibility sanction that would completely remove that safety net for six months to this vulnerable population.^x

Health Risk Assessment

The proposed waiver includes a requirement that enrollees participate in a health risk assessment (HRA), which is a questionnaire that is supposed to identify behavior that is associated with increased health risks. Until the HRA is completed, members will pay the proposed full standard premium for their coverage. Sanctions similar to those proposed elsewhere in the waiver have been tried in other states with unsuccessful results and have high costs of enforcement.^{xi} Withholding premium reductions for incompleteness of HRA's will only add administrative cost to taxpayers and another obstacle to Wisconsin citizens trying to access health care while living in poverty.^{xii} Finally, these same assessments that are performed as part of "workplace wellness programs" have also not yielded positive long-term results in the private sector, which only further reinforces the arguments against adopting such a policy for BadgerCare participants.^{xiii}

Woman of Childbearing Age without Children

WAWH also has concerns about the impact that the proposed waiver would have on women of childbearing age who do not have children. Women already live in poverty in higher rates than men, and in addition are less likely to have employer provided health insurance plans that are registered under their own name.^{xiv}

Women that are of childbearing age rely on health insurance in order to prevent unintended pregnancies and maintain access to adequate preconception care in the event that a pregnancy occurs. The lack of preconception care not only affects maternal health outcomes, but also birth outcomes. The greatest opportunities to improve health in children and mothers occur before the mother becomes pregnant.^{xv} The proposed waiver would limit the ability for Wisconsin women to have access to healthcare in these situations.^{xvi}

Limiting access to healthcare for women of childbearing age doesn't just negatively affect important health outcomes; it also affects long-term state Medicaid spending. The average first-year medical costs of a preterm infant are ten times greater than a full-term infant. Improving the health of childbearing age women would reduce the number of preterm births in Wisconsin and save millions of Medicaid dollars.^{xvii}

Federal Guidelines on 1115 Waivers

Section 1115 of the Social Security Act allows for waivers to Medicaid under certain conditions and for certain provisions of Medicaid. These provisions are listed in 42 U.S.C. § 1396a.^{xviii} The waiver must be an “experimental, demonstration, or pilot” project that will likely promote the goals of the Medicaid Act. The waiver can also only last a specific allotment of time. Failure to comply with these guidelines can result in judicial intervention and the loss of federal payments.^{xix} The overall purpose of the waiver is required to innovate healthcare, and this does include waiver changes that are only implemented for cost cutting purposes.^{xx} The likely and foreseeable reduction of enrollment in BadgerCare that would result from the implementation of this waiver proposal is clearly not an innovative way to expand eligibility or improve Medicaid services in the healthcare field in general. As a result, WAWH believes the Department’s waiver request is inconsistent with the relevant goals and criteria against which Section 1115 waivers must be measured.

Conclusion

The proposed Section 1115 waiver that would affect childless adults participating in the BadgerCare program seeks to introduce numerous policies that would raise administrative costs for taxpayers, reduce the insured rate, and lead to worse health outcomes in Wisconsin. While the stated goals of the waiver suggest that the waiver would create more overall access to affordable health insurance, the design of project tells another story.

In addition to these substantive policy concerns, WAWH is of the opinion that this proposed waiver raises serious Constitutional concerns and runs afoul of federal law that governs Section 1115 waivers.

For the above reasons, WAWH respectfully requests the Department to either withdraw this waiver proposal or significantly amend it so that it will actually achieve the state’s proffered goals for proposing the waiver while also respecting applicable federal and constitutional law.

Thank you for the opportunity to comment on these important issues.

Sincerely,



Sara Finger
Executive Director
Wisconsin Alliance for Women’s Health

ⁱ See, Medicaid, “1115 Transparency Requirements,” accessed at <https://www.medicaid.gov/medicaid/section-1115-demo/transparency/index.html>.

ⁱⁱ See, Wisconsin Department of Health Services, “BadgerCare Reform Demonstration Project Waiver Amendment,” (April 25, 2017) accessed at <https://www.dhs.wisconsin.gov/badgercareplus/waivers-cla.htm>.

ⁱⁱⁱ See, Wisconsin Department of Health Services, “BadgerCare Reform Demonstration Project Waiver Amendment,” (April 25, 2017) accessed at <https://www.dhs.wisconsin.gov/badgercareplus/waivers-cla.htm>.

^{iv} See, The Wisconsin Council on Children and Families, “DHS Proposes New Impediments to BadgerCare Participation,” (April 19, 2017) accessed at <http://www.wccf.org/dhs-proposes-new-impediments-badgercare-participation/>.

^v See, The Wisconsin Council on Children and Families, “DHS Proposes New Impediments to BadgerCare Participation,” (April 19, 2017) accessed at <http://www.wccf.org/dhs-proposes-new-impediments-badgercare-participation/>.

^{vi} See, National Women’s Law Center, “The Stealth Attack on Women’s Health: Medicaid Work Requirements Would Reduce Access to Care for Women Without Increasing Employment,” (April 18, 2017) accessed at <https://nwlc.org/resources/the->

stealth-attack-on-womens-health-medicaid-work-requirements-would-reduce-access-to-care-for-women-without-increasing-employment/.

^{vii} See, The Wisconsin Council on Children and Families, "The Costs of Governor Walker's Proposed Medicaid Changes." (April 2017) accessed at <http://www.wccf.org/assets/Costs-of-Governor-Walkers-Medicaid-Proposal.pdf>.

^{viii} See, The Wisconsin Council on Children and Families, "DHS Proposes New Impediments to BadgerCare Participation," (April 19, 2017) accessed at <http://www.wccf.org/dhs-proposes-new-impediments-badgercare-participation/>.

^{ix} See, Wisconsin Department of Health Services, "BadgerCare Reform Demonstration Project Waiver Amendment," (April 25, 2017) accessed at <https://www.dhs.wisconsin.gov/badgercareplus/waivers-cla.htm>.

^x See, Wisconsin Department of Health Services, "BadgerCare Reform Demonstration Project Waiver Amendment," (April 25, 2017) accessed at <https://www.dhs.wisconsin.gov/badgercareplus/waivers-cla.htm>.

^{xi} See, Medicaid and CHIP Payment and Access Commission, "The Use of Healthy behavior Incentives in Medicaid," (August 2016) accessed at <https://www.macpac.gov/wp-content/uploads/2016/08/The-Use-of-Healthy-Behavior-Incentives-in-Medicaid.pdf>

^{xii} See, Wisconsin Department of Health Services, "Do Incentives Work for Medicaid Members?," (May, 2013) accessed at <https://www.dhs.wisconsin.gov/publications/p0/p00499.pdf>.

^{xiii} See, Medicaid and CHIP Payment and Access Commission, "The Use of Healthy behavior Incentives in Medicaid," (August 2016) accessed at <https://www.macpac.gov/wp-content/uploads/2016/08/The-Use-of-Healthy-Behavior-Incentives-in-Medicaid.pdf>

^{xiv} See, Raising Women's Voices, "Medicaid Expansion Waivers and Women's Health," (March 2016) accessed at <http://www.raisingwomensvoices.net/rwvoices/2016/4/7/what-do-medicaid-expansion-waivers-mean-for-womens-health.html>.

^{xv} See, Health Affairs Blog, "Medicaid Expansion: Benefits for Women of Childbearing Age and Their Children," (February 22, 2013) accessed at <http://healthaffairs.org/blog/2013/02/22/medicaid-expansion-benefits-for-women-of-childbearing-age-and-their-children>.

^{xvi} See, 3 Eichner A, Gallagher Robbins K, "National Snapshot: Poverty Among Women & Families, 2014," National Women's Law Center, September 2015, <http://nwlc.org/wp-content/uploads/2015/08/povertysnapshot2014.pdf>.

^{xvii} See, Health Affairs Blog, "Medicaid Expansion: Benefits for Women of Childbearing Age and Their Children," (February 22, 2013) accessed at <http://healthaffairs.org/blog/2013/02/22/medicaid-expansion-benefits-for-women-of-childbearing-age-and-their-children>.

^{xviii} See, 42 U.S.C. § 1315(a) (codification of section 1115).

^{xix} See, National Health Law Program, "Background to Medicaid and Section 1115 of the Social Security Act," (April 3, 2017) accessed at <http://www.healthlaw.org/publications/browse-all-publications/background-to-medicaid-section-1115-social-security-act#.WRkwdGgrLIU>

^{xx} See, *Beno v. Shalala*, 30 F.3d 1057, 1069 (9th Cir. 1994).