KENTUCKY P&A PROTECTION & ADVOCACY

Protecting and Promoting the Rights of Kentuckians with Disabilities

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July 22, 2016

Stephen Miller
Commissioner
Department for Medicaid Services,
275 E. Main Street
Frankfort, KY 40621

Via electronic mail: kyhealth@ky.gov

RE: Comments on Kentucky HEALTH, 1115 Waiver Proposal

Dear Commissioner Miller:

Kentucky Protection and Advocacy is an independent state agency, federally created and federally funded, that provides legally-based advocacy for persons with disabilities in Kentucky. We provide the following comments to the proposed 1115 Waiver announced by Medicaid on June 22, 2016.

According to the law, Section 1115 waivers are supposed to establish an experimental, pilot or demonstration project that promotes the objectives of the Medicaid program. These include:

- Expanding eligibility to individuals who are not otherwise Medicaid or CHIP eligible;
- Providing services not typically covered by Medicaid; or
- Using innovative service delivery systems that improve care, increase efficiency, and reduce costs.

There are general criteria the Centers for Medicare and Medicaid Services (CMS) uses to determine whether Medicaid/CHIP program objectives are met. These criteria include whether the demonstration will:

- increase and strengthen overall coverage of low-income individuals in the state;
- increase access to, stabilize, and strengthen providers and provider networks available to serve Medicaid and low-income populations in the state;
- improve health outcomes for Medicaid and other low-income populations in the state; or
- increase the efficiency and quality of care for Medicaid and other low-income populations through initiatives to transform service delivery networks.

We would first note that it appears Kentucky's Medicaid 1115 waiver proposal is not tailored to meet any of the four objectives. In addition, most states who have had 1115 waivers approved have used them to expand Medicaid under the Affordable Care Act (ACA); Kentucky chose to expand Medicaid without doing so and by most accounts, the expansion has gone well. The substantial progress made under our expansion has provided Medicaid to an additional 400,000 plus previously uninsured Kentuckians, including children and persons with disabilities; had a positive economic impact; and increased access to healthcare.

Other than the IMD services, the waiver proposal will not add anything to what is already in place. In addition, we have spent copious amounts of time reviewing the document and find internal inconsistencies. And that, combined with the Cabinet-generated comments, presentations, and fact sheets that often contradict each other and what the waiver document says, has created much confusion. We have the following specific comments:

1. Medically frail definition
    a. The definition of "medically frail" found in the proposed application at page 24 says, "In accordance with 42 CFR §440.315(f), a person will be determined medically frail if the individual has a disabling mental disorder (including serious mental illness), chronic SUD, serious and complex medical condition, or a physical, intellectual or development disability that significantly impairs their ability to perform one or more activities of daily living. MCOs will identify high-risk individuals through the health risk assessment and available claims data. Kentucky will develop a process by which individuals may be evaluated and assigned a risk score based on objective criteria, such as specific underwriting guidelines." These individuals, although exempt from the community engagement/employment requirements and disenrollment, would be required to pay premiums or co-pays and they will be penalized for non-payment.
        i. Eligibility on page 14 for the application is listed as "able-bodied, working age adults and their families," but later includes the "medically frail" population. How can one be both able-bodied and medically frail? This will also seemingly include persons who receive SSI and are eligible for Medicaid. One presentation by the Cabinet says that the SSI and SSDI populations will be deemed medically frail, but that is not in the application.
        ii. Information provided by the Cabinet states that persons will have appeal rights regarding the MCO/DMS decision to determine "medically frail" status, but that language is not found in the application.
        iii. Many persons in this population will be unable to afford copays/premiums and may lack bank account, permanent

address, or access to mailing supplies, including persons with SMI who are a part of the expansion population. Persons receiving SSI get $733 per month and premiums or copays may well restrict their access to healthcare which would not meet any objective for an 1115. In addition, those that live in Personal Care Homes (PCHs) most of whom have a Serious Mental Illness (SMI) pay all but $60 of their SSI check to the PCH. Even the smallest deductible or copay would have deleterious effect.

2. Children and Youth:
    a. Some children and youth are receiving Medicaid because their parents are part of the expansion population or are newly eligible under the KCHIP program.
        i. If their parents do not meet the various requirements of the proposed 1115 and lose their benefits, will the children also do so? This is not addressed in the application.
        ii. The application states at page 20 that EPSDT services will be provided, but there is no explanation how this will occur. It also says on page 14 that there will be "seamless coverage for entire families," which seems problematic, untenable and impossible to administrate. There have historically been issues with Kentucky Medicaid's handling of the EPSDT program and this will only further muddy the waters.

3. 1915(c) waiver recipients are excluded from the proposal, however there are currently over 2,000 persons on the SCL waiting list (170 on the emergency waiting list), over 5,000 persons, including over 3,000 children and youth on the MPW waiting list, and over 150 persons on the ABI LTC wait list. Would not many of these individuals be found medically frail thus requiring copays/premiums or be placed in the proposal with all of its requirements?

4. Hearing, vision, and dental services are carved out of the proposal, but are necessary services for all populations, including persons with disabilities.

5. Non-Emergency Medical Transportation (NEMT)
    a. Until the eligibility issues are clarified including "medically frail", the current SSI population and persons on 1915(c) waiting lists, the effect of cutting NEMT will not be known for those populations. NEMT is valuable service which gets folks to many services, including day programs and medical appointments

6. Institutes for Mental Disease (IMDs)
    a. The proposed application states that "access to mental health and SUD services" will be increased to allow individuals to receive up to 30 days of treatment in an IMD. While often individuals will have a dual

diagnosis of SMI and SUD, will a diagnosis of SMI alone allow such treatment?

7. Community service
    a. Which strictures/controls/background checks will be used so that "vulnerable" populations will not be victimized by persons doing community service?

Thank you for being given the opportunity to submit these comments. We would ask to be provided the documentation submitted to CMS pursuant to 42 CFR 431.412.

Respectfully,

Heidi Schissler Lanham
Legal Director