



January 11, 2018

Administrator Seema Verma
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: ABC for Health, Inc.'s comment on CMS Work Requirement Guidance to State Medicaid Directors

Dear Administrator Verma,

Since there is no opportunity to provide public comment on CMS's new guidance that supports state efforts to impose work requirements on able-bodied, working age Medicaid beneficiaries, please accept this letter as our response to CMS's guidance.

Advocacy and Benefits Counseling for Health, Inc. (ABC for Health) has a unique perspective on working with low-income, health disparity populations to access health care and coverage in Wisconsin. Founded in 1994, ABC for Health helps families and individuals across Wisconsin gain access to health care benefits and services. ABC for Health's mission is to provide consumers and providers with information, advocacy tools, legal services, and expert support needed to secure health care coverage and services. ABC for Health works to translate individual case experiences into local strategies as well as system level reforms through our statewide HealthWatch Wisconsin, Inc. subsidiary, and serves as a catalyst in the development of local HealthWatch Coalitions to promote community efforts and community voices directed at health care coverage and access concerns for children and families.

Please take into consideration the following:

As you are aware, Wisconsin is one of the states seeking to institute a work requirement for childless adults enrolled in our BadgerCare Plus program, pending approval of its Section 1115 Demonstration Waiver¹ through your agency. With today's new guidance, our state will likely be allowed to deny benefits to adults unless they have jobs or participate in work-related activities. As such, the guidance contradicts the objectives of the Medicaid program, imposing a condition that excludes otherwise eligible applicants, contrary to the law's objective of providing health coverage for low-income individuals.

Creating obstacles to care violates your agency's goals of supporting better care and services for Medicaid enrollees. Above all else, Section 1115 of the Social Security Act gives the Secretary of Health and Human Services authority to waive provisions of major health and welfare programs,

¹ State of Wisconsin BadgerCare Reform Demonstration Project, Available at: <https://www.dhs.wisconsin.gov/badgercareplus/clawaiwer-finalapp.pdf>



including certain Medicaid requirements, and to allow a state to use federal Medicaid funds in ways that are not otherwise allowed under federal rules. The authority is provided at the Secretary's discretion for demonstration projects that the Secretary determines **promote** Medicaid program objectives.² You are now in the position of approving waiver requests that seek to impose work requirements, which is neither an appropriate demonstration nor a plan to promote Medicaid program objectives.

In fact, up until now, the Centers for Medicare and Medicaid Services have not approved state waiver requests to require that Medicaid beneficiaries work as a condition of eligibility, on the basis that such a provision would not further the program's purposes of promoting health coverage and access.

The guidance would not improve Medicaid; it rather seeks punitive changes that affect adults, many of whom are sick or suffering chronic health conditions that may not *yet* meet the level of a disability determination. For some individuals in Wisconsin, our BadgerCare Plus program coverage provides the opportunity to create or update a medical record in order to help support a future finding of eligibility for disability programs that may include an opportunity to work, such as Wisconsin's Medicaid Purchase Plan (MAPP). As you know, some programs require waiting periods before benefits begin. The proposal to eliminate BadgerCare Plus coverage for folks who do not yet rise to the level of a disability could affect people in a required waiting period imposed by other administrative roadblocks. Terminating coverage also demonstrates a lack of understanding of the health conditions in the community. The American Cancer Society has warned that terminating eligibility would be detrimental to cancer patients.³ Consider other patients who have moved from diagnosis through treatment – they may not be able to meet a work requirement. The effects of an illness, if not rising to the level of a disability, includes for some, a continued regimen of prescriptions, long-term side effects, and a risk of recurrence. Four years does not fit the scope of needed care.

We oppose work requirements – because they do not work. We need look no further than the failed work requirement in Wisconsin's own FoodShare program. Two years ago, Governor Scott Walker introduced new work requirements as a condition of receiving FoodShare benefits. The rule called for "able-bodied adults without children at home" to be employed in order to keep their FoodShare. If they could not secure employment within 3 months, the benefits would end. In his new state budget, Walker wants to expand work requirements to adults with children in the home. He would need federal approval to do so. Gov. Walker, in a December interview with the Wisconsin State Journal said, "Most of those people went out and got jobs, I believe... Human nature is we all need a

² Medicaid Waivers Should Further Program Objectives, Not Impose Barriers to Coverage and Care, Center on Budget and Policy Priorities, August 2017, available at: <https://www.cbpp.org/research/health/medicaid-waivers-should-further-program-objectives-not-impose-barriers-to-coverage>

³ Cancer Patient Concerned About BadgerCare Plus Changes, WKOW (2015), available at: <http://www.wkow.com/story/29142769/2015/05/Saturday/cancer-patient-concerned-about-badgercare-plus-changes>



nudge for things."⁴ In fact, 21,000 FoodShare beneficiaries gained employment as of January 2017, per the State Journal.⁵ However, Walker failed to mention that 64,000 FoodShare recipients were kicked off their food benefits because they were either not looking for or could not find gainful employment.⁶ That is as if the entire city of Eau Claire, WI were kicked off the program. The irony for many is that low-income workers, many of whom are participating in the job training programs connected to FoodShare in 2015, are making less than \$12 an hour. This means that despite full employment, they are still eligible for FoodShare.

The National Health Law Program published an issue brief called "Medicaid Work Requirements-Not a Healthy Choice"⁷ on March 21. In the brief, the authors describe how work requirements run counter to the purpose of Medicaid, saying, "work requirements applied to health coverage get it exactly backwards." They argue, and we agree, it is an additional and "counterproductive condition on eligibility," and simply a barrier to coverage and the "pathway to health" that Medicaid coverage represents. The brief points to research that demonstrates that 8 in 10 adults in Medicaid are already working.⁸ Moreover, the research reminds us that just because individuals on Medicaid may not be legally considered disabled, they may still live with chronic and possibly disabling conditions that preclude them from working. There is a classic and profound misunderstanding of the people enrolled in Medicaid by lawmakers and policy leaders proposing work requirements. Finally, the brief points to research by the Center on Budget and Policy Priorities that found work requirements are ineffective, including a startling finding: The large majority of individuals subject to work requirements remained poor, and some became poorer.⁹

Finally, consider the cost of adding a substantial number of these childless adults to the ranks of the uninsured. In Wisconsin, uncompensated care in hospitals amounted to \$900 million in 2015, down from over \$1.5 billion in 2013, largely in part to the rapid connection of adults to coverage, either through BadgerCare Plus or the Marketplace. When more people have access to coverage, hospitals see fewer uninsured patients and write off fewer bills, bringing their uncompensated care costs down. Uncompensated care costs impact everyone! When hospitals spend more on charity care or lose money to bad debt, they increase costs to everyone else to make up for losses.

Wisconsin notes, as it awaits approval on its demonstration waiver, that its baseline costs will be adjusted to account for program elements such as the financial impact of collecting premiums and

⁴ Wisconsin State Journal, "21K employed through FoodShare jobs program, 64K lost benefits" available at: http://host.madison.com/wsj/news/local/govt-and-politics/k-employed-through-foodshare-jobs-program-k-lost-benefits/article_cb37feed-43f5-5d77-9677-db447f030dbf.html

⁵ *Id.*

⁶ *Id.*

⁷ Medicaid Work Requirements-Not a Healthy Choice, National Health Law Program, available at: <http://www.healthlaw.org/publications/browse-all-publications/medicaid-work-requirements-not-a-healthy-choice#.WN1C62e1vRZ>

⁸ *Id.*

⁹ Work Requirements Don't Cut Poverty, Evidence Shows, Center on Budget and Policy Priorities, available at: <http://www.cbpp.org/research/poverty-and-inequality/work-requirements-dont-cut-poverty-evidence-shows>



increased emergency department copays, time-limited eligibility administration, and probable costs related to job training. As CMS requires Section 1115 waivers to be budget neutral to the federal government, Wisconsin will need to cover the administrative costs out of *taxpayer* pockets.

In Wisconsin, about 1.2 million people rely on BadgerCare and Medicaid programs to provide essential, affordable, and effective health care services. And the impact of these programs reaches thousands more--our friends, neighbors, grandparents, colleagues, and health care providers large and small in every county of Wisconsin.

Your guidance today paves the way for Wisconsin to radically restructure and limit benefits to several thousand adults and creates a complicated maze of an eligibility system.

In a proposal driven by ideology, it appears you aim to direct more people to the “free market” system of health care. Sadly, this promotes a “team of me” approach for Wisconsin with smaller risk puddles instead of larger pools, high costs instead of costs trending lower, and poorer benefits instead of comprehensive care that treats medically necessary services.

Instead, Wisconsin – and CMS - should be looking to *expand* public-private partnership programs like BadgerCare Plus that promote large scale pooling and discounted care due to purchasing power and economic efficiencies. The state should consider promoting pooling and spreading risk, creating financial leverage, and promoting consumer protection and health plan accountability.

The large pool of BadgerCare and Medicaid recipients provides cost effective coverage that lowers the number of uninsured and keeps people out of expensive, inefficient, and often uncompensated emergency room care. Most people realize that uncompensated care costs do not disappear but rather show up in the form of increased health care costs. Health care providers will redistribute and socialize unpaid medical bills to small businesses, people with insurance, and other hospital patients.

Sincerely,

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