July 14, 2017

The Honorable Tom Price, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Price,

We appreciate the opportunity to comment on Wisconsin Medicaid's proposed amendment to its Section 1115 waiver, the BadgerCare Reform Demonstration project. Wisconsin states that the waiver's intended goals are to "ensure that every Wisconsin resident has access to affordable health insurance to reduce the state's uninsured rate" and to "empower members to become active consumers of health care services to help improve their health outcomes." We are deeply concerned that the proposed provisions will undermine efforts to achieve these stated goals, and in fact, are likely to exacerbate the very problems they are intended to solve. This concern is based on previous analyses or state experiences with similar provisions.

We are particularly concerned about the consequences of this demonstration project for individuals with substance use disorders. The BadgerCare Reform Demonstration explicitly states the goal of addressing addiction and overdose deaths across the state. Per the waiver application, the majority of comments to the Department of Human Services referenced the addiction crisis in the state and stressed the need to treat individuals with substance use disorders. However, this waiver would create barriers to health coverage and interruptions in treatment, and would impose punitive policies that stigmatize people with addiction.

Requiring premiums as well as instituting lockout periods and enrollment limits will increase the number of uninsured and result in barriers to care

The waiver proposes to institute premiums of $8 per month, or 2% of income, for individuals between 51-100% FPL, as well as $8 copays for all emergency room visits for the entire childless adult population. These provisions will lead to an increased uninsured rate due to individuals losing coverage or disenrolling because they are unable to make these payments, as

well insured individuals deciding not to seek care. Studies on the effects of imposing cost-sharing requirements on low-income populations have shown that imposing higher costs, even nominal amounts, leads to individuals cycling off coverage or foregoing care altogether. Public comments on the premium requirement provisions shared the same concerns, with commenters noting that individuals with incomes starting at 21% FPL will not be able to afford these monthly premiums, and for many individuals "living at or near poverty, even one dollar a month is unaffordable given the need to pay for other basic needs, such as food and housing." In addition, Wisconsin's own experience shows that the premiums it is now proposing would lead to losses of coverage. In 2012, when premiums were imposed on adults with incomes above 138 percent of the poverty line, over two-thirds of these adults left the program within six months. Imposing premiums on people with even lower incomes would likely lead to at least the same result or possibly even a greater loss of coverage. Lastly, analysis of the famous RAND health insurance experiment has shown that while instituting cost-sharing requirements helped reduce government health care expenditures, the reduction was based on individuals deciding not to receive services or treatment, rather than making "savvier" health care choices. Therefore, we are concerned that the premium provisions will not only increase the number of uninsured, but worsen health outcomes for Wisconsin Medicaid enrollees.

The waiver also imposes more direct barriers to care that will likely further worsen health outcomes, such as imposing a 6-month lockout period for individuals who fall behind on premium payments. Additionally, the waiver seeks to impose a 4 year-limit on enrollment in Medicaid for the childless adult population ages 19-49 (with several exemption categories provided), after which they will also be locked out of coverage for six months, unless they're working or receiving job training for at least 80 hours per month.

We are concerned that these provisions will lead to individuals being unable to access or afford care during these lockout periods, and therefore be unable to receive necessary services, treatments and medications. Public commenters raised these concerns, noting that losing coverage for six months is not only detrimental to the health of Wisconsin Medicaid enrollees, but will increase emergency department utilization and uncompensated care.

The lockout periods and enrollment limits are particularly troubling for individuals with substance use disorders. Tackling addiction often requires long-term treatment services and supports to sustain recovery. Locking people out of coverage or interrupting treatment will undermine Wisconsin's efforts to addressing drug use and overdose deaths.

Instituting drug screening, testing and mandatory treatment may be unlawful and will worsen health outcomes for Wisconsinites with substance use disorders.

The waiver also proposed mandatory drug screening of all childless adult applicants or enrollees, consisting of a questionnaire regarding the applicant or enrollee's current or prior use of controlled substances. If an individual indicates that he or she is using a controlled substance without a prescription, he or she would be subject to a drug test, unless the individual agreed to enter a substance use treatment program. For an individual who tests positive on a drug test, continued Medicaid enrollment would be contingent upon participation in a treatment program. If the person fails to participate in a required treatment program, Medicaid enrollment will cease, unless or until he or she decides to seek treatment.

We do not support the proposed requirements regarding drug screening, testing and mandatory treatment because we believe they are contrary to the goals of the Medicaid program: to provide coverage and care to individuals who cannot afford the cost of medically necessary care.

We are concerned the proposed drug-testing requirement could deny medical coverage too many individuals who need it most and undermine Wisconsin's stated goal of expanding coverage for individuals with substance use disorders. This concern was raised in the comments submitted by Wisconsinites in response to the waiver, with some commenters noting that these types of provisions were "unlawful and ineffective ways to identify individuals with substance use disorder….and implementing this requirement as a condition of eligibility further stigmatizes SUD and will be a barrier to individuals obtaining health care coverage and receiving treatment not only for substance abuse, but other medical conditions."

Taking away health coverage for people who are unwilling to undergo a drug test or enter a treatment program will only exacerbate the state's drug overdose problem. The proposal would withhold health care from individuals who are not yet ready or are unable to seek treatment for their substance use disorder. Keeping individuals with a drug or alcohol addiction enrolled in Medicaid and engaged in medical care allows people to access treatment when they are ready, and to address co-occurring physical and mental health issues in the meantime.

Drug testing is ineffective and expensive. Drug tests only indicate recent drug use, and reveal nothing about an individual's need for treatment. The experience with TANF confirms this: In recent years, seven states with drug testing programs have spent over $1 million, only to find that in six of the states, fewer than one percent of beneficiaries tested positive, compared with 10 percent of the general population.[1]

[1] Bryce Covert, "What 7 States Discovered After Spending More Than $1 Million Drug Testing Welfare Recipients," *Think Progress*, February 2015.

As an alternative, a confidential early intervention approach like Screening, Brief Intervention and Referral to Treatment (SBIRT) would be more effective in identifying Medicaid enrollees with drug and alcohol problems and helping people access treatment. This strategy was recommended in numerous comments to the state during the waiver comment period. SBIRT includes a verbal or written validated screening tool administered by a trained health professional. This is coupled with a non-punitive and evidence based person-centered conversation that helps individuals recognize drug or alcohol problem and elicits desire to change behavior. Those who need further treatment are referred to voluntary services. Wisconsin can bill Medicaid for SBIRT and reduce its administrative costs of implementing a testing program that wastes precious resources.

Additionally, drug testing Medicaid recipients may be unconstitutional under the Fourth Amendment, since they require the government to perform of an invasive "search" of individuals who admit to substance use. Courts have struck down these types of provisions in other states because states could not show that these requirements were necessary to further a reasonable government interest. For example, the Eleventh Circuit Court of Appeals struck down a similar drug-testing requirement that Florida sought to impose on all TANF recipients and concluded that Florida did not have a legitimate interest in drug testing public assistance beneficiaries.

Approving provisions that impose barriers to care, such as work requirements, will likely undermine the intended goals of Medicaid and create a "race to the bottom" for state eligibility requirements

Similar to the drug screening and testing requirements mentioned above, we believe a work requirement is contrary to the goals of the program. Federal Medicaid law defines the broad criteria for Medicaid eligibility and does not include a requirement for the individual to be working or seeking work as a condition of qualifying for Medicaid coverage. Additionally, the work requirement provisions seek to solve a problem that does not appear to exist, since most Medicaid beneficiaries *do* work. While about half of the Medicaid population is permanently disabled and therefore unable to work, of the other half that is referred to as "able-bodied," 62% were employed in 2015. We cannot support the inclusion of waiver provisions that primarily serve as barriers to coverage and care. Additionally, we are concerned that if CMS approves these types of provisions, a "race to bottom" will begin for state Medicaid programs, in which states will be incentivized to propose increasingly restrictive eligibility and enrollment in their waiver applications that, if approved, will further reduce access to coverage and care.

The work requirement provisions would have a disproportionately harmful impact on people with substance use disorders. While the waiver application was revised to include an exemption for people with a documented disability receiving SSDI, enrollees with addiction as their primary disabling condition are ineligible for SSDI and would therefore remain subject to work requirements.

The work requirement creates barriers to care at a time when people with substance use disorders already struggle to access treatment and recovery supports. The Wisconsin Mental Health and Substance Abuse Needs Assessment found that only eight percent of Wisconsinites who need substance use disorders treatment receive it. With opioid-related deaths in Wisconsin on the rise every year - nearly doubling from 2006 to 2015 - it would be irresponsible to impose additional barriers to care.

Access to health services is a key pathway to employment for people with substance use disorders. If blocked from Medicaid coverage, they could find it much more difficult to find and sustain employment. In addition, a substantial number of individuals with substance use disorders have a criminal history that is directly related to their untreated addiction. Many of those individuals face legal barriers to employment based on their criminal records. The work requirement would clearly jeopardize recovery for persons who have completed treatment, but are unable to secure employment.

Thank you for the opportunity to provide comments on Wisconsin's Section 1115 Waiver Amendment application. Overall, we strongly support Wisconsin's commitment to expanding coverage to low-income individuals in the state, and particularly support its efforts to expand access to coverage and services for individuals with mental health and substance use disorders. However, we believe proposed premium contributions, lockout periods, enrollment limits and work and drug testing requirements will ultimately undermine the state's ability to provide comprehensive coverage and care.

Therefore, we urge you not to allow these provisions in the proposed waiver.

Sincerely,

Robert Restuccia
Executive Director
Community Catalyst