Survival Coalition
of Wisconsin Disability Organizations

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Secretary Kathleen Sebelius
U.S. Department of health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Subject: Wisconsin's Medicaid MOE Waiver Request and related Medicaid Savings Proposals

Dear Secretary Sebelius;

On November 10, 2011 Wisconsin's legislative budget committee approved a Medicaid waiver proposal that will now be sent to you for approval. We believe the proposal will be detrimental to people with disabilities in Wisconsin and does not meet the criteria for a waiver therefore we write today to ask that you reject this request. We also want to address an additional provision that the State is proposing in its Medicaid restructuring that is not part of the waiver request but which we believe violates federal law.

The Survival Coalition of Wisconsin Disability Organizations has been monitoring the Wisconsin Department of Health Services' (DHS) proposals to find efficiencies and savings in the state's Medicaid program since savings requirements were first introduced and passed in the legislature this spring. Over the last several months, disability advocates from across the state have participated in public hearings, issued position papers with questions and concerns, provided savings ideas and held meetings with Department officials, including Secretary Dennis Smith.

However, the conclusion we share in this letter is that the Department's final Maintenance of Effort (MOE) proposal does too much harm, does not incorporate adequate cost-savings input, and has disproportionate impact on people with disabilities. The Legislature's nonpartisan budget office projects 65,000 people - nearly half of them children and many of them people with disabling conditions - would no longer be eligible for our state's health programs. Although the assumption is that many of these individuals would find coverage on the private or employer market, we believe the evidence suggests otherwise.

Although we recognize the fact that individuals with more significant disabilities accessing Elderly Blind Disabled (EBD) Medicaid are protected in the state's larger Medicaid savings proposal which does not require federal approval, it is important to note than many people with disabling conditions rely on Wisconsin's BadgerCare programs to manage their illness, take care of their children and function. Without the current level of care and support they receive to afford co-pays for expensive

medicines and reasonable premiums, we have reason to believe many of these individuals will see their conditions worsen. While we appreciate the fact that Wisconsin did include significant new state funds in the budget to help support the Medicaid program the Department did not include many of the savings ideas that were analyzed and submitted by numerous disability advocates and organizations which could have eliminated the need for the more drastic measures proposed by Wisconsin DHS. Additionally, the Legislature chose to provide numerous tax breaks to businesses, expenditures that it could have used to fund the current Medicaid benefits. While it is certainly the Legislature's prerogative to make these choices we find it disingenuous for the State to then claim they did not have the money to fund Medicaid.

In summary, we ask that you review each item in the Wisconsin proposal carefully and consider the serious implications for individuals with disabilities. We summarize some of these concerns below. We question whether a state can be awarded a waiver for maintenance of effort when Medicaid coverage is undermined. We firmly believe Wisconsin can still achieve Medicaid savings without denying quality health care to tens of thousands of people.

1. **Alternative Benchmark Plan for BadgerCare Plus Standard Plan**

Although not part of the formal MOE waiver request to CMS, Wisconsin DHS has proposed to shift more than 200,000 people covered by the BadgerCare Plus Standard plan into an Alternative Benchmark plan. DHS asserts the change results in lower costs for taxpayers (but fewer benefits for recipients) while also leveling the playing field with private insurance. This change will significantly impact people with disabilities who may not qualify for Medicaid through their disability but qualify through income and still have significant disability-related health concerns. This may be a family with a child with a seizure disorder or other special healthcare needs like diabetes, someone with mental illness who is not on SSI or SSDI, or a person with a physical disability who does not have long-term care needs.

This shift to Benchmark Plan coverage is significant for these individuals, particularly because increased co-pays will cause people to drop coverage and the less comprehensive service package will not meet people's needs. (See attached comparison chart.) There will now be no limit on co-pays for families over 150% of FPL, and many people are likely to lose their coverage for failing to make a copay, or will drop out of BadgerCare because of the financial strain from the combination of uncapped copays and higher premiums. Dental and drug benefits will now be severely limited. For people with conditions like Multiple Sclerosis, a drug benefit change of this type could have severe consequences. It is important to note that when other states have required cost-sharing for drug benefits, elderly Medicaid beneficiaries and beneficiaries with disabilities have shown lower rates of prescription drug use. This burden falls disproportionately on beneficiaries in poor health.[1]

In addition, experiences in other states show that increasing the participant's cost-share led to unmet medical needs and financial stress, even when increases were nominal. In Oregon copayment policies did not provide the expected cost savings because individuals skipped preventive care and used more

[1] Stuart B, Zacker C., *Who Bears the Burden of Medicaid Drug Co-payment Policies?* 18 HEALTH AFF. (online ed., March/April 1999), http://content.healthaffairs.org/content/18/2/201.long.

costly hospital emergency care.[2] Based on communication with experts in this area we understand that section 1937 only provides authority to provide benchmark benefits and does not provide authority to exceed normal cost-sharing rules. **We ask HHS to assess and confirm whether Wisconsin's proposed Benchmark Plan changes comply with current law.**

2. **Increasing Premiums**

Analysis of DHS' proposal estimates that 64,748 Wisconsinites will become ineligible for BadgerCare coverage while an additional 104,000 will now pay higher premiums. In May a study sponsored through Georgetown University ran scenarios estimating the impact of charging premiums from 3 to 4% of families' incomes on participation rates in Wisconsin's BadgerCare Plus. Their findings suggested that such changes would result in between 49,422 and 87,298 fewer children and their parents participating in BadgerCare Plus.[3]

During public hearings, DHS heard from many families and individuals who said they were willing to pay more for their coverage, but that the proposed premium hike was not affordable. While DHS advises that an increase up to 5% of household income is fair, they have not been able to confirm how many people will drop off of coverage due to this change nor how much cost-shifting to hospitals will occur. **These hikes, combined with the above detailed changes to the Benchmark Plan, have concerning consequences for people with disabilities who experience poverty at a disproportionate rate. Far more people overall will be adversely affected by the MOE waiver than are harmed by a reduction in adult eligibility, which has been proposed by the current administration as the only other alternative to finding savings in the Medicaid budget.**

3. **Restricting Eligibility for People with Access to Private Insurance**

DHS defines affordability based on one section of the federal Patient Protection and Affordable Care Act (PPACA) which says that individuals with access to employer-sponsored insurance would not be eligible for coverage if the lowest cost self-only premium is less than 9.5% of household income. However, this section of the PPACA also includes a second piece of the affordability test which DHS did not include. In addition to consideration of a comparison to household income, the PPACA also recognizes allowances when the employer plan's payments cover less than 60% of total allowed costs. (See p. 2 of the document linked below). [4]

Additionally, the section of the PPACA addressing premium credits appears to define affordability differently. Premium credits under the law are based on the "applicable percentage"—that is, the maximum percentage of income that individuals will be required to pay toward the second-lowest cost "silver" exchange plan in the area. While individuals with income above 300% of FPL will pay 9.5% people at lower income levels will pay a lower percentage of family income. For instance families at 150% of FPL will pay 4% of family income and families at 200% will pay 6.3% (see page 6).[5]

http://www.ncsl.org/documents/health/HlthInsPremCredits.pdf

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[2] Neal T. Wallace *et al., How Effective Are Copayments in Reducing Expenditures for Low- Income Adult Medicaid Beneficiaries? Experience from the Oregon Health Plan,* 43 HEALTH SERV. RES. 515 (2008), *at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2442363/.

[3] Alker, J., Heberlein, M., Prater, W. The Impact of Premiums on Families in BadgerCare Plus, Georgetown Center for Children and Families, Georgetown University's Health Policy Institute, May 2011.

[4] Congressional Research Service, Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (PPACA), April 2010.

[5] Congressional Research Service, 2010.

For people with disabilities, the scope of the benefit package is an equally important consideration to cost. **If Wisconsin adopts the same household affordability measure utilized in the PPACA, residents should also be allowed the same benefit safeguards guaranteeing a minimum level of coverage that is not currently available in most private plans. Essential benefits for people with disabilities include such elements as mental health coverage.**

4. **Restricting Eligibility of Young Adults**

DHS' proposal denies Medicaid eligibility to people between ages 19 and 25 who have a parent with employer health insurance that may cover the adult child. Although well-intentioned to ensure access to coverage, we believe that this proposal will have unintentional negative consequences for people with disabilities. For example, the parent's insurance may not cover the adult child's medical condition or disability, it may not cover medical providers in the community in which the adult-child lives, or it may be unaffordable. Moreover, because a parent is no longer legally responsible for a child after the child turns 18, a parent may refuse to allow his or her adult child to enroll in the parent's insurance plan for a variety of reasons: because it may be too expensive to add the child to the plan; the parent may be worried that he or she will lose his or her job if the adult child has significant medical needs that drive up the health insurance cost to the parent's employer; or the parent may have no relationship with the child. **In all of the circumstances, adult children under 26 would effectively have no access to health insurance.**

CONCLUSION

We would like to acknowledge the Department's attempts to ensure coverage for people while making changes in Medicaid, however, the options listed above are simply not affordable nor adequate for many people, including people with disabilities. More than three decades of research have shown that measures such as those listed above lead to poorer health and increased use of high-cost services like emergency rooms.

We believe the above provisions are at odds with congressional intent to reduce the number of uninsured Americans and we question the premise that the MOE standards in the Affordable Care Act can be waived for a state when they undermine rather than enhance Medicaid coverage. We stand alongside other statewide disability organizations as well as many other broad coalitions and groups that believe Wisconsin's MOE waiver should be denied.

Thank you for considering our input. Please contact us with further questions on this matter.

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Enclosure: MA Benchmark Plan comparison chart