Survival Coalition
of Wisconsin Disability Organizations

March 18, 2020

Governor Evers
115 E Capitol Dr # 1
Madison, WI 5370

CC: DHS Secretary Designee Palm
DWD Secretary Frostman
DOT Secretary Thompson
Senator Fitzgerald
Senator Shilling
Representative Vos
Representative Hintz

Dear Governor Evers,

Thank you for your efforts to rapidly respond to the COVID-19 pandemic. We recognize the public health emergency is evolving and unfolding. The purpose of this letter is to offer strategies to help high risk populations successfully self-isolate, prevent the spread of infection and ensure continuity of care. Additionally, it is essential to protect the businesses and workers who provide critical long-term care and other services. Continuity of Medicaid and vocational rehabilitation funding is essential to ensure that this workforce is sustained to continue to pay workers and retain a qualified workforce.

People with disabilities and older adults are at high risk as COVID-19 spreads across the country. This population faces a greater risk of complications and death if exposed to the outbreak. It is essential that they isolate themselves for protection. Critical in-home supports are needed so that people with disabilities may safely remain in their homes. Care in institutional or other congregate settings in violation of their rights and at risk to their health.

Nondiscrimination in "Triage" Policies

As scarce testing and treatment resources are deployed it will be critical for DHS to ensure that Medicaid providers do not discriminate against people with disabilities or older adults. Any policy for resource deployment must be based on objective medical criteria that do not intentionally or inadvertently lead to people with disabilities or older adults being disproportionately denied testing or treatment. It must proactively inform providers that any internal policies they develop must be similarly nondiscriminatory. In particular DHS must prohibit inclusion of any criterion that explicitly or implicitly makes "quality of life" a consideration in any so-called "triage" policy. "Quality of life" has long been a pretext for denying treatment, including life-sustaining treatment, to vulnerable populations, particularly people with intellectual disabilities. It requires vigilance on the part of DHS to prevent it from happening during this emergency.

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Caregiver workforce

Many people in Family Care, IRIS and the Children's Long-Term Support (CLTS) programs (Medicaid Home and Community-Based Services Waivers) rely on daily in-home care (personal care, home health etc.) from professional caregivers who travel between client homes.

A caregiver worker who becomes infected may expose many people with disabilities and older adults with underlying health conditions to the disease. Wisconsin already has a significant shortage of caregivers. We are concerned that as workers become infected or exposed, adhere to quarantine requirements, or are hospitalized, the limited pool of workers will shrink to untenable levels. Some participants may have a network of natural supports that can cover some daily care needs, if they do not become sick themselves. However, a significant number of people do not have unpaid support options. Institutional facilities may be at greater risk for outbreaks, face the same workforce shortages, and have limited capacity.

Recommendations

- We recommend DHS issue guidance on any special precautions caregiver workers should be taking to further minimize risk to themselves and others.

- We recommend DHS issue guidance to provider agencies regarding the flexibility they have to reassign staff, enable staff to perform additional care services, and broaden criteria to recruit the greatest number of workers possible to ensure the daily care needs of participants continue to be met.

- We recommend DHS develop a messaging strategy for long term care waiver participants to understand what process they should follow to ask for help should they find themselves in a situation where their daily care needs are not being met.

Family Caregivers

When programs or schools are closed, families may be under extraordinary pressure to fill-in additional care hours. Family members may be forced to choose between their paid work and providing care to a loved one who is now at home during the day. Many people with disabilities live with aging caregivers who may also be reluctant to allow their loved one with disabilities to receive services from outside caregivers, given the health risks. It is important to ensure families are supported and policies and funding are flexible to meet their needs.

Recommendations:

- Waive restrictions on certain family members providing paid direct care, including family members between 16-18 years of age.

- Temporarily waive certain background check requirements so relative workers can be approved to provide paid care quickly.

- Expedite or temporarily amend training requirements for family members to be paid to provide care.

- Extend existing prior authorizations and waive prior authorization requirements for new service needs.

- Temporarily waive individual budget amendment requirements to ensure care can be provided in the least restrictive community-based setting.

- Ensure short-term respite options are available to family caregivers, particularly older adult caregivers.

- Create a process of telehealth check-in with families in self-isolation or quarantine, particularly elderly caregivers, to ensure caregivers have proper support and rest.

Residential, Employment, Transportation, Day Services

Family Care, IRIS, and Children's Long-Term Support waiver participants rely on Medicaid-funded long-term care services to access basic health care services as well as services that ensure their functioning, independent living, and well-being. Services older adults and people with disabilities and their families rely upon include nursing and personal care services, specialized rehabilitation and other therapies, intensive mental and behavioral health services, prescription medications, benefit and employment services, residential services, transportation services, and other needed services. Access to these services is often a matter of life, death, independence, and civil rights.

Medicaid functions on a reimbursement model. Many Medicaid HCBS Waiver Services, as well as Mental Health Services through the Comprehensive Community Services and Community Support Program, services can only be billed when face-to-face with the client. However, it is possible to deliver some needed services effectively via the use of distance technologies. Public health measures that impact services provided in congregant settings may temporarily impose a prohibition against provision of certain services or require adjustments to an individualized service delivery model. Providers may be required to close offices. Many workers may be laid off because worker wages are tied to Medicaid reimbursement, and non-Medicaid cash flow is insufficient to make payroll.

The impact to Wisconsin's overall economy and workforce should Medicaid providers go out of business is immense and threatens to critically undermine the long-term infrastructure and capacity to provide services in our communities. Many providers are already reporting they will have no choice but to lay off staff if they are not allowed to provide remote services or otherwise conduct meaningful invoiceable work. Wisconsin stands to lose a well-trained and highly skilled workforce in many areas.

Recommendations

Survival coalition recommends implementing strategies to:

- Streamline service authorization to allow changes/increase in hours or change in services through a presumptive approval process and require MCOs to follow DHS directives.

- Temporary eliminate face-to-face meeting or interaction requirements for service delivery wherever possible based upon the service type.

- Extend service plans by 3 months, when needed. There will be situations where a planning meeting cannot take place and services need to continue.

- Expedite approval attendants/employees in the event that a person's primary attendant is ill and a new attendant is quickly needed.

- Ensure people with disabilities and older adults have access to a 90-day medication and medical supply fills.

- Allow use of mail order pharmacies, remove limits on refills authorized via telehealth visits, and remove restrictions on mail order pharmacies across state lines.

- Remove short fill terms, such as those imposed under the Controlled Substance Act prohibitions, strict prior authorization requirements, and other bureaucratic barriers.

- Expand access to medically necessary equipment.

- Facilitate and lead a process to identify individuals who are at greatest risk of harm or other vulnerabilities, particularly people who do not have natural supports or other support systems available.

- Allow use of regular program funds to pay staff who are teleworking or put on mandatory leave during the COVID-19 response time, and that it is an allowable expense to pay staff placed on mandatory leave.

- Provide guidance around who may be considered as essential workers, or who is eligible for hazard pay.

- If workers use unemployment benefits, waive re-employment service sessions and reimburse the employer agency for its increase in unemployment costs.

CMS developed appendix K of the section 1915(c) waiver application for use by states during emergencies; we recommend exploring use of appendix K to address Coronavirus impacts to do the following:

- Modify provider qualifications and location (temporarily expand settings) to allow providers of group day services and community engagement services to provide services to individuals living in group homes in group home settings. This could increase capacity of group home providers should they have staff who are ill and provide a funding source for group day and community engagement providers who may otherwise go out of business if there are extended closures as a result of expectations for social distancing and quarantine.

- Consider a rate adjustment for group home providers who may be required to pay significant overtime in order to provide staff support should their workforce experience illness and Other workers must remain on the job to meet needs.

- Temporarily include retainer payments to retain providers who may otherwise go out of business (residential, employment, day, transportation service providers).

- In the event that someone is quarantined in the community, allow flexibility to authorize family members to be paid as providers without needing to demonstrate that no other provider is available and without needing to identify a back-up plan. Develop a seamless and expedited process to approve alternative care providers.

- Increase payment rates to account for the significant health risk to providers (hazard pay), overtime pay, and to solicit a larger pool of providers.

- Allow reimbursement for alternative services (Ex. Adult Day Care/Services closed let staff provide services in home setting), allowing for phone visits/screening in place of in-person assessment.

- Expand telehealth options as an alternate to face-to-face requirements – ADRCs, MCOs, ICA/FEA, home health/personal care intake assessment, mental health counseling, nurse review and case management etc.

- Temporarily modify the timeline for Long Term Functional Screen re-evaluations.

- Temporarily expand the window (currently 15 days) for staff retention payments (similar to bedhold in institutions) for services for the purpose of guaranteeing waiver participants still have help at home after returning from an acute care hospital or short-term institutional stay.

- Maximize use of Telehealth for long term care populations.

- Ensure billing is allowable for remote service delivery options, where appropriate, and communication between providers and employers of people with disabilities to ensure they can maintain their employment during or develop opportunities for after the crisis.

The declaration of a national public health emergency may offer states additional opportunities to request additional flexibility under a 1135 waiver[1] for the emergency period. Survival Coalition encourages the state to submit an 1135 Medicaid Waiver request to:

- streamline provider enrollment processes,

- create the opportunity for providers of affected services, such as employment and day services to provide alternate services,

- waive prior authorization requirements to remove barriers to needed services,

- provide care in alternative settings as needed,

[1] https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/1135-Waivers-At-A-Glance.pdf. Florida, Maryland, and New York have received 1135 waivers.

- provide the flexibility needed to expand the home- and community-based service provider network,
- relax requirements that physicians and other health care professionals be licensed in the State in which they are providing services, so long as they have equivalent licensing in another State,
- extend deadlines for appeals and state fair hearing requests, and
- waive specific eligibility and enrollment requirements to expand access to services (work requirements, premiums, income).

Survival Coalition recommends Wisconsin request an emergency declaration under the Stafford Act to allow for flexibility related to the use of Older Americans Act program funds (across titles) to provide additional funding to meet local needs – for example transition of congregate meal participants to home-delivered meals dramatically increases the number of home-delivered participants/meals and puts significant strains on dedicated home-delivered meal funding.

The U.S. Department of Transportation is now allowing all transit providers, including those in large urban areas, to use federal formula funds for emergency-related capital and operating expenses, and raises the cap on the federal government's share of those expenses. This flexibility may allow transit agencies to support individual vs. bus transportation (for health and safety reasons) to help people get needed groceries, supplies, prescriptions, etc., as well as to deliver meals and other needed supplies (Ensure, adult diapers, medical supplies, etc.)[2].

Additionally, DVR funds could be leveraged to meet needs during this time as well. This could include benefits counseling due to employment changes, linking people to high demand jobs such as stores, stocking and assisting people with home delivery, staying connected with and preparing people for a return to work in the coming months, and working with youth and their families to complete remote Pre-ETS Training, discussion and support since the youth are not in school at this time.

Institutional Settings

We fear that, as the workforce crisis deepens in the face of the pandemic, people with disabilities may be forced into institutional and other congregate settings due to worker shortages. Those settings increase risk to the health and wellbeing of people with disabilities, as well as individuals who work in such settings. As we have seen in nursing facilities, controlling this epidemic is extremely difficult in congregate facilities. Such a move would create ahigh risk of harm and would also represent a serious violation of their well-established right to live and receive services in the community. The only way to prevent such an outcome is to ensure that states have the resources they need to support workers and those relying on them, before it is too late.

In addition, for people who are already institutionalized, it is imperative that DHS encourage facilities to creatively solve the problem of allowing families and friends to maintain contact with loved ones in facilities that are essentially locked down. It is highly problematic that in this time of great stress on

2 https://www.transit.dot.gov/about/news/us-department-transportation-announces-increased-flexibility-help-transit-agencies

institutions that one of the major care quality assurance—outside eyes on residents—will be significantly curtailed.

Recommendations

- Strictly follow all CDC and CMS guidance relating to infection control-both for residents and care staff
- Encourage facilities to make it possible to use electronic communication between residents and their families and friends
- Permit in-person contact in end of life situations and other situations where in person contact is critical to the maintenance of the resident's mental health
- When in-person contact happens, encourage facilities to designate a separate meeting area that is as distant as possible from the main part of the facility
- When moving a resident to the separate visit area is not possible because of the health of the resident, ensure that visitors strictly comply with all infection control policies

Additional recommendations

- Immediately approve all Medicaid applications delayed more than 45 days for Temporary Medical Coverage.
- Immediately suspend all Medicaid terminations to keep recipients in continuous coverage and seek federal waiver to suspend redeterminations.
- Approve Medicaid applications, or extend Temporary Coverage, for people with disabilities and older adults in an expedited manner as fast as possible within 48-72 hours

Survival Coalition is comprised of more than 30 statewide disability organizations that advocate and support policies and practices that lead to the full inclusion, participation, and contribution of people living with disability.

Sincerely,

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