

January 13, 2014

VIA EMAIL (RA-PWHEALTHY PA1115@PA.GOV)

Beverly D. Mackereth, Secretary
Department of Public Welfare
P. O. Box 2675
Harrisburg, PA 17105-2675

**RE: COMMENTS ON BEHALF OF PERSONS WITH DISABILITIES ON PENNSYLVANIA'S
PROPOSED SECTION 1115 WAIVER APPLICATION**

Dear Secretary Mackereth,

Thank you for the opportunity to comment on Pennsylvania's proposed application to waive provisions of the Social Security Act governing Medicaid and related state plan amendments (Healthy PA).

These comments are presented on behalf of persons with disabilities. Our organizations, individually and collectively, work with people with disabilities and their families, their organizations, and their advocates. We believe people with disabilities should have equal and unhindered access to employment, transportation, public accommodation, and, of course, health care.

At the outset, we strongly urge Pennsylvania to accept the federal government's offer of expanding Medicaid **as soon as possible** – so that 500,000 Pennsylvanians do not have to wait another year or more to gain access to the health care they need. We believe that Pennsylvania's current Medicaid program can be expanded to address this opportunity **without** waiving provisions of the Social Security Act governing Medicaid. There is no need for Pennsylvania to go through a long negotiation with the Centers for Medicare and Medicaid Services (CMS) over the terms of the Healthy PA application. Neighboring states are already taking advantage of the health care and economic benefits afforded by expanding Medicaid through their existing programs. Pennsylvania should do the same.

GENERAL COMMENTS ABOUT THE APPLICATION

Three components of the waiver application Healthy PA cause us great concern.

First is the **premium requirement** for those between 50 and 100 percent of the Federal Poverty Level. Placing premium requirements on people living in poverty will force people to make untenable decisions between critical expenses such as housing, food and their health care. We oppose the premium requirement and urge the administration to withdraw this request in its application. We are also skeptical about the commonwealth's capacity to collect premiums from hundreds of thousands of

adults. Currently, **only one** category out of dozens within Pennsylvania's Medicaid program, the Medical Assistance for Workers with Disabilities (MAWD), charges a premium and all those individuals have incomes **above** the poverty level. Moreover, even though MAWD covers **only** 33,000 adults, the Department of Public Welfare (DPW) is having difficulty processing MAWD premium payments in a timely and accurate manner. Simply put, DPW does not have the infrastructure to vastly expand its premium processing capacity.

Our second general concern is the **work search requirement** which would mandate that adults working less than 20 hours per week, including those already on Medicaid, would have to prove they are looking for work. Since most people needing Medicaid expansion are already working, this mandate is a solution in search of a problem and would create more red tape for hard working families simply trying to get the health care they need. CMS is likely to reject this requirement since it will be a waste of time and money and, again, flies in the face of the goal of expanding access to health care. In fact, this proposal would place new restrictions on access. We oppose work search requirements and urge the Governor to withdraw this request.

Our third concern is **ensuring that all low-income persons maintain complete access to all current Medicaid benefits** if the Healthy PA proposal to use the private health insurance marketplace is approved. Specifically, Pennsylvania must continue to provide non-emergency medical transportation and access to services from federally qualified and rural health centers to the Medicaid expansion population, regardless of whether they remain in the existing HealthChoices/Fee-For-Service System or in a private plan. We urge the Governor to withdraw any elimination of these benefits from the waiver application.

ADDITIONAL CONCERNS FOR PERSONS WITH DISABILITIES

We believe the Healthy PA proposal represents a step backwards for many *covered* Pennsylvanians who will see their Medicaid benefits slashed. We strongly recommend that Pennsylvania expand Medicaid without reducing the current state plan Medicaid benefits or access.

1. The Proposal Would Terminate Critical Services to Persons on Medical Assistance for Workers with Disabilities

The Healthy PA proposal would eliminate the Medical Assistance for Workers with Disabilities (MAWD) as a separate Medicaid category. Instead, persons with incomes above 133 percent federal poverty would have to get coverage through the Marketplace. This is especially harmful for at least two reasons: First, a significant number of MAWD enrollees qualify for Home and Community Based Services (waiver) services, even if their income exceeds waiver income limits. The individuals who qualify for waiver

services, like attendant care, through MAWD are all individuals with disabilities who are employed (as employment is a requirement for MAWD). For most of these individuals, the services they receive through the waivers are essential to maintaining their employment as well as their ability to remain in the community. For these individuals, loss of MAWD will mean loss of waiver services; loss that will result in unemployment. This is directly contrary to the Governor's goal of expanding employment for persons with disabilities. Second, persons formerly on MAWD may have to change providers if they are put into the private option and, without the expanded coverage of traditional Medical Assistance, may face serious gaps in previously covered services as explained below.

2. The Process And Criteria for Determining “Medical Frailty” Remains Too Vague

The Healthy PA proposal does not provide sufficient information regarding the process and criteria that will be used to determine whether an individual is “medically frail”. The proposal still has not identified a screening tool(s) to determine whether an individual may be “medically frail/have exceptional needs.” The reliance on responses by applicants/enrollees to questions on the application is also problematic, especially for persons with disabilities or mental illness. Some individuals, for a variety of reasons, will have difficulty with the questions or answer them inaccurately, and then be dangerously underinsured because their level of coverage will be less than their health status warrants. Others, such as those with mental health or substance abuse issues may not report problems either out of the stigma attached to their illness or condition or may be in denial. Moreover, it is not clear the approach proposed by the state will actually identify those who are “medically frail” within the definition set forth in Medicaid regulations at 42 C.F.R. §440.315(f).

3. Healthy PA's Proposed Benefit Redesign Will Harm Consumers

The Healthy PA proposal cuts existing benefits by systematically putting adults into one of two levels of covered services based on an individual consumer's need. Under the proposal, both the “low-risk” and “high-risk” benefit packages are much more limited in comparison to the current benefits. The proposed restrictive limits make the plans insufficient to meet the health care needs of the Medicaid population. The restrictions are capricious and not comprehensible to the consumer. For example, the proposed “high risk alternative plan” which is being created to serve Pennsylvania's “medically frail” population, will limit radiology services to \$750 per year, a service which is currently not limited. The new limit is arbitrary and means little to a consumer who is unable to ascertain the cost of any particular procedure.

New restrictions on hospitalization and rehabilitation visits will leave Pennsylvania's sickest population at home without care instead of in the hands of capable providers.

The Medicaid population will struggle to find providers willing to treat even serious conditions after they have reached the billable limit. Those individuals who are able to find providers willing to treat them will be faced with high medical bills after they have reached the maximum benefit limits.

Current adult consumers on Medicaid (receiving HCBo2) have no limit for medically necessary durable medical equipment and supplies. The proposed “high risk alternative plan,” will limit supplies and durable medical equipment to a combined \$2,500 per year. This arbitrary limit will leave many unable to obtain even one piece of durable medical equipment, such as a wheelchair or an insulin pump. The aforementioned concerns apply to nearly every category of benefits listed in the Healthy PA proposal. The high-risk and low-risk plans include new, drastic limits on radiology, lab work, inpatient hospitalization, mental health and behavioral health services amongst others.

4. The Proposal Does Not Conform to Federal Mental Health Parity Requirements

The Healthy PA proposal illegally reduces mental health benefits. The Mental Health Parity and Addiction Equity Act of 2008 prescribes that a plan that provides both physical and behavioral health benefits cannot apply a more restrictive treatment limitation to mental health and substance abuse services than it does to physical health services of the same classification. Healthy PA proposes three non-emergency admissions per year for inpatient physical health hospitalization. Inpatient psychiatric hospitalization is limited to 45 days per year. The distinction between admissions and days per year does not comport with the Mental Health parity requirements because even one physical health admission could easily last longer than the 45 day psychiatric limit.

5. The Benefit Limit Exception Process Will Not Be Effective

The Healthy PA proposal suggests that a benefit limit exception process will exist to act as a catch-all for individuals needing services beyond the limits of the new proposed plans. However, DPW will grant exceptions to the benefits limits in the high- and low-risk plans *only* if the recipient can demonstrate the denial of the exception will jeopardize the individual’s life or will result in serious deterioration of her life, the exception is a cost effective, or granting the exception is necessary to comply with federal law.

The current benefit limit exception process, for the few categories in which limits exist, is not effective. Very low approval rates for benefit limit exceptions discourage consumers, as well as providers, to submit requests. Consumers currently subject to dental and prescription limits routinely report that providers are reluctant to submit the cumbersome requests. Additionally, the proposal offers no clarity on the promptness in

which they will be handled nor time limits for making exception decisions or remedies if a decision is not made in a timely basis. Simply put, the exceptions process will prevent consumers from getting appropriate care.

CONCLUSION

In closing, as Pennsylvania prepares to submit a formal waiver application, we hope the Governor considers the experiences of our neighboring states—specifically New Jersey and Ohio—that simply expanded coverage without waiving provisions of the Social Security Act governing Medicaid.

Thank you for this opportunity to provide comments.

ACHIEVA

ALPHA Pittsburgh, Inc.

The Arc Alliance

The Arc of Pennsylvania

Consumer Advisory Board of the AIDS Coalition of Southwestern Pennsylvania

Disability Rights Network of Pennsylvania

Institute on Disabilities at Temple University

Mental Health America of Westmoreland County

Mental Health Association & Compeer of CSV

Mental Health Association of Northwestern PA

Mental Health Association in Pennsylvania

Mental Health Association of Southeastern Pennsylvania

Message Carriers of Pennsylvania

National Alliance on Mental Illness (NAMI) Southwestern Pennsylvania

National Alliance on Mental Illness (NAMI) of Erie County

Pennsylvania Advocacy and Resources for Autism and Intellectual Disabilities

Pennsylvania Health Law Project

Pennsylvania Mental Health Consumers' Association

Vision for Equality

