

January 26, 2012

The Honorable Kathleen Sebelius, Secretary
United States Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

The undersigned organizations write to express our concern about the provisions of Wisconsin's recent request for a demonstration Section 1115 Medicaid waiver. This request proposes to waive the maintenance of effort (MOE) provisions of the Affordable Care Act. Many of our organizations expressed concerns about waiving the MOE in a previous letter sent to you on February 14, 2011 regarding Arizona's Section 1115 demonstration proposal. We have similar concerns with respect to the Wisconsin request.

Approving this request would set a precedent that we believe would be harmful for children, families and people with disabilities and is not compatible with your legal authority under Section 1115 of the Social Security Act. Section 1115 authorizes "experimental, pilot or demonstration projects" that are "likely to assist in promoting the objectives" of Medicaid. Waiving the MOE will only serve to allow Wisconsin to make changes that cause families to lose coverage as described below. We believe that this does not further the purposes of the Medicaid statute nor does it serve a useful research purpose.

The MOE waiver that Wisconsin is proposing would raise premiums to five percent of family income on families with incomes above 150 percent of the poverty line. According to Wisconsin's Legislative Fiscal Bureau, this change would cause more than 19,000 individuals from BadgerCare to lose coverage, about 12,100 of whom are children. As CMS has made clear in guidance, raising premiums on those protected by the MOE constitutes a violation of the MOE provisions with limited exceptions not relevant to Wisconsin's proposal. Those figures are very conservative because they are based on the premium increase alone, and don't take into account the combined impact of the higher premiums and the sharply higher co-pays that have been proposed by the state in its Alternative Benchmark Plan. Research has shown that making health care more expensive places a heavy burden on low-income families, and as a result they often delay or limit access to needed care, leading to poor health outcomes.

Parents in families with incomes above 100 percent of the poverty line and children with family income above 133 percent would be excluded from BadgerCare under this proposal if they have access to employer coverage and that costs less than 9.5 percent of their family income. The state's Fiscal Bureau projects that this policy would cause 28,000 BadgerCare beneficiaries to lose coverage.

We believe that Section 1115 demonstration projects should test and evaluate new and innovative approaches to providing health care to Medicaid beneficiaries and other low-income persons. We do not believe that eliminating coverage for thousands of persons is consistent with Section 1115 authority as it would not promote the objectives of Title XIX nor would it provide an opportunity to test any reasonable hypothesis about providing or improving coverage.

We see no valid research purpose in increasing the number of children and parents without insurance. Thank you very much for considering our views on this matter.

AARP

AFSCME

American Cancer Society Cancer Action Network

American Diabetes Association

American Heart Association

Bazelon Center for Mental Health Law

Center on Budget and Policy Priorities

Community Access National Network

Easter Seals

Families USA

First Focus

Georgetown University Center for Children and Families

HIV Medicine Association

March of Dimes

National Alliance to Advance Adolescent Health

National Association for Children's Behavioral Health

National Association of Social Workers, Wisconsin Chapter

National Consumer Voice for Quality Long-Term Care

National Council for Community Behavioral Healthcare

National Senior Citizens Law Center

Planned Parenthood Federation of America

The Arc

Voices for America's Children