September 6, 2013

Cindy Mann, Director
Center for Medicaid and CHIP Services
Centers for Medicare and Medicaid
Department of Health and Human Services

Re: AARP Comments on the Arkansas Health Care Independence Medicaid Section 1115 Waiver Application

Submitted electronically through Medicaid.gov

Dear Ms. Mann:

AARP is pleased to submit comments on the Arkansas Health Care Independence Medicaid Section 1115 Waiver Application. AARP is a nonprofit, nonpartisan organization, with a membership of more than 37 million, that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

Arkansas is proposing a unique strategy for assuring health coverage to its low-income citizens through the Arkansas Health Care Independence Act of 2013. AARP supported this initiative through its advocacy in Arkansas and continues to support the implementation of the Private Option to provide health care coverage for low-income Arkansans. This three-year statewide demonstration would use premium assistance to help low-income healthy adults purchase qualified health coverage through the new Arkansas Insurance Marketplace (the Exchange). Medicaid beneficiaries would receive an Alternative Benefit Plan (ABP) and “have cost sharing obligations consistent with both the Medicaid State Plan and with the cost-sharing rules applicable to individuals with comparable incomes in the Marketplace.”

This public-private partnership has received widespread publicity as an alternative model for expanding Medicaid under the Affordable Care Act. As the details of how expansion will be implemented are being reviewed, AARP would like to ensure that CMS and Arkansas continue to include and incorporate consumer input. Together, we will be better able to develop a waiver that addresses the concerns of Arkansans who may have no health insurance or Medicaid coverage today, but welcome health security and access to timely health care in the near future. In reviewing the waiver application, however, there are several areas where we believe the plan can be improved. We urge CMS to work with the Arkansas Department of Human Services (DHS) to address the following key areas before approving the waiver:
Screening and Enrollment

The process for determining eligibility and enrollment in the premium assistance demonstration will be critical to ensuring newly eligible beneficiaries enroll in health coverage that best meet their needs. In order for it to work effectively, the process must be streamlined and accessible so all potential enrollees have the information necessary to fully understand their options and access the application process in a consumer-friendly manner. The proposal outlines a framework for determining whether individuals are eligible for Medicaid premium assistance and will be mandatorily enrolled in a Qualified Health Plan (QHP) or are medically frail or have exceptional needs, such as long-term services and supports, and are exempt from the demonstration. Arkansas proposes to use an online screening tool consisting of twelve questions covering several domains to assess whether an individual may be medically frail or have exceptional medical needs.

According to the application, the screening process is meant to be prospective at the time of enrollment and will be conducted annually by Arkansas Medicaid, and a process will be developed for mid-year transitions to traditional Medicaid for “individuals with emerging medical needs that lead to a predictable and significant need for additional benefits during the plan year.”

AARP believes a mid-year transition process is inadequate and enrollees who have changing medical needs should be reassessed at any time as their needs change. Arkansas should ensure that the process for determining need is evidence-based, and individuals are reclassified as medically frail as soon as possible after a change in status occurs. There is a need for more clarity in how medically frail or exceptional needs will be defined, what assumptions will be incorporated into the screening tool to make this determination, and the reliability of the screening tool methodology in accurately assessing individuals’ needs. The proposal does not specify the definition of medically frail that will be used. Instead, it says an algorithm will be calibrated to identify “the top ten percent expected costs among the newly eligible population.” We believe determining the medically frail in this way is inconsistent with the Medicaid statute and regulations, which require all who meet the definition to be included regardless of their expected health care costs. As the screening tool is still being developed, we strongly urge Arkansas to test the tool’s accuracy and reliability and seek stakeholder input before the tool is finalized.

AARP believes more information is needed on how individuals who are potentially eligible will be notified of the enrollment process, its timeframe, and the steps involved. We are pleased to see that individuals will be enrolled in FFS Alternative Benefit Plan while completing the screening process and selecting a QHP. This will prevent disruptions in coverage that could jeopardize continuity of care. We are also pleased that the waiver application provides retroactive coverage for three months prior to when the beneficiary is determined eligible for premium assistance, and that such coverage will be provided through the Medicaid agency.

There also needs to be greater detail provided on how individuals determined to be exempt from the demonstration will be presented with alternative coverage options under the Alternative Benefit Plan or traditional Medicaid. For those individuals determined to be eligible for the demonstration, the application notes, particularly in 2014, “operational aspects of the enrollment process may result in a significant number of individuals being
auto-assigned.” For this reason, we encourage Arkansas to enhance the auto-assignment process to consider factors such as continuity of care and provider relationships. As it stands now, the auto-assignment process outlined in the application focuses on assigning plans based on QHP market-share instead of the needs of individuals. We encourage Arkansas to develop a more sophisticated, intelligent assignment process for 2014, to the extent practicable, that incorporates factors such as beneficiary-provider relationships and QHP quality and performance experience, as is currently planned for 2015 and 2016. We believe the opt-out period for auto-assignment should be extended to 90 days for all enrollees, whether or not they are auto-assigned, as guaranteed under Medicaid managed care regulations. Other beneficiary protections regarding disenrollment provided under Medicaid managed care regulations (e.g., the ability to dis-enroll for cause at any time) should also apply to the extent they are not separately required under QHP regulations. We are disappointed that the DHS removed the provision adopting 12 months of continuous eligibility for newly eligible beneficiaries, and encourage Arkansas to revisit this proposal as soon as feasible.

Outreach and Education

AARP is concerned the proposal does not adequately lay out an effective outreach and education plan on how new potential beneficiaries will be reached and educated on the premium assistance demonstration, and the options available to them. While we appreciate Arkansas has indicated they will reach out to SNAP recipients about coverage available under the demonstration and provide this population with a streamlined enrollment application, we believe that a more comprehensive and intensive outreach and assistance effort is necessitated under the demonstration to assist the newly eligible population in selecting a QHP, and it should be spelled-out in advance of the demonstration being approved by CMS.

Cost-Sharing

We appreciate that beneficiaries with incomes below 100% of the FPL will not have cost-sharing obligations in 2014, cost-sharing for beneficiaries between 100-138% of FPL will be consistent with Medicaid and Marketplace rules, and cost-sharing will not be required for beneficiaries who are exempt under federal Medicaid law. Arkansas plans to request authority to amend the waiver to include cost-sharing for beneficiaries between 50-100% of the FPL in 2015 and 2016. While this is not part of the current waiver application, we have serious concerns about this plan as it would likely result in reduced access to needed care or create undue service barriers. Indeed, current federal Medicaid law limits cost-sharing for this income cohort to nominal levels for the very reason that research has shown cost-sharing reduces access to services and causes low-income individuals to forego necessary care. We believe any future changes in cost-sharing should be subject to comment and separate review at the time a proposal is submitted.

Arkansas proposes that, for individuals between 100-138% of the FPL, aggregate annual cost-sharing will be capped at 5% of 100% of the FPL ($604 in 2014). Arkansas also proposes that providers will be responsible for collecting all applicable co-payments at the point of service, and plans will monitor beneficiaries’ aggregate amount of copayments to ensure they do not exceed the annual limit. The proposal needs more clarity on the
process for how QHPs will monitor beneficiary cost-sharing and how the state will ensure protections are in place consistent with Medicaid regulations. We also urge more clarity on how the demonstration will comply with all federal cost-sharing limitations -- including capping cost-sharing expenses for the household, and not the individual, and calculating cost-sharing on a monthly or quarterly basis as required, as opposed to an annual basis as currently proposed.

Benefits Package

We understand the state plans to use the same definition of Essential Health Benefits (EHB) for both QHPs and the ABP, so that the benefits available will be nearly identical. With the state plan amendment on ABP pending, it is important to know the differences, if any, between covered benefits under the ABP and the standard state plan benefits package. It is also unclear how QHPs will determine medical necessity in making coverage decisions, and how those guidelines will differ from federal Medicaid medically necessity determination standards. We support the provision of wrap-around benefits required for the ABP but not covered by QHPs, such as non-emergency medical transportation, and encourage Arkansas to notify enrollees in a clear, understandable fashion about how to access to these benefits through Medicaid FFS, including providing information through QHP call centers.

Arkansas also proposes that the prescription drug coverage for demonstration beneficiaries will be limited to the drugs in the QHP’s formulary. In seeking this waiver authority, beneficiaries are likely to be limited to less robust drug coverage than is available under standard Medicaid. As such, beneficiaries could lose coverage for prescription drugs otherwise covered by Medicaid resulting in drug non-adherence and adverse health effects. While we understand that the ABP may include a closed drug formulary, we believe it is essential that Arkansas monitor QHP drug formulary restrictions closely and take steps to ensure beneficiaries receive continued access to needed medications. Further, we urge DHS to ensure that QHPs provide coverage of all mandatory Medicaid services in the same amount, duration, and scope for all eligible beneficiaries.

Arkansas proposes that the non-emergent use of emergency rooms not be a covered benefit under the demonstration since non-emergency use of the emergency room is neither an EHB nor a mandated service in the ABP. We are concerned that complete denial of these claims as a first step could be disruptive to patterns of care for previously uninsured individuals who have come to rely on the emergency room as their only access point for needed health services. We therefore urge flexibility in the application of this provision. We appreciate that Arkansas will provide educational materials describing the appropriate use of the emergency room and will notify beneficiaries that non-emergency use of the emergency room is not covered under the ABP. Arkansas should also work with QHPs and providers to ensure better enrollee education with respect to alternative sources of these services through the QHP’s provider network. In addition, we believe QHPs should apply the required prudent layperson standard in determining non-emergency use of emergency rooms. Further, we believe any emergency department visits covered under the ABP should be subject to the Medicaid cost-sharing limits.
Appeals

Arkansas proposes that demonstration beneficiaries use the QHP appeals process instead of the state fair hearing process to appeal coverage determinations. We urge the state to reconsider this approach and grant beneficiaries access to the full Medicaid appeals process, or one that is equivalent. Because these plans are funded with Medicaid dollars, the same notice and hearing rights should apply to disputes concerning whether an individual is eligible for Medicaid services or an enrollee has a medical need for a particular medical service regardless of how the benefit is administered. Beneficiaries should continue to receive benefits pending appeal as required under federal Medicaid law. We seek assurances that individuals’ due process rights and all existing Medicaid protections are maintained; that dispute situations are fairly and expeditiously resolved; that individuals continue to receive adequate notice of state agency actions and a meaningful opportunity to have unfavorable administrative decisions reviewed with reasonable promptness; that coverage of care continues pending resolution of the appeal; and that Medicaid applicants and beneficiaries have the right to request a fair hearing on eligibility determinations and coverage issues. This will ensure that beneficiaries under the demonstration have access to all of the notice and hearing rights to which Medicaid beneficiaries are entitled under federal law.

Oversight

Arkansas proposes that the state enter into written agreements with Marketplace health plan issuers outlining expectations regarding payment of premiums, enrollment verification, referrals of medically frail individuals and other related issues. AARP believes that states have an obligation to provide effective oversight of the programs with which they contract to provide services to their frailest and most vulnerable citizens. Arkansas should not be permitted to reduce its Medicaid role and responsibilities to low-income individuals by simply relinquishing these functions to health plans. Final accountability for the performance of Medicaid-funded QHPs must remain with the state. We urge Arkansas to include more detail regarding QHP oversight to assure CMS and the public that its proposed plan will be adequately monitored and enforced. The details should be clearly specified in legally-binding contractual agreements with the health plan issuers, as opposed to written agreements or MOUs, setting out the rights and obligations on both sides. We believe that contracts would allow Arkansas to better enforce data reporting and ensure the transparency of evaluative data to the public on quality, health outcomes, and access to care in the demonstration.

Conclusion

AARP is pleased to continue to support the efforts of the Arkansas Department of Human Services to strengthen and implement a unique strategy to address the serious lack of access to health care among the uninsured in Arkansas. It is a reasonable step in the right direction. Many important objectives will be tested during this demonstration, such as reduced churning and coverage gaps, increased provider access for newly eligible adults, more consistent access to preventive services, and improved quality care over time. We look forward to working with CMS and Arkansas to address the issues discussed above and the evolving questions of how to best implement this new Medicaid 1115 waiver. We
also note that Arkansas anticipates making significant amendments to the waiver to initiate changes to the demonstration to impose additional cost-sharing and to establish a health savings account pilot after year one. We expect these future proposed changes will be open to a full public comment period to allow interested stakeholders an opportunity to provide continued feedback on the demonstration. Our continued collaboration and open communication will help ensure that the needs of vulnerable, low-income Arkansans are addressed while balancing sound fiscal parameters that will mean a sustainable, successful program for the long-term.

Thank you for the opportunity to comment on the Arkansas Health Care Independence Medicaid Section 1115 Waiver Application. If you have any questions, please do not hesitate to contact KJ Hertz on our Government Affairs staff at (202) 434-3732 or khertz@aarp.org.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs