

July 27, 2023

VIA ELECTRONIC SUBMISSION

Secretary Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
Re: Illinois Healthcare Transformation Section 1115 Demonstration

Dear Secretary Becerra:

Legal Council for Health Justice comments to share our strong support for the comprehensive and well-considered proposal for extending the Behavioral Health Transformation Section 1115 Demonstration.

Introduction

For over 30 years, Legal Council for Health Justice (“Legal Council”) has served individuals, children, and families living with chronic, disabling, and stigmatizing health conditions. Legal Council represents individuals and families across the lifespan, who are often experiencing compounding social issues that threaten their health, well-being, and potential to thrive. In particular, we provide legal services to hundreds of Illinoisans who are homeless or unstably housed each year and see the specific issues that these clients face in accessing health coverage and care. Legal Council also advocates on the systemic issues that create health inequities for our client communities. Legal Council has assisted thousands of Illinoisans in obtaining, maintaining, and re-establishing eligibility for government services and support, with a particular focus on the Medicaid program.

Legal Council believes Illinois’ proposals will support the objectives of the Medicaid program by improving coverage for enrollees and advancing equity for Black and Brown Illinoisans. Overall, Legal Council strongly supports the proposed waiver extension. We commend Illinois for working to ensure that data related to HRSN benefits be captured, tracked, and available for reporting. Accurate, reliable reporting is essential not just for budget neutrality purposes but also to ensure that enrollees receive services as part of care coordination and to facilitate overall demonstration monitoring and evaluation.

Public engagement.

We also recommend that CMS work with the state to assure that the demonstration supports using community-based providers to deliver services. The demonstration provides a significant

opportunity to include community-based providers in delivering waiver services. Still, Medicaid managed care organizations (MCO) in Illinois have limited experience partnering with small, community-based providers and lack a network or experience contracting with these providers, such as developing appropriate rates for non-clinical services. Similarly, community-based providers generally need more infrastructure to negotiate rates or services effectively with MCOs.

A. Medical Respite

Our clients who are homeless and facing serious mental health challenges routinely need and can rarely access medical respite care—either to end or to avoid an acute hospitalization. We see clients discharged to shelters that are utterly unequipped to care adequately for them or warehoused in inappropriate and expensive acute care beds without access to the services and supports they need for independent living in the future. The current health coverage options for these individuals are fundamentally inadequate. We strongly support the proposed waiver’s plan to provide medical respite for this population.

B. Food and Nutrition Services

Our clients frequently experience food insecurity and food access is often hampered by their complex medical needs. We strongly support the waiver provisions around food access and assistance in applying for SNAP. Food is health, and recognizing that Medicaid members with significant behavioral and mental health needs have even greater barriers to adequate nutrition is an important step forward for the Medicaid program. Likewise, accessing benefits like SNAP presents particular and acute challenges for individuals who are medically complex and homeless. Ensuring that SNAP functions as it should to prevent hunger in this population depends on the support included in the waiver proposal.

C. Non-Medical Transportation

Transportation to access critical services, food, and medications often presents a significant challenge for our clients. These clients are surviving with essentially no income, and even access to public transportation is cost prohibitive. Because of structural disinvestment, our clients often stay in neighborhoods that are food and pharmacy deserts with services either a non-walkable distance or requiring foot travel through areas that may be unsafe. Eligibility for services has no meaning if you cannot access them; therefore, we strongly support the proposed waiver’s transportation component.

D. Justice-Involved Community Reintegration

Legal Council is thrilled to see what we have long known are best practices for this population included in this waiver proposal. It is time to ensure that individuals transitioning from the justice system can access the care they need for a successful process. We have witnessed far too many clients fall out of care at this transition through no fault of their own, only to experience significant mental health crises that are, at best destabilizing and, at worst, lead to re-incarceration. This harm is pointless, avoidable, and cruel, and we fully support the Department’s plan to address it. Gaps in coverage and care contribute to a litany of poor health outcomes and compound the harmful effects of mass incarceration and the over-policing of people of color, mainly Black and Brown people. We strongly support Illinois’s request to provide

services in the 90 days prior to release. Covering a targeted set of services (including enhanced care management and coordination, MAT, and a 30-day supply of medications (including MAT) and DME) during the last 90 days of incarceration for a defined high-needs population is critical to ensuring the best transition possible.

We urge CMS to have Illinois 1) establish a clear, limited set of covered pre-release services that are tailored to the goal of improving continuity of care as people return to the community and 2) prioritize the use of community-based providers to deliver the services, in addition to the proposed use of MCOs to coordinate care. We also support CMS requiring a Reentry Initiative Reinvestment Plan to ensure that Medicaid funding doesn't simply replace other current funding sources. Finally, we strongly recommend that CMS ensure that the state's correctional system has the caseworker capacity and training necessary to ensure access to Medicaid (enrollment and services). Our experience in Illinois with that capacity has been troubling and is critical to transition success.

E. Housing Supports

Every single day in our practice, we see the connection between the structural and racial barriers to safe and affordable housing that federal, state, and local government policies created and the higher burden of morbidity and mortality among our clients. Serious mental health or substance use issues simply cannot be treated without housing as a medical intervention. Therefore, we strongly support all aspects of the Department's housing supports plan.

From our extensive practice in Social Security Disability and SSI benefits, we see the incredible challenge clients with behavioral and mental health diagnosis face in obtaining the benefits to which they are eligible¹—life-altering benefits that provide income to support permanent, sustainable housing in the long term. Including support on this and all of the pre-tenancy provisions in the proposed waiver are vital to changing the dynamic of homelessness, health decline, hospital admission, incarcerations, and institutionalization, which we have a solid moral and economic motivation to end.

To avoid confusion, we recommend that the state clarify that covering rent or temporary housing of up to six months is a distinct service from pre-tenancy supports since states have long been able to cover pre-tenancy and tenancy sustaining services under state plan authorities because it does not constitute room and board. While the state may choose to limit eligibility for rent/temporary housing to those receiving pre-tenancy or tenancy-sustaining services, it is crucial to identify it as a separate service and avoid conflating these distinct services to maintain clarity about which services states may and may not cover using various authorities.

Community Reinvestment Pool

We support the state's proposed Community Reinvestment Pool, which would be spent on implementing HRSN initiatives in historically underserved communities. However, the reallocation of DSH funding requires comprehensive monitoring and evaluation. As a starting point, CMS should require that the state seek input from its Medicaid Advisory Committee

¹ See https://www.ssa.gov/open/data/disability_reconsideration_average_processing_time.html.

(MAC) and the MAC's subcommittees as it develops strategies and interventions that the Community Reinvestment Pool will support and that the MAC be consulted prior to deployment of any such strategy. CMS should require the state to evaluate the impact of re-allocating funding on access to care (when uncompensated care funding is reduced) and the state's safety-net infrastructure.

CMS should carefully evaluate the Continuum of Care Facility Licensure proposal.

We have concerns that this proposal, as written, risks creating a more institutional environment. The "continuum of care" concept is rooted in problematic assumptions—most concerningly, individuals with the highest needs can only be served in an institutional setting. The reality is that the entire continuum of care can be provided in home settings, and it is the lack of home supports that makes transitions necessary across the continuum. We urge CMS to weigh feedback from enrollees with disabilities and advocacy organizations carefully and to consider the impact on HCBS infrastructure development of the proposal. We do not want to move forward in Illinois by decreasing incentives to build robust HCBS infrastructure to support individuals living in their communities of choice.

Conclusion

In closing, Legal Council expresses our thanks for the exhaustive efforts of the Department to address long-known problems facing people with behavioral and mental health issues with evidence-based and humane solutions.

Thank you for the opportunity to comment,

/s/Caroline Chapman

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