NSCLC
National Senior Citizens Law Center

PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

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Via Electronic Mail
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The National Senior Citizens Law Center appreciates the opportunity to comment on the proposal submitted by the state of Washington for its demonstration to integrate care for dual eligible individuals. NSCLC is a non-profit organization whose principal mission is to protect the rights of low-income older adults through advocacy, litigation, and the education and counseling of local advocates.

Positive elements in the proposal

Many aspects of the Washington proposal reflect thoughtful analysis and a realistic appreciation of the challenges involved in a fully integrated system:

Groundwork. Washington is one of the better prepared states to undertake a demonstration project. The state has a long-standing commitment to providing long-term services and supports in the community and has experience with efforts to integrate services.

Timing. Washington recognizes the challenges of full integration and wisely has proposed a phased approach. We appreciate the state's decision to postpone implementation of Strategies 2 and 3 until 2014. We also appreciate the state's acknowledgement that the number of counties ready to undertake a fully capitated model will be limited.

Evaluation. The state is proposing to compare impacts between counties where the demonstration is implemented and counties that are not part of the demonstration (proposal at 30). The state is also proposing to track the first cohort of duals in integrated capitation against a matched comparison group. This use of control groups, missing in other state proposals, is an essential element of a real demonstration.

Stakeholder Involvement. The establishment of the HealthPathWashington Advisory Team is an important concrete response to the need for ongoing and meaningful stakeholder participation in the demonstration.

Issues of Concern

Passive enrollment and lock-in. Washington proposes passive enrollment for both Strategy 2 and Strategy 3 with a 90 day lock-in. We understand that CMS has determined that it will prohibit any lock-in on the Medicare side and we applaud that decision. We oppose a lock-in on the Medicaid side as well. We also urge CMS to reject passive enrollment and require genuinely voluntary enrollment through an opt-in process.

> *Recommendation*: CMs should require an entirely voluntary opt-in enrollment process, with no lock-in, for all three strategies in the Washington proposal.

Enrollment choice counseling. We believe that an independent enrollment broker is critically important for genuine beneficiary choice and appreciate that Washington is proposing use of such a broker. The Washington proposal, however, is contingent on CMS funding of the broker contract. We ask that CMS require all states to use enrollment brokers whether or not CMS provides funding. We also note that Washington is proposing to use SHIBA staff and other existing resources to help counsel beneficiaries (proposal at 14) but does not appear to be ready to support this additional workload with financial support. It is particularly important that community based organizations that serve hard-to-reach populations, including dual eligibles with limited proficiency in English, have the tools and resources they need to help these individuals understand their choices and navigate the new systems.

> *Recommendation*: We ask CMS to require Washington to provide the necessary funding to support an enrollment broker and options counseling services.

Care continuity. Washington is proposing that new enrollees in Strategy 2 and Strategy 3 be permitted to retain their existing providers for a 90 day period. That timeframe is inadequate for this population with complex needs. A longer transition also gives plans more time to encourage providers serving members to join the network, allows smoother transitions and helps to discourage disenrollment.

> *Recommendation*: CMS should require a transition period of up to 12 months to ensure continuity of care.

Ombudsman Contract. The proposal does not include a dedicated ombudsman or other independent consumer advocate to assist with appeals and problems navigating the new systems, and identify systemic problems that need to be addressed. As with enrollment, the state is proposing to rely on SHIBA staff and existing community resources without additional funding (proposal at 25). It is unrealistic to layer these additional responsibilities on existing networks.

The absence of any provision for a conflict-free, state funded ombudsman for the demonstration is one of the most serious omissions among consumer protections. The success that Wisconsin has experienced with an independent ombudsman, particularly in addressing LTSS issues, demonstrates that such a position should be part of every state model. While the design of an ombudsman program can vary by state, elements that should be in every program include: independence, experience with LTSS and community

resources, and adequate funding, The position must be structured so that the ombudsman can address both individual and systemic issues and has direct access to state and plan decisionmakers.

> *Recommendation*: Before approving the Washington proposal, CMS should require the state to include provision for an independent ombudsman for the project. CMS should require such a position for all demonstrations.

PRISM.

The state is proposing to use its Predictive Risk Intelligence System (PRISM) tool in connection with assignment to health homes. We believe that use of a uniform tool is valuable and important for ensuring that beneficiaries are treated consistently throughout the state. We have concerns, however, about issues of transparency with the state's PRISM system and about the state's proposal to limit the availability of health homes to individuals who meet certain arbitrary cut-offs.

> *Recommendation*: CMS should require more details from the state about how the PRISM tool will be used and should insist on transparency about its operation. The tool should not be used to deny health home services to demonstration members who wish to use such services.

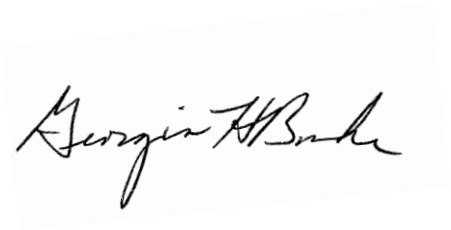
Consumer Protections. No state proposal should be approved without providing enough detail on consumer protection issues so that stakeholders have something to comment on. These critical items cannot be pushed down the road to a closed process involving only the state, CMS and the plans. The Washington proposal includes some good general framework statements about consumer protections but many details are yet to be developed. The state has indicated that the HealthPathWashington Advisory Team will be involved in drilling down on these issues and we encourage that approach. Areas of particular concern where details currently are lacking include: appeals, network adequacy standards, readiness review procedures, and language and disability access standards.

While it is certainly appropriate for many business details to be hammered out in a three way negotiation, consumer protections are different, involving as they do, existing rights under Medicare and Medicaid statutes, under Title VI of the Civil Rights Act of 1964, under the Older Americans Act, under the *Olmstead* decision, and, in many cases, under settlement agreements and consent decrees that bind the state.

> *Recommendation*: CMS should require Washington to develop consumer protections in its proposal that are specific and concrete and to solicit stakeholder input on those specific protections.

Thank you for the opportunity to submit these comments. Please let us know if you have and questions or would like to discuss our comments further.

Sincerely,



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