August 2, 2013

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Re: California's Bridge to Reform Demonstration (No. 11-W-00193/9)
Amendment Coordinated Care Initiative

Dear Mr. Nelb, Ms. Garner, and Ms. Nagle:

On June 18, 2013, the State of California submitted its proposed amendment to its Special Terms and Conditions and Expenditure of Authority of Waiver 11-W-00193/9, California Section 1115 "Bridge to Reform" Demonstration. California made this amendment available to stakeholders and advocates on July 9, 2013. The undersigned have reviewed the amendment and have several concerns that we have summarized below. We would like to arrange a meeting with CMS where we can discuss these issues in further detail.

As a threshold issue, we note that under the Affordable Care Act, CMS must provide a stakeholder comment period when states submit a new waiver request. We understand that CMS has interpreted

this to mean that the comment period is only for initial waiver requests and not for amendments to waivers. We and other advocates have urged CMS to provide a comment period for amendments as well as for initial requests, particularly here, where there is such a major shift in how health care services will be provided in California. Stakeholder input is critical to ensure that California implements the Coordinated Care Initiative (CCI) in a manner that comports with the *Olmstead* mandate and preserves beneficiaries' access to health and long term care services so that they are able to live in the most integrated setting that can meet their needs. Thus, we appreciate your consideration of the comments below, and encourage you to adopt a formal comment period for future waiver amendments.

There are three major components of the CCI. As drafted, the amendment repeatedly fails to effectively delineate what changes are occurring under each of these separate components. The amendment frequently conflates the three components of the CCI, muddling an already complicated set of changes. The amendment should set forth, in very specific language, which requirements apply to which aspects of the CCI. Our listed concerns illustrate where additional specificity is required.

Our other overarching comment is that the amendment should unambiguously preserve the State's existing managed care legislative and regulatory framework as a floor of consumer protections. Over many decades of experience with managed care, California has developed key standards and monitoring requirements in such areas as out-of-network access and continuity of care. These standards were deemed necessary to ensure access to appropriate medical care for historically "typical" managed care patients from healthy families and children, and this rationale applies even more strongly for the greater number of people with disabilities and chronic conditions that will be impacted by the CCI. Moreover, new service areas such as managed long term services and supports (MLTSS), for which managed care will assume responsibility, should be brought within existing regulatory protections and not governed by purely contractual assurances.

1. Default Plan Section
    - The amendment should address how DHCS will prioritize one plan over another in situations where a beneficiary has a history of utilization with multiple providers who are in different plans (p. 5).
    - The amendment fails to specify whether the default formula will consider utilization from ancillary service providers such as pharmacies, laboratories, and durable medical equipment providers in addition to primary care providers, specialists, and long term supports and services providers (p. 5). For beneficiaries with chronic conditions such as HIV and cancer, relationships with ancillary service providers may be as important, if not more important, than relationships with doctors and providers of LTSS, and the default formula should account for these relationships.

2. Network Adequacy and Standards
    - As written, the network adequacy standards listed will only apply to the MLTSS population. The amendment should make it clear that network adequacy applies to the LTSS network for both the MLTSS population and the Cal MediConnect population (p.7).
    - The amendment does not specify how DHCS will monitor the plans' LTSS networks to ensure that they are adequate. Nor does it include what standards DHCS will use to measure network adequacy for LTSS. Because plans have no prior experience with providing LTSS, the amendment should outline DHCS's responsibility to closely monitor the plans to ensure that beneficiaries have access to LTSS.

- The amendment should expressly articulate the beneficiary's right to access services out-of-network in situations where a covered benefit is not reasonably available in-network.

3. Continuity of Care
   - The amendment should make it clear that continuity of care protections apply equally to MLTSS beneficiaries and Cal MediConnect beneficiaries (p. 8).
   - In past transitions, efforts to ensure that a beneficiary's knowledge of his right to continuity of care and his ability to exercise continuity of care protections proved ineffective. Accordingly, the amendment should include more detail on how beneficiaries will access continuity of care protections and what outreach will be conducted and notification employed to inform beneficiaries of their right to continuity of care.
   - The amendment should specify that the Medical Exemption Request process will be available to Medi-Cal managed care beneficiaries, including dual eligibles.
   - The amendment is alarmingly vague with regard to what services and providers continuity of care provisions apply. In past transitions, the most significant issues arose out of a lack of continuity of care. The amendment should specify that continuity of care provisions will apply to provider relationships including primary care physicians, specialists, pharmacies, and other ancillary service providers, including durable medical equipment, as well as to ongoing treatment and services.

4. Care Coordination
   - The amendment should include more detail regarding how referrals to carved-out service providers will occur and how plans will be responsible for coordinating carved-out services (p. 8).
   - Under the amendment, a dual eligible enrolled in a Medicare Advantage plan may be mandatorily enrolled in a Medi-Cal managed care plan that is not operated by the same parent organization. Given that beneficiaries will be in different managed care plans, the amendment needs to further specify which entity will be responsible for care coordination and what care coordination standards will be required.

5. Home and Community Based Services and IHSS:
   - The amendment misleadingly states that Cal MediConnect beneficiaries will receive home and community based services including 1915(c) waiver programs through Cal MediConnect plans (p. 1 and p. 6). In fact, Cal MediConnect plans are not required to provide HCBS waiver services. They have the option to provide waiver-like services but no obligation to do so. Individuals in a 1915(c) waiver are not permitted to participate in Cal MediConnect.
   - The waiver amendment does not go far enough to comply with the *Olmstead* decision, and the CCI's oft-stated goal of expanding the availability of HCBS. The amendment should require plans to provide HCBS waiver services. The current waiver programs may be available to CCI beneficiaries, but as presently configured, they include cost and programmatic limitations that inhibit their viability as an alternative to institutional care for CCI beneficiaries.
   - The amendment sections on reporting (section 21 and 24. p. 2) should include reporting on 1915(c) waivers.
   - The transparency standard outlined in the amendment should be modified to encompass plans' decisions relating to LTSS, and specifically HCBS services (p. 9).
   - IHSS is provided under three options: The Personal Care Services Program (PCSP); the Community First Choice Option (CFCO); and the IHSS -Plus Option (IPO). In Attachment N of the

amendment, the definition of personal care services lists only PCSP as a managed care benefit. CFCO and IPO should be added to the definition.

6. Accessibility
    - Federal and state disability accessibility laws are not limited to "physical" accessibility. The amendment should specify that plans must provide reasonable accommodations and policy modifications that go beyond "physical" accessibility, including full programmatic accessibility for individuals with mental or developmental disabilities, as required by federal and state law (p. 8).
    - The amendment should be strengthened to specify that beneficiary information will be made available in alternative formats (p. 10).

7. Transportation
    - The amendment states that each plan will offer a "limited" number of non-emergency medical transports. The amendment must clearly state what the "limit" is and what process will be in place to determine how much transportation will be dispensed if the "limit" is reached. We are concerned that any limit will hamper access to medically necessary services, especially in geographically isolated areas like the north eastern part of Los Angeles County, and for beneficiaries with ongoing necessary medical appointments like therapy or counseling.

8. Outreach strategy
    - The outreach strategy in the amendment is vague and fails to provide a concrete outreach plan when implementation of the CCI is slated for January 1, 2014.

9. Quality oversight and monitoring
    - The amendment should specify which measures it will utilize to monitor beneficiary well being and plan performance (p. 11).
    - The amendment should also include assurances that DHCS will make the measures available to the public.

10. Freedom of choice
    - Federal regulations require freedom of choice for family planning services and supplies in the Medicaid program, and CMS has consistently confirmed that freedom of choice for family planning cannot be waived. The amendment should explicitly state that freedom of choice is not waived for family planning services and supplies.

We look forward to discussing these concerns in further detail with you and are hopeful we can do so by August 30, 2013. To arrange a meeting, please contact Amber Cutler at the National Senior Citizens Law Center at acutler@nsclc.org.

Sincerely,

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