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RHODE ISLAND'S MEDICAID WAIVER: A BAD DEAL FOR THE STATE

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Key Findings

* The outgoing Bush Administration has offered terms and conditions for the Rhode Island waiver that are a bad deal for the state, because they fail to account for the impact of the recession on Rhode Island.
* The five-year cap on federal funds is too low, making it likely that the state will have to make cuts in benefits, provider payments, or eligibility to stay under the cap.
* Fiscal relief from the federal government is likely to bring hundreds of millions of dollars to Rhode Island, far more than any short-term gain the state might get from the waiver. This prospect gives the state time to consider the many other ways it could improve the quality and cost-effectiveness of its Medicaid program - alternatives that do not lock the state into a five-year cap on federal funds.

In August 2008, Rhode Island applied for federal permission to radically transform its Medicaid program. Rhode Island asked for a fixed amount of federal funds each year along with permission to bypass longstanding federal standards protecting Medicaid beneficiaries.[1]

On December 18, 2008, the federal Centers for Medicare and Medicaid Services (CMS) sent Rhode Island its offer of "Special Terms and Conditions" for the Rhode Island Global Consumer Choice Compact Medicaid waiver. The Rhode Island legislature now has to decide whether to allow the state to move forward with the new plan.

At the heart of the Medicaid waiver is a fundamental restructuring of the way that Medicaid is financed. The waiver would establish a global cap on federal Medicaid funding coming to Rhode Island, that is, a cap on the total amount of funds the state can spend on Medicaid – a change in Medicaid policy that the Bush Administration has been promoting throughout its tenure but that has been rejected by federal and state policymakers alike.[2]

[1] The waiver proposal is at http://www.dhs.state.ri.us/dhs/whatnew/medicaid_reform_2009_Additional_Info.htm. See also, Judith Solomon, "Rhode Island's Medicaid Proposal Would Put Beneficiaries at Risk and Undermine the Federal-State Partnership," Center on Budget and Policy Priorities, September 4, 2008.

[2] Vermont is the state that comes closest and has agreed to two separate global caps through waivers, one for acute care and one for long term care services.

Most Medicaid waivers, such as the Massachusetts health reform waiver, include a per capita cap which puts the state at risk for unanticipated increases in health care costs but not for higher than expected increases in enrollment. For example, if enrollment increases in Massachusetts more quickly than the state expects, Massachusetts still receives federal funds for all beneficiaries. If legislators approve the terms and conditions offered to Rhode Island, the state would be at risk for both increased health costs *and* increased enrollment. Any unanticipated cost increases would have to be paid wholly by the state or the program would have to be cut to fit within the cap. Rhode Island would become the only state to operate virtually its entire Medicaid program under a global cap.[3]

Capping federal funds for Medicaid presents risks for states, beneficiaries and health care providers under any circumstances, but accepting a global cap on federal funds during a recession is especially unwise. Medicaid's matching funding system is designed to provide each state with flexible federal support to meet the health care needs of its most vulnerable residents. The guarantee that federal funds will match a certain percentage of state spending allows states to cover unexpected increases in Medicaid costs resulting from an economic downturn, a new disease or epidemic, new drugs or medical technology, or other factors that are beyond the control of a small state like Rhode Island.

The December offer does not reflect worsening economic circumstances. Significant changes in both the Rhode Island and national economy have occurred since Rhode Island first announced its plan in April 2008. The state is now forecasting a steeper and longer lasting increase in unemployment, which will result in increased need for Medicaid by children and families. Rhode Island is also predicting that an increasing number of Rhode Island seniors will need Medicaid because of depletion of their retirement accounts and other assets. Yet the Governor has agreed to a final offer from CMS that fails to take these trends into account.

It would be especially short-sighted to accept a cap on federal funds given that Rhode Island will likely get significant fiscal relief from the federal government in the forthcoming economic stimulus legislation. Rhode Island is not alone in dealing with increased demand for Medicaid at the same time its revenues are falling. Caseloads are beginning to rise in many states, as they have in previous recessions. For example, Medicaid enrollment nationally among children and adults grew at a 10.2 percent annual rate during the last recession (between federal fiscal years 2001 and 2004).[4]

Over the coming weeks, Congress is likely to enact a temporary increase in the Federal Matching Assistance Percentage (FMAP) for Medicaid as part of the economic stimulus package. The likelihood of significant fiscal relief from the federal government is also a change in circumstances that needs to be considered by the legislature as it considers whether to authorize the waiver. The benefits the state will get from fiscal relief will be far greater than any short-term gain the state

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[3] Administrative expenses, the Disproportionate Share Hospital (DSH) program, and funding to local education agencies (LEAs) are exempt from the agreement as is the case with most waivers.

[4] Center on Budget and Policy Priorities analysis of Congressional Budget Office data. The Kaiser Commission on Medicaid and the Uninsured has also determined that Medicaid enrollment among children and adults increased by an average annual rate of 10.1 percent between December 2000 and December 2003. See Eileen Ellis et al., "Medicaid Enrollment in 50 States: December 2006 Update," Kaiser Commission on Medicaid and the Uninsured, January 2008.

would get from accepting the terms and conditions offered by CMS. With fiscal relief, there is no need for the state to agree to a cap on federal funds that is risky for Medicaid beneficiaries, health care providers, and the state as a whole.

While the amount Rhode Island will receive from a temporary increase in its FMAP has not been decided, the increase is likely to provide the state with significant help in meeting the state's budget challenges. Estimates of how much the economic recovery package will provide to states through a variety of mechanisms have been growing. Current discussions on fiscal relief suggest the total amount of new federal Medicaid funding is likely to be about $100 billion over a period of at least two years. Assuming a similar proportion of the total goes to Rhode Island as in the economic stimulus bill considered by the House last fall, *Rhode Island would receive more than $600 million over the next two plus years in federal Medicaid funds alone.*[5] Congress is also expected to pass the Children's Health Insurance Program as one of its first orders of business, and this legislation will also provide increased federal funding for the RIteCare and RIteShare programs covering Rhode Island's children and families.

If the waiver is adopted, however, Rhode Island residents hit hard by the economic downturn would not get the intended benefit from the federal fiscal relief. The state would remain constrained by the cap, even as enrollment increases. The state would not be able to use the enhanced FMAP as it is intended, to allow spending to rise to accommodate recession-induced caseload increases; the waiver would thwart the purpose of fiscal relief in Rhode Island. At the same time, the state would still be subject to the "maintenance of effort" requirements that will accompany the fiscal relief, and would not be able to cut eligibility. As a result, Rhode Island would have to cut benefits or provider payments to stay within the cap for the time period fiscal relief is in place.[6]

The cap on federal funds in the terms and conditions is well below what the state is likely to need over the next five years — even if there were no recession. In the waiver proposal that was sent to CMS in August 2008, Rhode Island requested a five-year aggregate cap of $12.39 billion. This amount, which includes both state and federal Medicaid spending, was based on the state's projection of what it would spend in the absence of the waiver. The state's forecast of a 9.2 percent annual increase in Medicaid expenditures included a 6.8 percent annual increase in health costs and a 2.3 percent increase in enrollment.

In October 2008, Rhode Island went back to CMS and requested an increase in the trend rate to 10.2 percent, projecting annual growth in health costs of 6.7 percent and enrollment growth of 3.3 percent. The state projected greater increases in enrollment based on two factors related to the deepening recession: projections of worsening and longer-lasting unemployment in the state and an increased need for Medicaid by seniors whose assets had lost value. Based on the higher trend rate,

[5] Under the Senate's bill considered in the fall of 2008, Rhode Island would get less but the total would still exceed $500 million.

[6] The Governor's Office claims that it can ask to revisit the budget ceiling "at anytime" if expenditures are greater than expected. No such provision is in the terms and conditions. While it is true that the state could choose to terminate the waiver at any time, CMS would assess whether the state had received more federal funds than allowed under the budget neutrality agreement up to the date of termination, and Rhode Island would have to repay any excess federal funds it received. (Section 94 of the Terms and Conditions).

the state requested an aggregate cap of $12.9 billion, an increase of half a billion dollars over five years.[7]

The terms and conditions offered by CMS did not use the state's projections. Instead CMS offered the state a cap of $12.1 billion over five years, $800 million less than the state's revised request — and below even the original request that did not account for the depth of the recession.

The trend rate in the terms and conditions is based on national projections of 7.8 percent annual growth. It is not clear what part of the trend rate offered by CMS takes into account enrollment increases, but a recent report by the CMS actuary projected Medicaid growth at 7.9 percent for the next ten years, with enrollment increases accounting for 1.2 percent of increased spending.[8]

By way of comparison, the recent renewal of the Massachusetts waiver includes an annual growth rate of close to 7 percent, which *only* applies to growth in health costs. The trend rate offered to Rhode Island is 7.8 percent, which must account for both growth in health costs and enrollment.[9]

The waiver is not necessary to implement desired changes. The waiver allows Rhode Island to claim federal funds for some state-funded health care programs in exchange for the cap. According to a release from the Governor's office, the state will get $22 million in new federal funds as match for these previously state funded programs. This amount is far less than what Rhode Island will likely receive from an FMAP increase.

The state is also claiming that it can generate substantial savings by making numerous changes in the way care is delivered to keep spending below the cap. However, changes the state seeks to make to improve the quality and efficiency of health care services for Medicaid beneficiaries could be made without a waiver with a global cap. The state argues that the waiver gives it "unprecedented … flexibility to ensure right services," but in fact the additional flexibility granted by the waiver beyond what can already be accomplished without it is largely additional authority to cut benefits for many of those served by Medicaid.

The scope of the flexibility Rhode Island has under the waiver is not totally clear – in one section the waiver grants the state unprecedented flexibility to limit the "amount, scope and duration" of benefits for all individuals regardless of eligibility category,[10] but the agreement also includes a three tiered process with differing levels of review for changes the state may want to make in benefits and other features of Rhode Island's Medicaid program. The lack of clarity raises serious questions regarding the potential impact of the waiver on children and families such as:

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[7] Rhode Island Department of Human Services, "Waiver Revisions: Impact of Economic Downturn on Waiver Projections," October 10, 2008.

[8] CMS Office of the Actuary, "2008 Actuarial Report on the Financial Outlook for Medicaid," October 17, 2008.

[9] Rhode Island's RiteCare waiver, which covers children, parents and pregnant women, also has a per capita cap. The waiver was renewed in October 2008 with a trend rate of 6 percent for all beneficiaries except children with special health care needs. The trend rate for these children is 7.62 percent. As in the Massachusetts waiver, these trend rates are based only on projections of increases in health care costs not enrollment.

[10] See Draft CMS Waiver and Expenditure Authority paragraph 1 December 19, 2008.

- Will all children in RIteCare, particularly those with incomes over the poverty line who fall into the so-called "optional" or "waiver" categories continue to have access to the EPSDT benefits package?[11]

- Will families who are enrolled in the state's successful RIteShare premium assistance program continue to have access to the full Medicaid benefits package?

What is clear, however, is that the waiver *would* allow the state to establish waiting lists for long-term services and supports for seniors and persons with disabilities though a new, tiered system of care. Under the guise of rebalancing its long-term care system, the state would establish three categories of need for long-term services, and only individuals who are at the highest level of need would have a guarantee of *any* form of long-term care (whether institutional or home- or community-based). Everyone else, including some people who can get care in a nursing home under Rhode Island's current program, could be put on a waiting list.[12]

Conclusion

Rather than accepting a risky offer from the outgoing Bush Administration at a time when the recession is deepening, the state would be better served by waiting for the forthcoming federal FMAP relief. Many of the programmatic changes the state seeks to make, especially in rebalancing its long-term care system, can and should be pursued without a global waiver. Should a federal waiver be needed, Rhode Island could seek a waiver with a per capita cap like Massachusetts avoid the very clear risk it is assuming if enrollment goes up faster than allowed under the trend rate included in the waiver. Fiscal relief gives the state time to change course and consider less risky alternatives.

[11] EPSDT is Medicaid's Early and Periodic Screening, Diagnostic and Treatment benefit, which ensures that low-income children in Medicaid get regular check-ups and all follow-up treatment they need to attain the best possible health and developmental outcomes.

[12] For more on this feature of the waiver, see Coffey, G. *Long-Term Care Proposals in Rhode Island's Global Consumer Compact Waiver* National Senior Citizens Law Center, October 2008.