

September 16, 2016

The Honorable Sylvia Mathews Burwell, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Burwell:

The undersigned organizations write in response to your request for public comments on Utah's proposed extension of its Section 1115 Primary Care Network Demonstration Waiver. This is a complex proposal, and we have general and specific comments.

General Comments

Utah proposes to extend its Primary Care Network (PCN) demonstration, which was first approved in 2002 to provide a limited package of benefits for up to 25,000 Utahans not otherwise eligible for Medicaid. In approving the original PCN, HHS allowed the state to achieve budget neutrality for the coverage expansion by limiting mandatory benefits for parents eligible under section 1931 of the Social Security Act. In its current extension request, Utah proposes a five-year extension of the PCN. The state also proposes to increase the income limit for parents to 55 percent of the poverty line who like the parents already eligible for coverage would receive limited benefits. As explained below, Utah no longer needs to limit benefits for parents to achieve budget neutrality for the PCN or for an additional expansion it is proposing that would provide coverage to a small group of adults who are either chronically homeless, justice-involved and in need of treatment for substance use disorders (SUD), or otherwise in need of SUD treatment. Those eligible under the expansion would receive the traditional benefit package.

Limited expansions such as the PCN and the new program Utah is proposing, while well-intended, do not further the objectives of the Medicaid program as amended by the Affordable Care Act (ACA). Prior to health reform, low-income adults under 65 who were not disabled, pregnant or caring for a child did not qualify for Medicaid except in a small number of states that covered them through waivers, such as Utah did in the PCN. States with these waivers were allowed to cap enrollment so they could meet budget neutrality requirements that limit federal funds to the amount the state would have received without the waiver. States could also significantly limit benefits and impose premiums and cost-sharing on these beneficiaries, because they were regarded as being outside the protections of the Medicaid statute.

This is no longer the case. Health reform's Medicaid expansion established a pathway to coverage for all non-elderly adults with incomes up to 138 percent of the poverty line, including for the first time, low-income adults without children.

While the 2012 Supreme Court decision upholding the health reform law made the Medicaid expansion a state-by-state decision, health reform's explicit pathway to coverage for low-income childless adults means that they are entitled to the same protections as other mandatory groups of Medicaid beneficiaries when a state expands.

Because health reform added a statutory basis for covering poor and low-income adults, limits on benefits and enrollment that were previously approved prior to the passage of the ACA – such as in Utah's Primary Care Network – are no longer appropriate. Expansions of coverage to adults who could be covered under the ACA Medicaid pathway should not be capped or limited by state appropriation as Utah proposes. Moreover, Utah no longer needs to limit benefits for other Medicaid beneficiaries in order to make its expansion budget neutral to the federal government.

The best way to address the health care needs of people needing treatment for substance abuse disorders is by expanding Medicaid. However, should Utah want to take a more limited path it could explore other options such as section 1915(i) of the Social Security Act, which allows states to expand coverage to targeted groups based on needs-based criteria. Similarly, Utah could increase its eligibility level for parents and caretaker relatives through a state plan amendment.

We do not believe the Utah proposal should be approved in its current form. The income limit for parents should be increased through a state plan amendment, and the state should explore other pathways such as 1915(i) to address the needs of people requiring treatment for behavioral health conditions. We understand it would be disruptive to eliminate the limited coverage that is currently available to PCN enrollees in Utah. Therefore, we encourage you to approve the Primary Care Network extension for no longer than a year to allow the Governor to work with the Utah legislature to seek a full coverage solution.

Our specific comments follow:

Raising the eligibility level for parents and caretaker relatives to 55 percent of the federal poverty line. Amendment #19 notes that Utah plans to submit a state plan amendment (SPA) that would increase the income limit for parents to 55 percent of the federal poverty line. We support the state's decision to pursue this change through a SPA rather than through section 1115 waiver authority. However, the state is asking that parents and caretaker relatives who become eligible under the expansion get the same limited benefit package available to currently eligible parents. The proposal is vague on what these limits are, and over the years there have been multiple changes to the benefits package. We disagree with the original decision to allow a limited benefit package for parents, but regardless of the merits of using this approach to fund an expansion, it is no longer necessary. The adults eligible under the PCN now can be covered under statutory authority, and there is no need to use waiver authority to balance the costs of the

expansion. A state plan approach should define both eligibility and benefits for parents and include all mandatory benefits.

Ending the EPSDT waiver: We commend the State for its request to terminate in Amendment 15 the existing waiver of Early and Periodic Screening, Diagnostic and Treatment (EPSDT) for 19 and 20 year olds and urge you to adopt this request. EPSDT delivers a robust pediatric benefit package designed to meet the unique needs of children and adolescents and should not be waived.

Expanding coverage to a narrowly defined group of individuals experiencing chronic homelessness or needing treatment for substance use disorders. The state proposes to expand coverage to three very narrowly-defined groups. The state's responses to public comments make it clear that the criteria defining these groups were crafted with an eye to keeping enrollment within the limits of state funds appropriated for the new coverage. A number of commenters expressed concerns that the criteria are too narrow to meet the goals of addressing the needs of chronically homeless people and those needing SUD treatment especially those who are justice-involved. In each case the state's response was that the "proposal was drafted within the limitations of the appropriations associated with House Bill 437."

Moreover, the state appears to be seeking authority to modify the definition of the newly eligible group without amending the waiver, presumably to stay within the limits on state funds. On page 2 of the amendment, the proposal states that Utah is "seeking authority to modify the definition of these populations through Utah Administrative Code. For example, if there is a need to change the chronically homeless criteria from 12-months of continuous homelessness to 6 or 18-months, this would be done through a revision to the Utah Administrative Code." This suggests that the state wants to be able to limit enrollment on its own through state administrative action rather than through a change in the terms and conditions of the waiver. Defining eligibility criteria to maintain enrollment at a level commensurate with state appropriations is the same as putting a numerical cap on benefits. As explained above, capping enrollment for expansions should no longer be allowed. As also noted, the state could expand eligibility using needs-based criteria under 1915(i) as long as the criteria are reasonable and truly needs-based. Under 1915(i), everyone who meets the criteria would be eligible for coverage.

Time limit for the extension: Utah is proposing a five-year extension of the PCN, which is incompatible with section 1115(e)(2) of the Social Security Act, which only allows for three-year extensions. Moreover, as discussed above, we believe that the PCN should not continue indefinitely and consequently recommend an extension for no longer than one year as the state seeks to move to a full-scale expansion.

Thank you for your willingness to consider our comments. If you would like additional information, please contact Joan Alker (jca25@georgetown.edu) or Judy Solomon (Solomon@cbpp.org).

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