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Via email (1115DemoRequests@cms.hhs.gov)

April 9, 2014

Centers for Medicare & Medicaid Services

Attention: Megan Stacy

7500 Security Boulevard

Mailstop: S2-01-16

Baltimore, MD 21244

Re: Comments on *Healthy Pennsylvania* 1115 Demonstration Application

Dear Sir/Madam:

Thank you for the opportunity to comment on the *Healthy Pennsylvania* 1115 Demonstration Application.

The Homeless Advocacy Project (HAP) is a free legal services program for individuals and families experiencing homelessness in Philadelphia. HAP's clients reside in homeless shelters and abandoned buildings and on the city's streets. They frequently suffer from debilitating psychiatric impairments, cognitive limitations and physical conditions that, along with their living circumstances, hamper their ability to navigate the myriad systems under which they are eligible for supports and services.

Along with a corps of over 300 volunteer attorneys, paralegals and law students, HAP's staff attorneys represent some of the most fragile chronically homeless men and women in a wide array of civil legal matters. Since December 2007, HAP has secured federal Supplemental Security Income (SSI) disability benefits for more than 1,200 homeless individuals on an expedited basis through its SOAR (SSI/SSDI Outreach, Access, Recovery) Project. With an approval rate of 99.6% and an average processing time of just over one month, HAP's project is the most successful SOAR initiative in the country.

While HAP is pleased that the Administration is seeking to provide health care access to low-income Pennsylvanians, we have concerns with a number of components of the Demonstration Application which pose insurmountable barriers for homeless

individuals seeking health benefits. HAP, accordingly, urges you to reject the Demonstration Application in its current form.

Pennsylvania Should Implement Immediate Medicaid Expansion

The Affordable Care Act (ACA) offers Pennsylvania an unprecedented opportunity to provide health care coverage to hundreds of thousands of Pennsylvanians. The lengthy implementation delay surrounding the Demonstration Application results in these Pennsylvanians remaining uninsured as well as the loss of millions of federal dollars to the Commonwealth. Having set forth a complicated and controversial plan at the end of 2013, Pennsylvania has fallen behind the progress made by surrounding states.

HAP remains frustrated by our state's refusal to adopt traditional Medicaid expansion as contemplated by the ACA. Medicaid expansion in 2014 remains the optimal choice for Pennsylvania residents, providing access to quality, affordable health insurance while saving taxpayers millions of dollars. Instead, Pennsylvania continues to withhold health care benefits for 500,000 low income individuals while it pursues devastating and unfavorable changes – especially harmful to existing Medicaid recipients – to its Medicaid program.

The Demonstration Application Reduces Current Benefit Coverage

As a legal services program designed to meet the legal needs of homeless men, women and children, HAP encounters a large number of clients who are experiencing serious symptoms of mental illness and are in need of an array of behavioral health services. The Demonstration Application will limit access to essential services and treatment that are currently available to HAP's clients in the Medicaid benefits package. HAP is especially concerned with the following proposed mental health treatment benefit limits:

- Reduction to 30-day-per-year limit on inpatient drug and alcohol treatment for persons in the Low-Risk plan, and 45 days for persons in the High-Risk plan. There is currently no limit;
- Reduction to 30-visit-per-year limit on outpatient mental health treatment for individuals in Low-Risk plan, and 60 visit limit for the High-Risk plan. This limit would not even enable seriously psychiatrically impaired individuals to meet with a therapist weekly;
- Reduction to 30-visit-per-year limit on outpatient substance use psychotherapy treatment for individuals in the Low-Risk plan, and 60 visit limit for the High-Risk plan. Again, weekly needed treatment would be precluded and even the High-Risk package represents a significant reduction from the current level of 96 hours;

- Elimination of targeted case management except for individuals with one of the limited and overly restrictive enumerated psychiatric diagnoses qualifying for the High-Risk plan.
- Reduction in peer support services to 4 hours per day or 900 hours per year. HAP currently collaborates with certified peer specialists in two SAMHSA-funded projects targeting seriously mentally ill men and women who are chronically homeless and resistant to shelter as well as medical treatment. These homeless individuals are difficult to serve and require constant and continuous engagement and support.

While the proposed behavioral health treatment limits are of paramount concern to HAP given our clients' psychiatric and substance disorder treatment needs, HAP is likewise opposed to the additional benefit reductions outlined in the Draft Application. According to the proposal: radiology would be limited to 6 tests per year for the Low-Risk plan and 8 tests per year in the High-Risk plan although there is *currently no limit*; durable medical equipment would have a limit of \$1,000 per year in the Low-Risk plan and \$2,500 per year in the High-Risk plan although there is *currently no limit*; medical supplies would have a limit of \$1,000 per year in the Low-Risk plan and \$2,500 per year in the High-Risk plan although there is *currently no limit*; and laboratory services would be limited to \$350 per year in the Low-Risk plan and \$450 per year in the High-Risk plan although there is *currently no limit*. The proposed limits are prohibitively low.

As attorneys working with a population of individuals who are homeless or have experienced past episodes of prolonged homelessness, we are especially concerned with the Draft Application's elimination of coverage for podiatry services. Although care by a podiatrist is *currently covered*, neither individuals in the proposed Low-Risk nor High-Risk plans are eligible for this medical care. Many of HAP's clients have experienced frost bite, suffer from foot maladies associated with diabetes and/or have foot wounds that cannot heal properly given their inability to elevate their feet or properly care for their wounds due to unsanitary living conditions. It is essential that these men and women have access to routine and urgent podiatry treatment.

Although the Draft Application provides for DPW to grant an exception to the limits outlined above, the availability of this exception rings hollow. Mentally ill homeless individuals, including those living on the street and/or with cognitive impairments (frequently due to traumatic brain injuries or substance use disorders), will be burdened with establishing that they have a "serious chronic systemic illness or other serious health condition and denial of the exception will jeopardize the life or result in the serious deterioration of the health of the recipient." This standard is more stringent than the current Medicaid standard of medical necessity. The exception option as set forth in the Demonstration Application woefully fails to ensure that Medicaid beneficiaries with disabilities, especially the psychiatric or cognitive

impairments so common among those experiencing chronic homelessness, receive the health care they need.

The Demonstration Application Relies Upon an Unworkable Health Screening Tool

According to the Demonstration Application, beneficiaries will be assigned to either the High-Risk or Low-Risk plan, which, as shown above, determines the level of coverage to which they will be entitled. Plan designation, as well as the determination whether an individual meets the “medical frailty” criteria, will be decided based upon a “health screening tool.” This tool consists of an individual’s responses to a self-administered questionnaire that will inquire into the person’s health care needs and conditions.

It must be noted that the health screening tool has not been available for review; while advocates have pressed for more details about the tool, none have been provided.¹ In any event, reliance upon self-reported responses to questions on a form is problematic, especially for individuals suffering from mental illness or cognitive impairments. Many of HAP’s clients lack insight into their mental illness and/or experience limited intellectual functioning. In fact, HAP has secured federal disability benefits for a number of clients who were found disabled because of a serious mental illness or intellectual disability while the clients believed their eligibility was based upon back pain, arthritis, diabetes or some other medical ailment. By designating their coverage based on their answers to a questionnaire, these individuals would be incorrectly categorized and, consequently, dangerously uninsured below what their actual health status warrants.

Individuals who fail to complete and submit the screening tool would be automatically placed in the Low-Risk or private option plans. Thus, persons too impaired to overcome this administrative burden – precisely those individuals in need of the most generous benefit package because of serious and persistent psychiatric symptoms or cognitive limitations – will receive less coverage. The Demonstration Application fails adequately to address how these individuals, as well as persons who are illiterate or non-English speakers, will be accommodated to ensure that they receive the proper level of medical coverage.

Advocates are justifiably concerned that the unworkability of this health screening tool will lead to an over-reliance on established SSI/SSDI eligibility to qualify for the High-Risk category.

¹The Demonstration Application similarly fails to provide sufficient information as to the process and criteria that will be used to determine whether an individual is “medically frail” or the process by which re-determinations will be made. Medical frailty discussion in the Demonstration Application is overly vague and appears incredibly exclusionary. Its inadequacy is further compounded by reliance upon the unknown health screening tool, as discussed herein.

HAP's extensive experience representing homeless individuals seeking these disability benefits demonstrates the flaw in relying upon Social Security Administration (SSA) determinations. Approximately one-half of HAP's SSI approvals via SOAR involve the reopening of prior SSA decisions where the claimant was erroneously found ineligible for SSI disability benefits. Outside of SOAR, only 10 to 15% of individuals experiencing homelessness are found eligible for SSI. A large number of homeless claimants' applications are denied for technical reasons due to unreliable mailing addresses, missed appointments and the inability to meet other administrative process demands – denials having nothing to do with the level and nature of physical and/or psychiatric impairments.

The Demonstration Application Seeks to Impose Impermissible Premium Requirements and Severe Penalties for Nonpayment

Federal regulations only authorize states to impose premiums on non-pregnant adults with incomes above 150% of the FPIGs. Pennsylvania's intention, as set forth in its Demonstration Application, is to impose premiums on individuals with incomes below 138% of the FPIG is simply insupportable on its face.

The imposition of a premium requirement, even on those persons above 100% of the Federal Poverty Level, will force households living in poverty to choose between the most basic necessities of food, shelter and health care. The overwhelming majority of HAP's clients suffer from severe mental illness along with chronic medical conditions that commonly accompany homelessness and inadequate medical care. Even when willing to seek medical and psychiatric treatment, they often fail to have the funds to travel to medical appointments. HAP frequently has to provide clients with transportation tokens in order to meet with their attorneys; clients have similar financial impediments in accessing medical care. An amount that one with a steady income stream may consider a nominal premium may act as a significant barrier to health coverage to our clients.

Assuming that an individual in poverty scraped together a health care premium, the logistics for payment will likely be overwhelming. HAP's clients rarely have bank accounts and many cannot open accounts because they lack required identification documents. Even fewer of HAP's clients have regular computer access or the necessary technological skills to make online payments. An in-person payment option would do little to improve matters. County Assistance Offices throughout the state are understaffed and overburdened; public benefit recipients already confront long in-person wait times, unanswered telephones and paperwork that is frequently lost or simply not processed. Repeated trips to, and waits at, overcrowded offices are untenable for psychiatrically and physically impaired individuals who lack funds for a bus ride. Thus, the payment of a small premium may be a daunting task, and that is without regard to any

psychiatric, cognitive or physical limitation from which the individual may suffer which causes him/her to become overwhelmed in crowded office settings.

Given that the Demonstration Application provides for the imposition of punitive penalties, such as eliminating coverage for failure to pay a premium, it is expected that insurance coverage for individuals in poverty will be inconsistent, resulting in lapses in critical treatment. When payments are made, moreover, DPW's capacity to accurately and timely monitor payments is questionable in light of its current backlog of premium payments in the Medical Assistance for Workers with Disabilities (MAWD) program, which has resulted in wrongful termination of health coverage for disabled recipients throughout the state.

The Demonstration Application's Job Search Requirements are Unworkable and Discriminatory

Pennsylvania, with some limited exceptions, is attempting to link medical coverage eligibility with work search requirements on unemployed working-age recipients. This requirement would apply to many people who are disabled but do not receive SSI benefits and who have not secured a special, personal exemption from DPW.²

As discussed above, through the implementation of its SOAR Project, HAP meets homeless men and women every day who are too psychiatrically and/or physically impaired to work – or even look for work – but who have been previously been denied SSI benefits time and again. None of these disabled homeless individuals have the wherewithal to engage in a work search of any level, let alone one demanding 12 jobs each month. Nor are they capable of navigating even a slightly rigorous work exemption process. To be sure, outside of SOAR, only 10 to 15% of individuals experiencing homelessness are found eligible for SSI benefits, with many denials due to an inability to navigate the administrative process.

The work search as proposed by the Demonstration Application, moreover, involves JobsGateway and Career Line – both of which are already available and mean little to HAP's clients. An online system is unworkable for vulnerable men and women experiencing homelessness for the reasons set forth above. Poverty and disability render repeated office trips impossible. DPW, moreover, simply lacks the capacity to monitor compliance as provided in the proposal.

The punitive lockout penalties, which would suspend coverage for work search violations, are almost certain to be imposed upon those individuals least able to engage in a search for employment in the first place. Essential medical and mental health treatment will undoubtedly be interrupted, resulting in exacerbated illness and expensive unpaid hospital treatment.

²Even SSDI recipients who are not yet eligible to receive Medicare are not exempt.

Similarly, even if Pennsylvania's March 5, 2014 letter to CMS amounts to a modification of the Demonstration Application's work requirements – and it is not clear that it does – an optional work search that reduces premiums for able-bodied individuals would unlawfully discriminate against the most vulnerable benefit recipients.

Demonstration Application Improperly Restricts Medical Coverage for Former Foster Care Youth

The Demonstration Application's work search and premium payment requirements would also apply to youth who have aged out of foster care. This is at odds with the ACA's mandatory Medicaid enrollment for former foster care youth, without restriction, until they turn 26 years of age.

Demonstration Application Fails to Adequately Protect Newly Eligible Private Option Enrollees

Individuals who do not meet the requirements for the Low-Risk or High-Risk plans will receive benefits through a private coverage plan. Pennsylvania currently offers point-in-time coverage for existing Medicaid recipients until they can be enrolled in managed care. The Commonwealth should, therefore, take a similar approach with regard to private option program enrollment. Contrary to federal law, the Demonstration Application does not include this requisite point-in-time eligibility determination, which will result in unnecessary periods without coverage.

In addition, and of significance to HAP's client population who suffer extreme poverty, the Demonstration Application's private option program does not include retroactive coverage. This will result in outstanding medical debt that may well limit or preclude a variety of housing options, thereby extending periods of homelessness and instability. This failing, moreover, is not cured by hospital presumptive eligibility determinations as proffered by the state. Hospitals and their contractors submit expedited Medicaid applications inconsistently and incorrectly. Retroactive coverage is a vital protection for our indigent clients.

Pennsylvania also seeks to avoid "wrap around coverage" to private option enrollees. Given our clients' extreme poverty – the majority of HAP's clients have zero income – and need for sustained behavioral health treatment, the availability of Pennsylvania's Medical Assistance Transportation Program (MATP) is critical. (Outside Pennsylvania, this assistance is referred to as non-emergency medical transportation or NEMT.) HAP routinely provides tokens to our clients to enable them to meet with their attorneys. Many of our clients, moreover, are simply unable to utilize public transportation due to their serious and persistent psychiatric symptoms. Absent transportation assistance, they would be unable to maintain essential treatment.

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Finally, in its Demonstration Application, Pennsylvania does not provide requisite Medicaid appeal rights to private option program enrollees. The availability of commercial health plan grievance and appeal processes is no legal substitute for due process appeal rights, including continuing benefits pending a fair hearing upon a written termination notice.

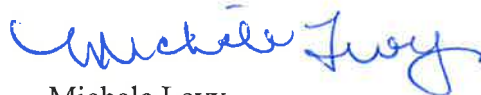
Conclusion

On behalf of individuals experiencing homelessness in Pennsylvania, and for the reasons set forth above, HAP urges CMS to reject Pennsylvania's Demonstration Application as submitted. Thank you for your time and consideration.

Sincerely,



Marsha I. Cohen
Executive Director



Michele Levy
Managing Attorney