



MAINE EQUAL JUSTICE

Finding solutions to poverty and improving the lives of people with low income in Maine.

Proposed Medicaid Waiver Will Cause Thousands to Lose Needed Health Care

Medicaid Waivers were created by Congress to promote health care, not deny it.

Maine DHHS wants to fundamentally change Maine's Medicaid program, commonly known as MaineCare. DHHS seeks to go ahead with these changes with no input from our elected policy makers.

The Medicaid Act helps states provide medical assistance to residents who can't afford the health care they need. Section 1115 waivers are a way to allow states to implement "experimental, pilot or demonstration projects" which are "likely to assist in promoting the objectives" of the Medicaid Act.¹ Maine DHHS's planned use of a Section 1115 waiver will not do that.

Instead, Maine's proposed DHHS waiver will create barriers that reduce access to timely and appropriate health care for thousands of Mainers, struggling to make ends meet. This proposal is directly contrary to the purposes of the Medicaid Act.

Here is what we know about the proposed changes:

- **MaineCare would be limited to only 3 months in every 36 month (3 year) period for certain persons:**

Under this plan, non-pregnant, non-disabled parents with children 6 or older would be limited to only 3 months of Medicaid coverage in a 36 month period, *unless* the person works or engages in other DHHS approved activities for 20 or more hours per week. This limit would also apply to children ages 19 and 20. While some exemptions will be available, this leaves too many people without the regular health care they need.

Other states have asked for a waiver in order to apply work requirements as a condition of eligibility for Medicaid. Those requests have been denied. The federal agency that oversees Medicaid has stated that adding work requirements to Medicaid, a health care program, is inconsistent with the objectives of the Medicaid Act.

Jane Perkins, a national expert in Medicaid law and policy at the National Health Law Program, recently reviewed state attempts to impose work requirements in the Medicaid program. After noting that Congress imposed work requirements in the TANF and SNAP programs, but not in the Medicaid program, she concluded that:

The Medicaid Act provides states with flexibility in the operation of their Medicaid programs. However, that flexibility has limits and does not extend to adding restrictions on eligibility that are not contained in the Medicaid Act. This includes work requirements. Moreover, when considering a section 1115 waiver request, the HHS Secretary's duty is to consider, among other things, whether the proposal is consistent with the purpose of Medicaid, including the impact of the proposal on people whom the Medicaid Act "was enacted to protect." Work requirements would stand Medicaid's purpose on its head by creating barriers to coverage and the pathway to health that the coverage represents." (Citations omitted)²

These unnecessary requirements stand in opposition to the stated purpose of existing law.

- **Premium payments for MaineCare**

Some people, even those with incomes less than the poverty level, would have to pay monthly premiums. These premiums would be higher than 2% of family income and far exceed current Medicaid rules.

If payments are not made, then the person could serve a penalty of 3 months without health care. Then, only upon repayment of all missed premiums, would the person be allowed back onto MaineCare.

This would impact parents, former foster care children (ages 18-26), women getting treatment for breast or cervical cancer, people seeking family planning services, 19 and 20 year olds and others. Why would we want to make it harder for these vulnerable groups to get the care they need?

A large and consistent body of research shows that premiums and other costs will result in decreased access. There is nothing new to be learned from this experiment. It will simply reduce access.

Finally, imposition of premiums on people below 150% of the FPL is unlawful. Under federal Medicaid law premiums may not be imposed on people at this income level. 42 U.S.C. § 1396o. This provision may not be waived.³

- **New Asset Limits for Parents, Children and Pregnant Women**

Despite changes in the Affordable Care Act (ACA) to remove the complex burden of asset tests, DHHS proposes to put them back. This plan would reinstitute asset tests for parents, children, and pregnant women. Assets such as retirement accounts and saving that exceed \$5,000 would result in eligibility for MaineCare being denied. Although the vast majority of low-income parents and children do not have these types of assets, they will now have to prove it. This proposal to impose an asset test cannot be waived under Section 1115.⁴

The proposed asset test also violates Maine's pre-ACA law that expressly requires the MaineCare program to exclude "[a]n amount up to \$8,000 for an individual and up to \$12,000 for a household of more than one person..." 22 MRS §3174-AA. Unless federal Medicaid and Maine laws change, this proposal is unlawful. Certainly, after decades of asset tests, reinstating an asset test does not meet the purposes of Section 1115 waiver since there is nothing new or experimental to learn from an asset test.

- **Elimination of Retroactive Medicaid Eligibility**

Current and long-standing Medicaid federal law allows for eligibility to date back 3 months prior to the month of application, *if* the person had incurred prior medical bills *and* was otherwise eligible during the retroactive period.

Under this new proposal, eligibility could only date back to the first day of the month of application. This proposal hurts individuals—typically in the midst of a health care crisis—who are seeking care and also hurts hospitals and other providers who provide treatment *regardless* of insurance status and then seek payment later.⁵

- **Imposition of penalties on the elderly and disabled who have annuities**

Elderly and disabled spouses who transfer funds into annuities may now be subject to new restrictions. Many seniors face huge medical expenses for nursing and home care, and this proposal will push them into even deeper poverty.

- **Elimination of Hospital Presumptive Eligibility Determinations**

Current law allows qualified hospitals to determine initial (called presumptive) eligibility for MaineCare for certain groups, eliminating long wait times in the DHHS MaineCare application process. Maine hospitals are not currently using this process. However, DHHS proposes to eliminate the option to use this process in the future, when it could potentially relieve cost burdens on local hospitals.

- **DHHS proposes to charge low-income people \$20 for the non-emergency use of the Hospital Emergency Department**

This proposal would mean that any MaineCare recipient who goes to the Emergency Department and who is then not admitted as an in-patient would be charged a \$20.00 copayment, even though their doctor's office may have even referred them to the ED and even though a prudent person would go to the ED under these circumstances.

There is no evidence that charging poor people for non-emergency use of the ED will reduce unnecessary use of the ED.⁶ This is why the Medicaid Act contains specific and detailed waiver requirements for states that seek to impose such high and potentially dangerous copayments. These protections cannot be ignored.

Rather than imposing co-payments, CMS (the federal Medicaid agency) cites as effective strategies to reduce ED use; expanding access to primary care or providing health homes for frequent ED users, which the proposed waiver would make more difficult. CMS suggests that increased copays for nonemergency use are unproven and problematic to implement fairly.⁷

- **Charging For Missed Appointments**

DHHS proposes to allow providers to charge MaineCare recipients for “broken appointments.” Under current policy, providers may refuse to treat MaineCare members who violate the provider's missed appointment policy. This new proposal would also allow providers to charge the MaineCare member.

This proposal fails to recognize that not only is a MaineCare member unable to pay for a broken appointment, but also fails to recognize that MaineCare members face unique barriers in getting to their appointment. They are often reliant on the MaineCare transportation broker to get them to appointment and this system is far from perfect.

MaineCare members also face daunting challenges in arranging for child care in order to get to appointments and they often have unreliable vehicles or other barriers to getting to appointments on time.

While this policy may feel good, it will simply result in more MaineCare members going without access to treatment, being dunned for unaffordable missed appointment charges, and instead waiting to simply go to the Emergency Department for their care. (Even if they might be charged \$20, as this waiver proposal also seeks to do.)

Conclusion

Maine's Medicaid program faces fundamental and harmful changes unless action is taken now to stop this waiver. You can do the following:

1. Contact your state legislator and ask them to contact DHHS and ask DHHS to not submit this waiver without approval by the Legislature after thorough review;
2. Attend the DHHS public hearing on May 17th or 18th to say how these changes impact you. If you can come to the public hearing on this waiver, then please contact Kate Brennan at Maine Equal Justice Partners for more information at 626-7058, ext. 204.

Here is a link to the public hearing information: http://www.maine.gov/dhhs/oms/rules/demonstration-waivers.shtml?utm_medium=email&utm_source=govdelivery

(Endnotes)

1 42 U.S.C. §1315(a) (§1115 (a) of the Social Security Act).

2 Medicaid Work Requirements- Legally Suspect, by Jane Perkins and Ian McDonald, published by the National Health Law Program, 3/21/17 and available at <http://www.healthlaw.org/about/staff/jane-perkins/all-publications/medicaid-work-requirements-legally-suspect#.WQcxYvkrKpo>

3 A Section 1115 waiver may only waive provisions found in 42 U.S.C. §§1396a. Since premiums are found in Section 1396o, not in Section 1396a, they are not waivable. Furthermore, the limited waiver authority in 1396o does not apply to premiums, since premiums are not "deductions, cost sharing or similar charges" subject to the waiver provisions found at §1396o(f)

4 42 U.S.C. Section 1396 a (e)(14)(B)

5 For example, a person who has a stroke on the last day of the month, or near the end of the month, but isn't able to get the MaineCare application in to DHHS until the next month, would not get coverage for the expenses of the stroke.

6 Maryland abandoned a non-emergency ED copay for this reason. See Karoline Mortensen,

Copayments Did Not Reduce Medicaid Enrollees' Nonemergency Use of Emergency Departments, 29 Health Aff. 1643 (2010); David J. Becker et al., Copayments and the Use of Emergency Department Services in the Children's Health Insurance Program, 70 Med. Care Res. Rev. 514-529 (2013).

7 CMS, Reducing Nonurgent Use of Emergency Departments and Improving Appropriate Care in Appropriate Settings (Jan. 16, 2014), <http://www.medicare.gov/Federal-Policy-Guidance/downloads/CIB-01-16-14.pdf>; see also Wash. State Health Care Authority, Emergency Department Utilization: Assumed Savings from Best Practices Implementation (2013).