

TO: Interested Parties

FROM: National Family Planning & Reproductive Health Association (NFPRHA)

DATE: May 20, 2013

SUBJECT: NFPRHA Guidance on Medicaid Family Planning Waivers

In 2011, following passage of the Affordable Care Act (ACA), the Centers for Medicare & Medicaid Services (CMS) began issuing the same end date for all renewals of Section 1115 family planning waivers: December 31, 2013. Over the last year, a number of waiver renewal applications have been granted only month-to-month extensions, as the December end date nears.

However, at NFPRHA's 2013 National Conference, Julia Hinckley, Deputy Director of the Children and Adults Health Programs Group at the Center for Medicaid and CHIP Services within CMS, provided some insight into CMS' view of family planning waivers and indicated that successful family planning waiver renewals/applications would address how the waiver would work within the context of the ACA's coverage expansion. This memo provides details from Hinckley's presentation and provides NFPRHA's recommendations on what a successful family planning waiver renewal or application might include.

Background

Although never officially stated, the rationale for the December 31, 2013, Medicaid family planning waiver end date was tied to the implementation of key provisions of the ACA beginning January 1, 2014, primarily to the expansion of Medicaid to individuals with incomes up to 133% of the federal poverty level (FPL). The 2012 US Supreme Court decision, however, which effectively made the ACA's Medicaid expansion optional for states, will leave many individuals without the coverage intended by the ACA.

The health reform experience in Massachusetts shows that even with "universal" health insurance coverage, there will be significant coverage gaps for millions in need of family planning. An estimated 30 million will remain without coverage despite the ACA.ⁱ Moreover, it will take years for those eligible for Medicaid or subsidies for commercial insurance to be enrolled in coverage.ⁱⁱ Medicaid family planning waivers can help to ensure that women and men can access the services they need where and when they need them, in addition to serving as a gateway to enrollment in more comprehensive insurance coverage.

NFPRHA and its allies have been advocating with CMS to approve Medicaid family planning waivers past December 31, 2013. Despite positive conversations about why family planning waivers will continue to play a critical role in providing health care access during and after ACA implementation, there has been no official guidance from CMS on the future of family planning waivers, and to date no such waiversⁱⁱⁱ have been approved with end dates past December 31.

Guidance from NFPRHA 2013 National Conference

On April 29, 2013, Hinckley addressed NFPRHA's National Conference, providing insight into CMS' ACA implementation efforts and priorities. Hinckley addressed the important role of family planning in Medicaid, reiterating the requirement that family planning is a mandatory benefit and that family planning services are exempt from cost sharing. Hinckley said that CMS' commitment to family planning access is unchanged.

Hinckley also addressed the continuation of Medicaid family planning waivers in her presentation and the follow-up question and answer session. She indicated that:

- There will be no official guidance coming from CMS on family planning waivers;
- CMS is "open for business" and open to state proposals;
- CMS staff was "thinking we would see a reference to the new coverage landscape" in family planning waiver proposals, and would like to see how applicants believe their family planning waivers interact with "the new world";
- Some key considerations for family planning waivers beyond 2013 include whether states plan to expand Medicaid up to 133% of the FPL; privacy issues; and the accessibility of the broad range of family planning methods in insurance plans.

NFPRHA's Assessment

Based on Hinckley's presentation, the Q&A session, and further conversation between Hinckley and NFPRHA staff following her session, NFPRHA's assessment is that CMS is open to continuing waivers beyond 2013, but that successful applications must address how the coverage provided through waivers works within the broader ACA landscape. States looking to continue or obtain a family planning waiver cannot think about family planning waivers in a vacuum; instead, states must consider how the waivers fit in with their efforts to implement the ACA's coverage expansion.

1. Address the ACA, But Keep Your Application Simple

Waiver renewals that simply attempt to continue the status quo – failing to address how insurance coverage and health care access may change in their states – are unlikely to be successful. However, NFPRHA believes that states seeking renewals should also keep their applications simple by not including numerous modifications in their renewal applications. Keeping it simple will allow CMS to focus its consideration of a state's application on how the waiver works within the context of the ACA, as opposed to having to also consider time-consuming modifications.

2. *Apply for the Traditional Time Period, But Consider a Shorter One*

NFPRHA also believes that states should begin thinking in terms of shorter time periods for waivers as opposed to the traditional 5-year initial approval and 3-year renewal period. Although there was no substantive discussion on this point, given the quickly changing health care landscape and CMS' focus on how family planning waivers fit within the ACA's coverage expansion, NFPRHA believes it is likely CMS will be interested in shorter waivers that can be adaptive to the changing needs of a state over time.

3. *You Don't Have to Have All the Answers; Think About Possibilities*

There is tremendous uncertainty in states right now about how – or even if – they will implement portions of the ACA, which could therefore prove difficult for state agencies seeking to explain how their family planning waiver will work with the ACA. NFPRHA suggests that CMS' interest is less about certainty and more about ensuring that states have thought through how family planning waiver coverage might interact with whatever decisions the state makes about ACA implementation. State agencies should focus on the most likely scenario for their state (particularly regarding Medicaid expansion up to 133% of the FPL), but should also be open to including multiple scenarios if facing too much uncertainty.

NFPRHA recommends that states consider addressing issues including coverage gaps, churning (people cycling on and off of coverage or between health plans), individuals who will be ineligible for coverage, and those who might remain uninsured for various reasons. In particular, NFPRHA recommends that states focus on the key considerations outlined in Hinckley's presentation:

- How family planning waivers will work in states that do not expand Medicaid;
- How family planning waivers can help ensure care for individuals seeking confidential services (privacy issues); and
- How family planning waivers provide a broad range of contraceptive methods that may not otherwise be fully accessible despite the ACA's requirement that all FDA-approved contraceptive methods be covered by commercial insurance plans, without co-pays.

More information about how family planning waivers can work within the context of the ACA to provide essential coverage can be found in "Medicaid Family Planning Expansion Programs: Essential Coverage Post-ACA Implementation," available on NFPRHA's website.^{iv}

Conclusion

NFPRHA believes that, following the guidance outlined in this memo, states may be successful in applying for or renewing their family planning waivers beyond 2013. NFPRHA encourages all states that currently have or are considering obtaining a Medicaid family planning waiver to submit their applications as soon as possible.

NFPRHA is available to help states think through their family planning waiver applications as states move forward. For more information or for assistance, please contact Robin Summers (rsummers@nfprha.org) at 202-286-6877.

ⁱ Congressional Budget Office, *Payments of Penalties for Being Uninsured Under the Affordable Care Act*, September 2012, accessed March 7, 2013, <http://www.cbo.gov/publication/43628>.

ⁱⁱ The Congressional Budget Office estimates that 11 million people will gain Medicaid coverage under the ACA by 2022. Congressional Budget Office, *Estimates for the Insurance Coverage Provisions of the Affordable Care Act Updated for the Recent Supreme Court Decision*, July 2012, accessed May 9, 2013, <http://www.cbo.gov/sites/default/files/cbofiles/attachments/43472-07-24-2012-CoverageEstimates.pdf>.

ⁱⁱⁱ Arizona's family planning waiver has been approved into 2016, but only because it is part of the state's larger waiver covering its entire Medicaid program.

^{iv} The fact sheet is available in the Medicaid Issues section of NFPRHA's website, www.nationalfamilyplanning.org. Click on the Family Planning State Plan Amendments and Waivers link.