



The
Legal Aid Society
of Cleveland
Since 1905

August 5, 2016

The Honorable Secretary Sylvia Burwell
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Submitted online at Medicaid.gov

**Re: Comments in Opposition to the Healthy Ohio Program 1115
Demonstration Waiver**

Dear Secretary Burwell:

The Legal Aid Society of Cleveland's mission is to secure justice and resolve fundamental problems for those who are low income and vulnerable. Founded in 1905, our organization serves clients in five counties — Ashtabula, Cuyahoga, Geauga, Lake and Lorain counties. This area of Northeast Ohio has long been economically fragile. It was “ground zero” for the foreclosure crisis and currently ranks 2nd on a nationwide Distressed Communities Index which measured the percent of population under the poverty level, median home income, and percent of population out of work.¹

The low income population of Northeast Ohio has greatly benefited from Ohio's extending the State's Medicaid plan to cover adults up to 138% of federal poverty level. Since Medicaid expansion, the number of uninsured in Cuyahoga County alone dropped 25 percent, from 133,000 in 2013 to just under 100,000 in 2014, bringing the uninsured rate for all ages down from 10.7 percent to 8.0 percent.² Among adults 18 to 64 years old, 121,000 were uninsured in 2013, but only 92,000 in 2014, bringing the uninsured rate down from 15.6 percent to 11.8 percent. Across the State of Ohio, the number of uninsured has been cut in half and 650,000 previously uninsured people now have health care coverage.

The Legal Aid Society of Cleveland submits these comments to describe the harm that would befall those most vulnerable in our service area if the proposed Ohio Medicaid waiver plan is approved. The proposed plan imposes premiums, cost

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<http://www.clevescene.com/scene-and-heard/archives/2016/02/26/report-post-recession-cleveland-is-in-worse-economic-shape-than-detroit-or-anywhere-else> accessed August 4, 2016.

² http://www.communitysolutions.com/assets/docs/Research_Sl_files/health_ins_cuy_acs_2014_091715.pdf

sharing and penalties for nonpayment — all of which have been shown to reduce enrollment, affordability, and access to health care.

The Medicaid waiver plan would create deeper poverty in an already impoverished area and reduce public health as people lose their health care coverage or are not able to get care because of unaffordable premiums. The plan has been sharply criticized by Northeast Ohio's U.S. Senator Sherrod Brown as a plan that would make it harder for Ohioans to afford and access care and simply "politics at its worst."³ Imposing premiums and penalties is not a way to make our state healthier; it is simply a way for the Ohio Department of Medicaid (ODM) to shift program costs to Ohio's poorest citizens. On behalf of the Ohioans helped by Medicaid and specifically on behalf of Northeast Ohioans who will suffer yet another hardship, the Legal Aid Society of Cleveland urges CMS to reject Ohio's waiver plan and protect the thousands of insured who will likely become once again the uninsured and forgotten if the waiver were approved.

For the following reasons, CMS must reject Ohio's proposed plan.

I. The Healthy Ohio Wavier Will Increase Ohio's Health Disparities by Race

According to the draft 2016 State Health Assessment released June 24, 2016, Ohio ranks in the bottom 25% of states for health outcomes. Even more troubling are the stark racial disparities revealed in the report. To highlight just a few of the multiple examples of disparate health outcomes, although black/African-American non-Hispanics comprise only 12.1 percent of Ohio's population, the black infant mortality rate is nearly twice as high as the white rate, and blacks are much more likely than other racial and ethnic groups to experience worse outcomes for the health problems of obesity, low birth weight, diabetes, hypertension, and child asthma.

Ohio's waiver program will hurt Ohio's African-American citizens at a greater rate than other Ohioans. Medicaid provides more services to minority groups than it does to Caucasians, with African-American citizens comprising the largest group. In 2014, the Ohio Medicaid Population was 42% black, 33% Hispanic, and only 20% white. The largest county in Legal Aid's service area, Cuyahoga, is 29.64% Black. Over two-thirds of Legal Aid's service recipients in 2015 were minorities, with 58% Black and 7% Hispanic. The waiver's increased cost of care, decreased access to care, and resultant barriers and administrative complications will disproportionately affect Ohio's African-American and other minority residents. These groups already face racial, ethnic, and economic barriers to care. For a state that struggles to improve all population health outcomes, with so many poor health indicators exacerbated by poverty, implementing Healthy Ohio would be a significant step backwards.

³ http://www.cleveland.com/healthfit/index.ssf/2016/04/us_sen_sherrod_brown_calls_pla.html accessed August 3, 2016

II. The Healthy Ohio Waiver cost-sharing provisions will decrease access to care for the most vulnerable, including children, pregnant women, and youth transitioning out of foster care.

A. Children and Pregnant Women:

Implementing the Healthy Ohio program will be a detriment to the well being of pregnant women and their unborn children because it will eliminate presumptive eligibility. Low-income pregnant women who cannot access health coverage are often unable to get adequate prenatal care. These women miss out on regular check ups and testing which puts themselves and their unborn child at risk. Not having adequate prenatal care leads to premature births, higher infant mortality rates, and less healthy infants and children. “Many states have found that implementing presumptive eligibility for pregnant women has increased the number of women who seek prenatal care in their first trimester.”⁴

The new Healthy Ohio regulations would change when pregnant women get Medicaid coverage, leaving some women uninsured for the first months of their pregnancy. Currently, the recent Medicaid expansion adopted in Ohio has presumptive eligibility for pregnant women and their coverage starts the same month they submit their application. Under the waiver, the new regulation Medicaid coverage would not start until the application is approved.⁵ Recipients note that County Job and Family Services (JFS) can sometimes take over 90 days to approve an application. While waiting for approval, pregnant women will have to pay for care out of pocket; this for many low-income women is unfeasible. These women will then avoid proper prenatal care until their Medicaid is approved.

The Healthy Ohio waiver would be a backwards step towards addressing Ohio’s low birth weights, early deliveries, and infant mortality. Ohio’s administrative and legislative officials have committed to reduce Ohio’s high infant mortality rate. Over the past few years, different projects and funding have been utilized to educate and assist mothers in an effort to address the high infant mortality rate in our state. The proposed Healthy Ohio Program does not support the state’s commitment to reduce infant mortality. Instead, the waiver would seriously jeopardize the health of pregnant women and place Ohio’s youngest and most vulnerable citizens at even higher risk. If low-income women can no longer receive presumptive eligibility, they will most certainly forego prenatal care resulting in neglect of possibly at-risk and sick unborn infants.

Cleveland, the highest population density city served by Legal Aid, has averaged about 13 infant deaths per 1,000 live births since 2010.⁶ This number is nearly double the state and national average. With the Medicaid expansion, Ohio’s overall infant mortality rate has decreased from 7.4 deaths per 1,000 births in 2013 to 6.8 in 2014.⁷ With the Healthy Ohio waiver, and loss of presumptive eligibility for pregnant women, the infant mortality rate for Cleveland and throughout the state will increase. The lives and health of Ohio’s children are threatened by any barrier to health care.

⁴ <http://www.nga.org/files/live/sites/NGA/files/pdf/MCHUPDATE2000.pdf>

⁵ <http://medicaid.ohio.gov/Portals/0/Resources/PublicNotices/HealthyOhio-1115-Waiver.pdf> (page 17)

⁶ http://www.cleveland.com/healthfit/index.ssf/2015/12/solving_clevelands_infant_mort.html

⁷ <http://medicaid.ohio.gov/Portals/0/Resources/PublicNotices/HealthyOhio-1115-Waiver.pdf> (page 4)

B. Former Foster Care Youth:

Another vulnerable group in our service area negatively impacted by the waiver is young adults transitioning out of foster care. In Ohio, about 1,000 young adults transfer out of foster care each year, with around 150 of those coming from Cuyahoga County alone. These youth face unique hardships because they do not have the safety blanket of a biological family like most of their peers. For example, young adults can stay on their parents insurance into their mid twenties. These young adults are not often paying premiums to their parents to keep this insurance active. Young adults aging out of foster care are currently assisted by the Affordable Care Act provision which grants insurance through Medicaid in a way that mimics receiving insurance through a parent. Requiring young adults who have come out of foster care to pay premiums is unfair and adds to the barriers they already face. As they transition out of foster care they face difficulties such as homelessness, mental health conditions, food instability, education struggles, and difficulty finding and maintaining employment. Healthy Ohio also aims to have recipients choose local providers, which is difficult for young adults who have recently transitioned out of foster care for they are a transient population. Without a biological family home to stabilize them, they move from city to city in an attempt to find housing, a job, or further education. Consistent care will be difficult if these young adults must change providers and constantly make sure their coverage is accepted when they move.

The Healthy Ohio waiver premium requirement would become an additional burden for former foster youth. A 2007 Chapin Hall study found young adults who have come out of foster care typically earn an average of only \$8,000 a year at the age of 24. The premium requirement from this waiver would create an undue burden on these young adults. The likelihood of these youth having the ability to pay the costs of Healthy Ohio would be very low because they are already making difficult choices daily with extremely limited resources.

Like other populations, if these young adults lose their health coverage because they cannot pay, they will stop receiving regular health care services and will only reach out for care when they are in crisis. Emergency room and more costly services will be the only care they receive instead of consistent health coverage from a regular provider. This year, MetroHealth launched a program to address the needs of young adults transitioning from foster care and concluded that consistent primary care leads to better health outcomes, less illness, and less missed work. If young adults in foster care become known for having no insurance, providers will simply stop providing services for this already vulnerable and burdened population.

III. The Healthy Ohio Waiver Does Not Promote the Objectives of the Medicaid Act

The Healthy Ohio Waiver fails to meet the criteria under 42 U.S.C. 1315(a). There is no demonstrative experimental value to adding another state plan to the long list of states to which CMS has granted waivers. Co-payments and health reimbursement accounts have already been unsuccessfully tried in other Medicaid Programs. Under the proposed waiver, persons with incomes as low as 1% of the FPL (near-zero income) and living in extreme poverty would have to pay a monthly or annual premium. Ohio does not need an experiment to show that individuals living in extreme poverty simply do not have the resources to meaningfully engage in Medicaid cost sharing.

Moreover the waiver does not adequately propose any real benefit to Medicaid recipients. The only possible benefit to Medicaid recipients of the Healthy Ohio waiver is that an extremely small percentage of recipients who obtain employment, and who do not use all of the funds in their

Buckeye Account, can then roll over those funds to assist with cost sharing in an employer-sponsored plan. The suggestion, however, that a Healthy Ohio Bridge Account will decrease churn back into Medicaid from private health insurance coverage, and increase the proportion of Ohio residents covered by employer-sponsored insurance or market coverage, shows a lack of understanding of Ohio's current labor market. Over 80% of the Medicaid enrolled adults are either working or disabled.⁸ In 2015, eleven of Ohio's top twelve occupations did not pay enough to raise a family of three above 200% of the federal poverty level and eight of the twelve left a working family of three below 133% FPL.⁹ Unless and until Ohio's labor market and wage scales improve, many responsible working individuals and families will depend on Medicaid to support their ability to work. Erecting barriers to Medicaid harms not only the individuals and families locked out of health care, but also Ohio's economy.

Rather than benefit Ohioans, Healthy Ohio is projected to substantially decrease the overall number of people receiving Medicaid. The waiver proposal will change eligibility not only in the Medicaid expansion category, but also for all other non-disabled adults. This includes many of Ohio's most vulnerable populations: parents with incomes below 90% FPL, low-income 18-, 19- and 20-year-olds, children aging out of foster care, and women with breast and cervical cancer. All of these groups will be subject to premiums, a lock out from coverage if those premiums are missed, and no retroactive coverage to reduce medical debt.

According to ODM, Healthy Ohio will lead to a reduction of 126,000 individuals in the first year following its implementation.¹⁰ Independent researchers estimate an even greater decline in that first year.¹¹ For each successive year of the proposed waiver, ODM projects ever larger decreases in enrollment. Because ODM's projections are based on the assumption of an 85% penetration rate (i.e., 15% of the eligible population will simply chose not to enroll), the estimated declines fail to account for the inevitable drops in enrollment caused by lock out for failure to pay premiums. This is simply unacceptable. A project that predicts, and indeed relies upon for budget neutrality, the loss of hundreds of thousands of participants over a four-year span, will do significant harm to Ohio. None of the supposed benefits listed by ODM can outweigh this devastating harm.

IV. Conclusion

Ohio's waiver proposal will negatively affect the very people the Medicaid Act was enacted to protect. The proposal forecasts a significant decrease in enrollment and locks members out of health care coverage when they cannot afford to pay premiums. Ohio's proposal defeats the primary objectives of the Medicaid program by creating unnecessary barriers to enrollment and continued access to care. Ohio's current Medicaid expansion program is working. The MetroHealth Care Plus pilot project in Cleveland found Ohio's Medicaid expansion has reduced

⁸ [https://osuwmcdigital.osu.edu/sitetool/sites/omaspublic/documents/OMASSLIDEDECK_FINAL\(1\).pdf](https://osuwmcdigital.osu.edu/sitetool/sites/omaspublic/documents/OMASSLIDEDECK_FINAL(1).pdf)

⁹ <http://www.policymattersohio.org/sowo-aug2015>

¹⁰ Ohio Department of Medicaid, "Healthy Ohio Section 1115 Demonstration Waiver Detail." Public Notice and Request for Comments, April 5, 2016, <http://medicaid.ohio.gov/PORTALS/0/Resources/PublicNotices/HealthyOhio-Detail.pdf>

¹¹ Comments by Center for Community Solutions on Healthy Ohio 1115 Demonstration Waiver, filed with the Ohio Department of Medicaid on April 21, 2016, http://www.communitysolutions.com/assets/docs/Health_Policy/2016/healthy%20ohio%20comments%20for%20the%20ohio%20department%20of%20medicaid%20_04212016.pdf

chronic disease among participants with costs lower-than-expected.¹²This waiver proposal would introduce swipe cards, points, and incentives. Consistent, quality health care should not operate like a department store rewards program. The Healthy Ohio waiver would reduce access to health care and simply should not be supported. The Legal Aid Society of Cleveland asks that CMS reject the waiver request.

Sincerely,



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¹² <http://www.policymattersohio.org/medicaid-jan2016>