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October 7, 2016

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

Via Electronic Submission

Dear Secretary Burwell:

AARP welcomes the opportunity to submit comments on the proposed Kentucky Health Section 1115 Waiver Demonstration. AARP is a nonprofit, nonpartisan organization, with a membership of nearly 38 million, that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

AARP believes everyone should have access to affordable health care. Indeed, since Kentucky's Medicaid expansion occurred in 2014, an additional 428,000 low income adults have gained access to healthcare, funded substantially by federal assistance payments intended to alleviate costs to the state.

We are writing to express our serious concerns with the proposed Kentucky HEALTH 1115 Waiver that would significantly alter Kentucky's coverage of individuals up to 138% of the Federal Poverty Level. While there are some positive elements in the waiver, such as the chronic disease management program, the substance use disorder pilot program, and other incentives for quality care, overall we believe that the proposed waiver may negatively impact many of the 1.2 million Medicaid beneficiaries in the state, including AARP members aged 50 to 64 who often struggle to qualify for or afford quality health insurance coverage.

The issue of health care coverage is particularly important to individuals who are over age 50 and not yet eligible for Medicare. These middle-aged adults have been particularly hard hit by the economic downturn in recent years, and often experience unemployment for longer periods than their younger counterparts, or struggle in jobs

that do not offer health coverage. The importance of health care coverage comes at a critical time when people are beginning to face the onset of health conditions that if left untreated could inevitably increase their need for and use of health and long-term care in the future. The 2014 expansion of Medicaid has given Kentuckians without insurance access to preventive care that can save lives, and has eased dangerous and expensive emergency room overcrowding that hurts all of us.

With this in mind, AARP urges CMS to reject the state's proposal in its current form and to work with the state, if possible, to address the following key areas before approving the waiver.

Member Cost Sharing

As proposed in Kentucky HEALTH, new waiver premiums would be instituted for beneficiaries. Premiums for those with incomes between 101% - 138% of the federal poverty level would begin at \$15 per month for the first two years, and rise to \$37.50 for those who stay on the program for more than 5 years. Although exempting some groups such as pregnant women, children, and the medically frail would be an important protection for some of the most vulnerable participants in Kentucky, we are concerned that the proposed monthly premiums could still result in reduced access to needed care. Premiums for individuals with extremely low incomes could result in stressful financial decisions for individuals and families who are already having trouble making ends meet, thereby making it difficult for beneficiaries to maintain health coverage while affording other everyday essentials.

The institution of monthly premiums would be made more problematic by the proposal that some participants who fail to pay the premium within 60 days would be terminated from the program until overdue premiums are paid. This proposal would be a significant departure from the traditional Medicaid program, in which failure to pay premiums does not result in complete termination of enrollment in the program. The coverage gaps created by terminating enrollees would lead to added uncompensated care costs for providers, an inability of health plans to manage care over time, and poorer health outcomes for enrollees that would likely be more expensive to treat later. The new monthly premium requirement, coupled with the termination provision, would create a sizable barrier to access, participation, and continuity of care. This is especially the case for those who are newly eligible for coverage and may have "pent up" needs for health care.

In addition, the proposed Kentucky HEALTH waiver would impose harsh financial penalties for participants who failed to pay their premiums. People over 100 percent of the federal poverty level who did not pay premiums would be locked out from coverage for six months. To regain coverage after the six month lock out period, enrollees would be required to pay all overdue premiums, the current month's premium, and participate in a health or financial literacy course. People below 100 percent of the federal poverty level who don't pay their premiums would face other cost sharing consequences, including penalties related to loss of funds in their "My Rewards" account (see below)

established under Kentucky HEALTH. The lock-out provision would also apply to beneficiaries who do not timely renew their Medicaid eligibility by prohibiting them from re-enrolling in coverage for six months. Moreover, we are concerned with the penalty for non-emergency use of the emergency department, which is much higher than the current \$8 maximum allowed under federal regulations.

We urge the state to reconsider premiums as a requirement for participation in the plan, eliminate premiums for those below poverty, and eliminate termination of coverage as a consequence for failure to pay monthly premiums or for not renewing their eligibility on time.

Community Engagement and Employment Requirements

To maintain enrollment under the proposed Kentucky HEALTH plan, all adult enrollees, with some exceptions, would be required to participate in the Community Engagement and Employment Initiative, beginning after three months of coverage. Initiative activities include active employment, volunteer work, job training, or job search activities, and failure to meet required engagement hours would result in a suspension of benefits until the member satisfied the requirement for a full month.

AARP is very concerned that the Community Engagement and Employment Initiative requirement would present yet another barrier to health coverage for a sector of the Kentucky population who needs coverage the most. As with the non-payment of monthly premiums mentioned earlier, participants who do not comply with the requirements in the Community Engagement and Employment Initiative would be locked out of Kentucky HEALTH. The member would have no coverage until the beneficiary satisfied the Community Engagement and Employment Initiative requirements for a full month, placing the enrollee at risk for adverse health consequences that could be more expensive to treat later. Since the beginning of Medicaid, CMS has shown extreme reluctance to grant a state any waiver that would create Medicaid eligibility requirements beyond the program's focus on those "whose income and resources are insufficient to meet the costs of necessary medical services" (42 U.S.C. § 1396-1(1)) and has never granted a Medicaid waiver that contained a work requirement. We strongly urge CMS to continue this stance.

Additional Benefits Eliminated

Kentucky HEALTH would eliminate non-emergency medical transportation (NEMT) to newly eligible adults. Transportation help is critical for some low-income beneficiaries to access needed care, especially in a state like Kentucky where many beneficiaries live in rural areas and have to travel long distances for medical appointments. The elimination of NEMT is already being evaluated through other state 1115 waivers (e.g., IA and IN). Evaluation data has shown that these waivers have led to transportation problems such as missed medical appointments. AARP strongly believes that CMS should refrain from granting any further NEMT waiver requests until more data is available from those

evaluations already underway in order to assess the full impact on access to services for beneficiaries.

In addition, the proposed waiver would carve out dental and vision services (allowing for a three month transition period), whereby beneficiaries could only gain access to coverage if they had enough funds in proposed “My Rewards” accounts to pay for those services. In Kentucky HEALTH, each beneficiary would be responsible for a \$1,000 deductible applied to all non-preventative healthcare services. To cover the deductibles, each beneficiary would be provided an account funded by \$1,000 to cover the initial medical expenses. Newly created “My Rewards” accounts would be funded by individual beneficiary contribution of 50% of unused deductible amounts into the account, and beneficiaries could “earn” additional rewards by participating in certain actions such as job search and training activities.

We believe that “My Rewards” is an inadequate source of funds for individuals who do not have deductible funds remaining, and would tend to disproportionately benefit the healthiest participants of Kentucky HEALTH. In addition, the accounts would have no value for anyone who uses \$1,000 or more of medical services throughout the year, and would essentially mean only healthy people would be provided access to vision or dental care. We therefore urge the state to reconsider the elimination of these benefits that are currently provided under Kentucky’s Medicaid program, and remove the cumbersome and inequitable “My Rewards” program as a method for restricting access to needed services.

Retroactive Coverage

Members other than children and pregnant women would be required to make their first month’s premium payment prior to the start of benefits, and the waiver seeks to eliminate retroactive coverage for beneficiaries. Under current Medicaid law, eligibility may be made retroactive for up to three months prior to the month of application if the individual would have been eligible during the retroactive period had he or she applied then. We urge the Department to reject this waiver proposal and allow for retroactive coverage as set forth under current Medicaid law. Without retroactive coverage, future low-income enrollees could incur crippling medical debt which would be exacerbated by their inability to take advantage of the more favorable provider reimbursement rates paid by Medicaid or Qualified Health Plans sold through the Kynect marketplace. In addition, lack of retroactive coverage would increase the burden of uncompensated care on providers, and may cause future enrollees to forego needed care, resulting in higher medical costs than would otherwise have been the case once they are covered. For these reasons, AARP believes enrollees should be afforded the same retroactive coverage protections that all other Medicaid beneficiaries receive.

Conclusion

While AARP appreciates the desire of the state to seek new ways to provide health care to the state’s most vulnerable, we believe that the Kentucky HEALTH proposed waiver

contains numerous provisions that could negatively impact the health of beneficiaries. AARP believes that Kentucky HEALTH would be greatly strengthened by revising the provisions of concern as outlined in this comment letter. We encourage the state to work with CMS, where possible, to build upon the positive impact Medicaid Expansion has brought to Kentucky since 2014, and to avoid creating additional barriers to care that will do little to address the needs of vulnerable, low-income Kentuckians.

Thank you for the opportunity to comment on the proposed Kentucky Health Section 1115 Waiver Demonstration. If you have any questions, please do not hesitate to contact KJ Hertz on our Government Affairs staff at (202) 434-3732 or khertz@aarp.org.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

CC: Vicky Wachino, Director, Center for Medicaid and CHIP Services