

November 18, 2016

Hon. Sylvia Burwell
Department of Health and Human Services
200 Independence Ave. SW
Washington, DC 20201



Secretary Burwell,

On behalf of our union, AFSCME Council 31, I submit the following comments on the Illinois Department of Healthcare and Family Services' (IDHFS) application for a Section 1115 behavioral health demonstration waiver. AFSCME Council 31's 70,000 Illinois-based members include several thousand who work in the mental health field. We are committed to helping ensure the quality and efficiency of our state's mental health system.

While many of the goals articulated in the waiver are laudable, our union has serious reservations about the likely efficacy of the means proposed. We object most strongly to a proposal to utilize privately operated Institutions for Mental Disease to detain and restore to fitness criminally-involved individuals whose mental illness is so acute that they cannot participate in their own defense.

The use of IMDs to restore to fitness individuals found unfit to stand trial

Illinois has both hospitals (public and private) and long term care facilities that meet the federal definition of Institutes for Mental Disease (IMDs). In Illinois, the approximately 24 for-profit long term care IMDs operate far more beds than public and private IMD hospitals combined. The industry has a poor reputation among mental health advocates. The for-profit long term care IMDs are seen as providing care that is insufficient to encourage recovery among residents. Since Illinois agreed under the Williams consent decree to transition individuals out of long term care IMDs, the industry has been looking for a new business opportunity.

In 2013 the industry passed legislation that established higher levels of care – and higher state payment rates. The Specialized Mental Health Rehabilitation Act (210 ILCS 49) allows long term care IMDs to establish units offering non-residential 23-hour triage, crisis stabilization (stays not to exceed 21 days), and transitional living units (stays up to 120 days). However, the Act specifically bars the placement of individuals in any of these programs who require a locked setting, require psychiatric hospitalization because of an acute psychiatric crisis, or have been found unfit to stand trial.

The state's inability to claim Medicaid for IMD residents is costly. Therefore, under the waiver application, Illinois is identifying ways to use IMDs that could claim federal match. The waiver proposes:

- Stays in IMDs of up to 30 days for patients enrolled in fee-for-service to enable Medicaid coverage for appropriate, short-term residential stays that focus on stabilization and transition to community care
- Stays in IMDs of 15 to 30 days for members enrolled in managed care

The waiver application states: "... [Medicaid covered] individuals with mental health conditions may encounter barriers to accessing inpatient mental health services, even when inpatient treatment is most appropriate...Therefore, through the 1115 waiver, Illinois seeks to test provision of crisis intervention and acute stabilization services within IMD facilities for stays of up to 30 days for all Medicaid members including those deemed unfit to stand trial (UST)."

The above paragraph refers to our state's crisis in psychiatric inpatient bed access. Illinois proposes piloting treatment for individuals needing that level of care in long term care IMDs instead. It would be irresponsible to establish a pilot as proposed here when there is no indication that IMDs provide the level of treatment and services that could bring about the desired stabilization.

We must emphasize: any plan to use the private long term care IMDs to treat UST individuals who are so acutely mentally ill that a court has found they cannot participate in their own defense, is not only bad policy, it is prohibited under current Illinois law. UST individuals cannot be served in such a setting because they require a locked setting, require psychiatric hospitalization because of an acute psychiatric crisis, and have been found unfit to stand trial – characteristics that make them ineligible for admission to a private IMD. As the Illinois General Assembly has repeatedly rejected the industry's attempts to play this role on the grounds that it does not offer an appropriate level of care, there is no reason to assume the law will be changed. Clearly, this part of the waiver application should be rejected.

Leveraged Federal funding is no substitute for adequate state funding

We believe the waiver will be insufficient to address the tremendous challenges facing behavioral health services in Illinois at this moment of budget crisis. After 12 months with no state budget, and only partial and temporary restoration of the many cuts initiated by Governor Rauner to behavioral health programs, community mental health providers have laid off staff and cut back programs. The community mental health services infrastructure is in disarray and, rather than addressing this current crisis in services, the waiver's proposed expansion of Medicaid managed care may worsen it.

For example, AFSCME represents employees of the Will County Health Department (WCHD) which has been a community based outpatient mental health provider for over 40 years. WCHD provides mental health and psychiatric services for approximately 1,800 adults who have been diagnosed with a mental illness, with a waiting list of new patients seeking services. In April 2016 the uncertainty regarding state funding impelled the WCHD Board to propose eliminating entirely: WCHD's mental health services, including crisis services; pre-admission hospital and nursing home screenings for the mental health population; and acute mental health outpatient care to those discharged from hospitals without medical insurance. Grassroots advocacy convinced the Will County Board to increase funding to the Health Department until the state budget is stabilized. But even with that additional support, the County still eliminated a program to improve post-hospital linkage to reduce readmissions as the Rauner Administration had completely eliminated its funding.

Much of the \$1.2 billion in savings forecasted in the waiver application would be generated by expanding managed care – what the waiver calls Integrated Health Homes. This may have unintended consequences. These managed care entities would be free to contract with whatever entities they

choose, and at whatever rates they deem appropriate. This could leave community mental health agencies without contracts and therefore without any Medicaid revenue, or it could mean cuts to reimbursement rates that a system already on the ropes may not survive.

Lack of accounting for investment and cost savings

IDHFS claims to have a spreadsheet which lays out where investments will be made and savings achieved, and the exact balances of investments and savings. No such document has been posted for comment. We have the projected savings targets, but no walk up to how those savings will be achieved.

Conclusion

Recognizing the critical nature of the crisis facing our behavioral health delivery system in Illinois, we want to stress that a federal waiver can in no way substitute for the urgent need for a fully-funded state budget that supports this important and endangered service array. Moreover, in its current form the Illinois Section 1115 Waiver Application could actually further damage our struggling system of care.

Sincerely,

A handwritten signature in black ink, appearing to read "Roberta Lynch". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Roberta Lynch
Executive Director