October 20, 2017

The Honorable Eric Hargan, Acting Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Seema Verma, Administrator
U.S. Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Comments on Request to Amend Massachusetts' Section 1115 Demonstration: MassHealth (11-W-00030/1)

Submitted on medicaid.gov

Dear Secretary Hargan and Administrator Verma:

On behalf of the undersigned organizations, all dedicated to preserving and improving affordable health coverage for all Massachusetts residents, thank you for the opportunity to comment on the MassHealth Section 1115 Demonstration Waiver Amendment submitted to the Centers for Medicare and Medicaid Services (CMS) on September 8, 2017.

With this 1115 waiver proposal, the Massachusetts Executive Office of Health and Human Services (EOHHS) requests broad flexibility to make various eligibility and coverage changes. While we appreciate EOHHS's intent to maintain the Commonwealth's gains in access to health coverage and care, we are concerned that many of the provisions included in the proposed 1115 waiver amendment will decrease access to affordable coverage and care for low-income consumers. We outline our concerns in more detail below.

Aligning MassHealth with Commercial Health Insurance Coverage

Section 1115 waiver demonstrations are premised on "promoting the objectives" of the federal Medicaid Act.[1] The objectives of Medicaid are to provide medical assistance to low-income individuals and families who cannot afford the costs of medically necessary services and other services that help such individuals attain or retain capability for independence or self-care.[2]

Aligning MassHealth coverage with commercial insurance – one of the stated goals of the MassHealth 1115 waiver amendment request – is not one of the objectives of Medicaid. Commercial insurance differs from Medicaid coverage in many ways, including charging higher premiums and cost-sharing, covering fewer benefits, and providing fewer consumer protections. EOHHS's premise that low-income people, including non-disabled adults, are similarly situated to commercially insured individuals does not accurately reflect the economic and health status realities of these individuals. MassHealth-eligible non-disabled adults are much poorer than commercially insured individuals. Given the high cost of living in Massachusetts, individuals with incomes below 133% of the federal

[1] 42 U.S.C. § 1315a.
[2] 42 U.S.C. §1396-1.

poverty level (FPL) are often unable to pay for basic needs and have no disposable income to pay for health care.

Reducing MassHealth Eligibility to 100% FPL for Non-Disabled Adults

EOHHS proposes to reduce MassHealth eligibility for non-disabled adults ages 21 to 64 to 100% FPL, and instead enroll these individuals into the Health Connector's subsidized marketplace program, ConnectorCare, beginning January 1, 2019. Currently, this population includes approximately 100,000 parents enrolled in MassHealth Standard and 40,000 childless adults enrolled in MassHealth CarePlus. ConnectorCare is a valuable program, integral to Massachusetts' health coverage system, as it offers more affordable coverage than even the federal Advanced Premium Tax Credits (APTCs) and Cost-Sharing Reductions (CSRs) alone would provide. However, ConnectorCare coverage provides fewer benefits, is more costly to consumers, and presents more enrollment barriers than MassHealth coverage.

We strongly urge CMS to consider the following implications of shifting non-disabled adults with incomes over 100% FPL from MassHealth to ConnectorCare, including:

- *Higher premiums for consumers for most health plan options*: ConnectorCare will offer at least one $0 premium plan in 2018, but unlike Medicaid or the former Commonwealth Care program, in ConnectorCare there is no legal requirement that the Connector continue to offer a $0 premium contribution plan to low-income individuals. The premiums for plan options other than the lowest cost plan(s) are substantial – up to $174 per month in 2017 for this income cohort. Many MassHealth members transitioning to ConnectorCare would not be able to continue enrollment in their current health plan or maintain continuity of care with current providers due to the higher cost of ConnectorCare plans.
- *Higher copays:* ConnectorCare copays at this income level are substantially higher than those in MassHealth, impacting access to services for members. For example, MassHealth copays for prescription drugs are currently $1 or $3.65 per medication, and MassHealth members cannot be turned away for inability to pay. ConnectorCare Plan Type 2 members (with incomes between 100-200% FPL) are required to pay between $10-40 to fill each prescription. ConnectorCare imposes copays for a wider range of services than MassHealth, including $10 for a primary care or mental health/substance use disorder visit, $18 for a specialist visit, and $50 for emergency room and other hospital services. We appreciate that since releasing the original waiver proposal for public comment, EOHHS has agreed to ensure MassHealth-level copays for ConnectorCare enrollees with Medicaid Modified Adjusted Gross Income (MAGI) up to 133% FPL, and we support this modification. However, this provision is not included in the waiver amendment document submitted to CMS; therefore, these comments reflect the pending proposal as written.
- *Loss of benefits*: ConnectorCare does not guarantee coverage of the same level of benefits as MassHealth. While MassHealth covers dental services, ConnectorCare does not. The Health Connector offers stand-alone dental plans, but the cost of these plans is not subsidized, and would be out of reach for most. In addition, the Health Safety Net – which provides "wrap" dental coverage to ConnectorCare enrollees – already has long wait times for patients to receive dental services, and adding more people to ConnectorCare will exacerbate this problem. We applaud EOHHS for recognizing the importance of access to dental care by assuring stakeholders that EOHHS will maintain MassHealth dental benefits for ConnectorCare enrollees with incomes up to Medicaid MAGI limit of 133% FPL, upon approval by the Connector Board. This change, which we strongly support, is not reflected

in the waiver amendment submitted to CMS, as it does not require federal approval. In addition, while ConnectorCare plans are required to cover inpatient and outpatient mental health and substance use disorder services, these plans may not offer the same range of behavioral health services as MassHealth. In particular, access to diversionary services, such as Community Support Programs and Emergency Services Programs, are not typically a part of traditional commercial insurance benefit packages and therefore may not be available to many individuals covered through ConnectorCare plans. Last, ConnectorCare plans are currently able to implement more restrictive drug formularies than current MassHealth rules allow, and may impose more utilization management techniques, which create barriers to both obtaining needed medications and continuing on a course of treatment.

- *Enrollment barriers*: Unlike MassHealth, Connector enrollees must take the step of choosing a plan and paying a premium before their coverage is effectuated. Data provided by the Health Connector showed an "eligible but unenrolled" rate of 40% at one point this summer for ConnectorCare-eligible individuals with incomes between 100-150% FPL. In addition, ConnectorCare has eligibility rules that would bar certain people from qualifying, such as those who have access to employer sponsored insurance with a premium that costs less than 9.69% of their family income in 2017 and married couples living apart filing taxes separately (with limited exceptions). We appreciate that EOHHS has excluded veterans who are eligible for Veterans Administration services from the population targeted to lose MassHealth eligibility, in addition to exempting medically frail individuals, pregnant women, individuals who are HIV positive and individuals in the Breast and Cervical Cancer Treatment Program.
- *Removal from MassHealth Accountable Care Organization (ACO) program*: Another negative feature of the proposed transition is that 140,000 adults would be removed from MassHealth soon after the program moves into implementation of ACOs. ACOs have a potential to demonstrate long-term cost savings and care improvement. ACOs will need stable and expanded enrollment to succeed. Keeping this population in MassHealth will give ACOs the chance to achieve savings and enhance quality by addressing the underlying cost drivers and to produce better health outcomes for its members.

Shifting Parents from MassHealth Standard to CarePlus Coverage

EOHHS proposes to transfer 230,000 parents and caretaker relatives with income under the newly reduced 100% FPL limit from MassHealth Standard to MassHealth CarePlus, an Alternative Benefit Program authorized under the Medicaid expansion program. CarePlus does not include long-term services and supports (LTSS) and under a previous waiver amendment, MassHealth would eliminate non-emergency medical transportation (NEMT) in CarePlus (except for travel to substance use disorder services). The Medicaid program has required coverage of NEMT, as studies have shown that it improves health outcomes and in some cases reduces costs.[3] We understand that MassHealth will make efforts to ensure that individuals who have not received a disability or medically frail determination can maintain their MassHealth Standard coverage, including access to LTSS and NEMT services. However, non-disabled adults who do transition from MassHealth Standard to CarePlus will lose the key NEMT benefit, and may struggle to find reliable means of transportation to provider appointments.

[3] P. Hughes-Cromwick and R. Wallace, et al., Cost-Benefit Analysis of Providing Non-Emergency Medical Transportation, Transit Cooperative Research Program (Oct. 2005). Available at: http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_webdoc_29.pdf.

Ending MassHealth Limited Upon ConnectorCare Eligibility

EOHHS proposes to eliminate MassHealth Limited (emergency Medicaid) ninety days after an individual is determined eligible for ConnectorCare. We are concerned that those who remain eligible for ConnectorCare but unenrolled will not have access to even emergency coverage after ninety days, and they will be foreclosed from enrolling in ConnectorCare until the next open enrollment period. In addition, without Health Safety Net or MassHealth Limited coverage after the initial ninety days, hospitals and community health centers will incur more uncompensated care costs and consumers will incur more medical debt.

Implementing a Closed Drug Formulary

We understand that prescription drugs are a key driver of increasing health care costs and the state must explore ways to lower costs. However, we are concerned that a closed formulary, as proposed in the 1115 waiver amendment, would impose unnecessary barriers to needed medications. Unlike several of the changes proposed elsewhere in this 1115 waiver amendment request, the proposed formulary restriction would apply to all MassHealth members, including people living with disabilities, medical frailty, HIV, and breast and cervical cancer, as well as children and seniors.

Prescription drugs are a lifeline for people living with chronic and complex conditions, and further restrictions on access to medications will only serve as a barrier to obtaining the treatment regimens that are most appropriate for these individuals. People with complex medical conditions are often treated for multiple ailments, requiring further balancing of patient histories and drug interactions to arrive at patient-specific treatment plans. A closed formulary would restrict the drugs MassHealth covers, with as few as one drug available per therapeutic class. It is important that doctors are able to provide treatment based on patients' needs, not on availability of coverage in MassHealth, driven solely by cost savings concerns.

If despite these strong objections, CMS allows Massachusetts to approve the request for a limited formulary, any such approval should be conditioned on the state adopting more consumer protections than it has proposed, such as adopting the patient protections afforded Medicare Part D patients in their selection of a pharmacy plan with a closed formulary. At the very least, the formulary should adhere to the guidelines set forth in the Medicare Prescription Drug Benefit Manual – Chapter 6 Part D Drugs and Formulary Requirements. Section 30.2 requires that two drugs per category or class be made available in a given formulary – not the single drug proposed by the formulary restrictions of the MassHealth proposed 1115 waiver. We further recommend that the rule set forth in the Medicare Prescription Drug Manual at Section 30.2.5 "Protected Classes" be adopted. This rule states that "Part D sponsor formularies must include all or substantially all drugs in the immunosuppressant (for prophylaxis of organ transplant rejection) antidepressant, antipsychotic, anticonvulsant, antiretroviral, and antineoplastic classes." We also recommend the additional "protected class" category of "direct acting antivirals" which are so essential in the treatment of hepatitis C (HCV), and further exempting certain populations, such as children, people with disabilities or chronic illnesses, and others.

Further, there should at a minimum be a robust exceptions process to cover drugs that are not on the formulary, including but not limited to exceptions to address adverse drug reactions, drug interactions or specific clinical needs of a patient. Exceptions should also take into consideration the ability of enrollees to adhere to a treatment regimen. MassHealth must ensure that the exceptions process is accessible, easy to navigate, and timely.

Instituting Narrower Primary Care Clinician (PCC) Plan Networks

In its 1115 waiver amendment, MassHealth seeks a freedom of choice waiver in order to implement narrower networks in the PCC Plan to encourage enrollment in ACOs and MCOs. We are concerned about the potential impact of limiting freedom of choice for PCC Plan enrollees. Most often, applicants choose the PCC Plan because their preferred providers are not included in Managed Care Organization (MCO) networks, or are not all included in the same network. This choice is particularly important for individuals with disabilities who more frequently choose the PCC Plan over MCOs. In its request, the state indicates that certain areas of the state will not have a choice among two or more MCOs in 2018. With no MCO choice, it will be particularly important that the PCC Plan maintains a full roster of MassHealth participating medical providers in order to give members in these areas of the state some kind of meaningful choice. Indeed, in its public notice comments, the state indicates it plans to delay restricting freedom of choice for PCC Plan members until the second year of the ACO roll-out. Finally, the Evaluation section of the proposal makes frequent references to the lessons to be learned by comparing outcomes among the new delivery models, including the PCC Plan. If the PCC Plan restricts freedom of choice just as the MCOs do, the state and CMS will lose the benefit of comparing costs and outcomes across a range of delivery systems in order to draw useful conclusions about the results of the demonstration.

We appreciate the opportunity to provide feedback on the proposed Massachusetts 1115 waiver amendment currently before CMS. Should you have any questions or wish to discuss these comments further, please contact Suzanne Curry, Associate Director of Policy and Government Relations at Health Care For All at (617) 275-2977 or scurry@hcfama.org. Thank you for your time and consideration.

Sincerely,

Action for Boston Community Development (ABCD) Health Services
AIDS Action Committee of Massachusetts
The Arc of Massachusetts
Association for Behavioral Healthcare
Boston Center for Independent Living
Boston Public Health Commission
Center for Public Representation
Central West Justice Center
Children's HealthWatch
Disability Law Center
Disability Policy Consortium
East Boston Ecumenical Community Council - EBECC
Easter Seals Massachusetts
Greater Boston Legal Services
Health Care For All
Health Law Advocates

Massachusetts Artists Leaders Coalition
Massachusetts Immigrant and Refugee Advocacy Coalition
Massachusetts Law Reform Institute
Massachusetts Medical Society
Massachusetts Organization for Addiction Recovery
MassADAPT
Mass Home Care
National Alliance on Mental Illness of Massachusetts (NAMI Mass)
National Association of Social Workers - MA Chapter
National Multiple Sclerosis Society
Oral Health Advocacy Taskforce
Personal Disability Consulting, Inc.
Prevent Blindness - Northeast Region
Stavros