Wisconsin BPDD
WISCONSIN BOARD FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

May 12, 2017

Wisconsin Department of Health Services
Secretary Linda Seemeyer
P.O. Box 309
Madison, WI 53707-0309

Dear Secretary Seemeyer:

Thank you for the opportunity to comment on the Department's proposed changes to the BadgerCare waiver.

Although BadgerCare participants are often referred to as the "able-bodied" Medicaid population, many people with disabilities access Medicaid health care and services through BadgerCare. People with disabilities in BadgerCare fall into four general categories:

- People with Intellectual/Developmental Disabilities (I/DD) who do not meet the functional screen criteria for Family Care or IRIS
- People with disabilities who do not have or are in the waiting period for a disability determination
- People with intermittent disabilities (multiple sclerosis, for example) or disabilities that are progressive or may increase in severity and lead to functional limitations over time
- People with a primary diagnosis of mental health conditions

The Wisconsin Board for People with Developmental Disabilities (BPDD) is concerned that the proposed changes to the BadgerCare waiver will negatively and disproportionally impact BadgerCare participants who have disabilities.

BadgerCare is an important pathway for people with disabilities to access Medicaid health care and services that are not available at all or in the amount needed in private sector insurance plans. People with I/DD—including those with autism, epilepsy, and conditions that do not currently require a nursing home level of care—may require health care and supports that are only available through Medicaid. For these individuals, BadgerCare may be the only Medicaid program option.

For people with I/DD who have progressive conditions or disabilities that will eventually impact function, BadgerCare plays an important role in maintaining health coverage until the individual qualifies for long-term care programs. BadgerCare is critical for people with disabilities who are awaiting a disability determination from the Social Security Administration; it may take two years for an initial determination, and many people with disabilities find it necessary to take additional time in an appeals process before receiving a formal recognition of their disability.

BadgerCare also provides a bridge for people with disabilities who lack formal documentation of their disability prior to age 18 or who were diagnosed after age 18. It is important to note that underserved

populations, including those from culturally and linguistically diverse communities, are less likely to have a formal documented diagnosis of their disability prior to age 18 due to lower health care access and other barriers, which may impact their ability to obtain an adult disability determination.

Despite the Department's intent to exempt BadgerCare participants with disabilities from the new waiver requirements imposed on the childless adult population, BPDD believes many people with disabilities—including those with I/DD—may be subject to premiums, health risk assessments, financial penalties for Emergency Room use, work requirements, and potential loss of Medicaid eligibility based on the amount of time spent in the program, especially if they do not have or are in process of obtaining documentation of a disability or a disability determination.

Additionally, it appears the drug screening provisions apply to all BadgerCare participants or prospective BadgerCare participants, and would therefore by default impact people with disabilities.

Drug Testing and Substance Abuse Treatment

It is unclear if the proposed drug assessment screening/drug test would be required prior to determining whether an individual is eligible for BadgerCare. Prospective BadgerCare applicants should not have to submit a drug test as a pre-requisite for Medicaid eligibility; the current means testing criteria should continue to be used to assess eligibility.

The costs of drug testing BadgerCare applicants or participants should be borne by the state. The prospective BadgerCare population is by definition low-income—at or below 100% of the Federal Poverty Level—and does not have health care coverage. Without health insurance, lab and other costs associated with drug testing may be prohibitively expensive for low income applicants, and could become a financial barrier that would prevent access to BadgerCare.

Many low income prospective BadgerCare participants face additional barriers including reliable/affordable transportation, non-regular work hours, caregiving responsibilities, low access to health care providers etc. Requiring a drug assessment screening test significantly increases the burden on low income people to overcome multiple barriers in order to get the drug test.

Although evidence of a valid prescription exempts individuals from substance abuse treatment requirements, it does not exempt BadgerCare participants from initial or annual drug screenings or tests. It is not clear how the Department will handle false positive test results or what the process will be to confirm the validity of drug testing results. Many people with disabilities may have multiple prescriptions, which may result in positive drug screening results. It is also unclear whether a false positive, positive test results, or inability to complete an annual drug test would have on BadgerCare eligibility.

BPDD questions the cost of repeated and continual drug testing. There is no evidence that BadgerCare participants are any more likely to use drugs than those insured under private sector plans. Private sector plans do not require drug tests as a pre-requisite to accessing non-drug related health care. State investment in administrative oversight and management of drug test assessments and results for all participants is a considerable expense that will not result in improved health, access to care, or better services for the vast majority of BadgerCare participants.

Work Requirements

Health care needs and access are independent from an individual's work status; BPDD does not support the Department's addition of a work requirement to the demonstration waiver. This proposal goes beyond what the legislature directed under 2015 Wisconsin Act 55, and may result in low income individuals who are unemployed, cannot work the number of hours required per month, or who have cyclical or many limited term employment positions losing access to health care. Health status is a pre-requisite to being able to work; work should not be a pre-requisite to achieve health.

If DHS chooses to pursue a work requirement with CMS as part of its waiver, BPDD offers the following comments.

BPDD is a strong proponent of employment for people with disabilities. Evidence shows that with the right supports, people with disabilities—including those with the most significant disabilities—can work. BPDD recommends that the Department include an exemption from the work/training requirement that is based on medical or daily functional skills criteria rather than having a blanket exemption that is based on the presence of a disability. This would address populations that may have intermittent disabilities or acute health events that preclude them from continual participation at a constant number of hours per week in the workforce, those waiting for disability determinations, and those without formal diagnoses.

Many people with disabilities can work but may not be able to work 80 hours per month. While disability should not mean an automatic exemption from work, DHS should use the presence of disability or multiple chronic health conditions that impact employment to lower the number of hours of work required on a case by case basis. We also encourage DHS to establish a process for individuals to apply for an exemption that DHS may grant at its discretion.

BPDD acknowledges that the presence of a disability may necessitate additional accommodations and job supports, and recommends that DVR services and other job supports that are specifically geared for people with disabilities are included as ways participants can meet work requirements. BPDD also acknowledges that many people with disabilities experience additional barriers to employment—transportation, housing that is not located near employers, lack of caregivers that impact the ability to keep a routine schedule, etc.—and asks that these factors be considered and addressed when implementing any work requirement policy for BadgerCare participants.

Limiting eligibility to no more than 48 months

The waiver application does not explicitly state that participants who are exempt from work requirements will not accrue time towards the 48 month limit; we recommend DHS explicitly exempt these individuals from the time limit.

People with disabilities rely on Medicaid for health care, supports and services that are not available at all on the private sector market or are not available to the degree needed. The average time an applicant spends waiting for a disability determination from SDDI is two years, and that can extend longer as people move through an appeals process. BPDD recommends that the time spent by people actively seeking a disability determination be exempted from the 48 month limit. A similar exemption should be included for those with intermittent disabilities and those with multiple chronic health conditions; this would help address the population in BadgerCare who have acute health or mental health needs as well as those who do not have a formal diagnosis.

BPDD objects to the six month lockout period that occurs after 48 months has passed and before a participant can re-apply for health care coverage under BadgerCare. Abrupt loss of health care, especially for people with acute or multiple chronic conditions, intermittent disabilities, or people with disabilities waiting for a determination can lead to rapid deterioration of health conditions—will be more costly when they are re-enrolled in BadgerCare or result in uncompensated emergency room care—or even death.

The administration required for DHS to track how many months individuals have been on BadgerCare without being exempt from work requirements, working 80 hours per month, or participating in a qualified training program will be complex. The potential for recordkeeping mistakes that result in loss of health care is serious. It will be difficult for participants to track their remaining months of coverage and identify any mistakes that resulted in incorrect accounting of employment or exempt status. There must be an appeal process that enables participants to dispute the Department's accounting.

There must also be a notification process—we recommend annually for all participants with additional notifications 9, 6, 3, and 1 month before coverage is terminated—that states how many months of coverage an individual has left if work requirements are not met. Any notification process must recognize the diversity of BadgerCare participants and the barriers that low income people and people with disabilities often face—changes in housing location, lack of access to internet based systems, literacy, etc.

Health risk assessment

People with chronic health conditions and disabilities may have conditions that fall into the Department's categories of Risky Behavior (such as excess body weight) that are the result of their condition or medications used to manage their condition. Premium increases in these situations are punitive and do not serve to change health or behaviors.

Similar to our concerns with the annual drug testing requirement, requiring an annual Health Risk Assessment results in an extra administrative hurdle to maintain health coverage for populations that already face many barriers—including reliable/affordable transportation, non-regular work hours, caregiving responsibilities, low access to health care providers.

Premiums and penalties for Emergency Room Use

BPDD is not aware of BadgerCare participants using the Emergency Room as their vehicle for primary health care. BadgerCare participants are able to choose primary health care providers; if an ER is the only health care setting participants can access, a need for increased provider capacity in underserved geographical locations should not be penalized.

For people with chronic conditions or disabilities, transportation barriers may lead to ER use. Lack of access to preventative care or missed appointments due to lack of transportation may lead to worsening health conditions. Participants may not have a choice on the destination if an ambulance is being used; if they are delivered to an ER as a default we do not believe this merits an additional co-pay.

Similar to our concerns with a six month lockout on health care coverage after 48 months have been exceeded, BPDD opposes locking participants out of access to health care for six months due to unpaid premiums. Abrupt loss of health care, especially for people with acute or multiple chronic conditions,

intermittent disabilities, or people with disabilities waiting for a determination can lead to rapid deterioration of health conditions—which will be more costly when they are re-enrolled in BadgerCare or result in uncompensated emergency room care—or even death.

People at 100% FPL do not have excessive disposable income; any additional bill puts participants at risk of being unable to cover their financial obligations (including housing, food, transportation) all of which may have a direct correlation to maintaining health. The amount of money gathered from premiums does not significantly offset the financial risks to the state should people lose health care coverage.

BPDD also questions the administrative expense associated with tracking relatively small premium amounts for each individual participant. The potential for recordkeeping mistakes that result in loss of health care is serious. Without clear communications, participants may not recognize small premiums as bills and what the consequences are should they not be paid.

Communication with members on how to maintain coverage

The proposed waiver creates many separate items that must be completed on a cyclical basis in order to maintain coverage 1) annual drug assessment/testing, 2) annual health risk assessment 3) continual tracking of employment and number of hours worked 4) continual tracking of premium charges and payments. 5) potential additional co-pays or premium amounts based on ER use or health risks.

This creates complexity for participants and can cause confusion. At the minimum, any individual notifications and explanations to participants should cover each of these elements and detail any deadlines, steps that must be taken, documentation needed, appeal processes etc. for each requirement.

Changes in housing location, lack of access to internet-based systems, literacy and other barriers make it imperative that the Department have a multi-pronged communications approach that makes every effort to locate and inform participants in plain language what they must do to maintain BadgerCare.