



Survival Coalition

of Wisconsin Disability Organizations

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July 19, 2011

VIA FACSIMILE

Secretary Kathleen Sibelius
U.S. Department of Health and Human Services
200 Independence Ave. SW
Washington, DC 20201

Subject: CMS' Response to Wisconsin's anticipated request to amend the Family Care § 1915 (c) Waiver

Dear Secretary Sibelius,

The Survival Coalition of Wisconsin Disability Organizations is writing to join various other organizations and elected officials in asking you to deny Wisconsin Department of Health Services Secretary Dennis Smith's anticipated request to eliminate the entitlement feature of Wisconsin's Family Care Waiver. As you know, the current agreement in effect between CMS and Wisconsin includes the following language:

"Every eligible person will have entitlement to Family Care within 36 months of implementation of the Family Care Waiver in his or her county. Every person with a nursing home level of care will have the choice of receiving the Family Care (or in some parts of the state Partnership) benefit by enrolling in a managed care organization or to choose Medicaid fee-for-service benefits including participation in IRIS, Wisconsin's self-directed supports waiver, if desired."

The recent budget passed by the legislature and signed by Governor Walker creates a cap on all community-based LTC funding as of 7/1/11, effectively negating this feature of the waiver. In fact, Wisconsin has already implemented the cap, which has resulted in Wisconsin already being in violation of the agreement with CMS, i.e. DHS has told counties in their third year of Family Care operations that they will not achieve entitlement by the end of the third year.

There are several reasons that CMS would be justified in denying the proposed amendment:

1. Entitlement is part of the DNA of Family Care. When Governor Tommy Thompson proposed the Family Care waiver to CMS in 1999, a "ramp up" to entitlement with a date

certain for each county was an essential ingredient of the proposal, both in negotiations with CMS and with advocates and the state legislature. There is no way that advocates would have supported a managed care model or the legislature would have adopted it without the promise of entitlement. We were told by officials in the Thompson administration that CMS was also insistent on this feature.

The other requirement that CMS emphasized at the beginning of Family Care was choice. This was a major factor in Wisconsin deciding to create the IRIS program, which provides a self-directed supports alternative to managed care in every Family Care county. Now DHS is asserting that Family Care eligible people still have a choice in Family Care counties, but in fact that only refers to people already receiving service who could move from Family Care to IRIS or vice versa.

2. Wisconsin is too far “down the road.” 57 (out of a total of 72) counties have passed county board resolutions to adopt a managed care/entitlement model, dismantled their county Long Term Support (LTS) units, and turned over all adult LTS operations to new multi-county managed care organizations (MCOs). These decisions and actions were premised on an explicit promise from both the executive and legislative branches of state government (and indirectly from CMS), that the needs of future people who meet the eligibility criteria in each county will be met. For the state to renege on that promise 11 years after the program started, with 80% of Wisconsin counties relying on that promise, strikes us as unconscionable.
3. Counties cannot “take up the slack.” Wisconsin law specifies certain responsibilities for counties in relation to protection and services for certain vulnerable groups. Many of these people are Family Care eligible. Counties have agreed to give up some of the state funding they received in the past, with the understanding that the state and federal government would provide these services through Family Care. County funding was cut again in the current 2011-2013 state budget. Counties are also subject to caps on their tax levy powers. They have no funding to replace the loss of a Family Care entitlement.
4. Likely violations of the ADA. DHS made a last minute addition to the state budget to enable DHS to enroll individuals into Family Care who currently reside in institutions, i.e., to exempt such individuals from the cap. Some people have characterized this as a measure to prevent Olmstead litigation against the state. Unfortunately the budget language is vague. It does not ensure that funding will be adequate for each person, nor does it indicate how MCOs will receive adequate training and technical assistance to carry out this responsibility. Moreover, it requires people to endure 90 days of unnecessary institutionalization before they can access relocation funding. In other words, people with disabilities must first subject themselves to illegal discrimination before the state will even consider relieving them of it.

The legislature added \$5 million/year of state funds to serve “individuals on wait lists who are in urgent need of long-term care services.” Unfortunately this fund will only be sufficient to serve 300-400 people at any point in time, which is a small percentage of the current 9000+ (or projected June, 2013 16,000) person wait list. Counties and advocates predict that the total number of people at imminent risk of institutionalization, or who are

protectively placed by the courts, or who use up their private funds and become financially eligible for Family Care in the coming biennium, will far outstrip this fund.

5. Governor Walker is having second thoughts about the cap. In a June 27 on-line interview with the Milwaukee Journal Sentinel Governor Walker states that he intends to prioritize addressing the Family Care caps in the fall. The article reports that the Governor specifically indicated, “the state budget’s freeze on new enrollments in the state’s Family Care program could be modified or dropped later this year.” If that is the case, it seems premature to ask CMS to make a fundamental change in a longstanding agreement between Wisconsin and the federal government, in relation to a program which serves over 30,000 people.

When the governor initially proposed the cap, he said that he wanted to wait for the results of a legislative audit of Family Care before continuing expansion. Now the audit has been completed, and it is clear that the recommendations in the audit report can be implemented while expansion continues.

6. Widespread opposition to the cap. Virtually all major disability & aging organizations in Wisconsin, and many other organizations oppose the cap on community – based LTC and a return to the system we had 12 years ago in which the only entitlement is for nursing home care. We have attached the list of 70 organizations which submitted a Resolution in opposition to the cap to the Wisconsin legislature.

Thank you for your consideration of the views of people with disabilities and disability advocates in Wisconsin.

Sincerely,

Lynn Breedlove, Co-Chair

Maureen Ryan, Co-Chair

Beth Swedeen, Co-Chair

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Enclosure

Wisconsin Organizations who oppose the Cap on Community-based Long Term Care

Statewide Agencies

<p>AARP Wisconsin Aging & Disability Professionals Association of Wisconsin Autism Society of Wisconsin Board on Aging and Long Term Care Brain Injury Association of Wisconsin, Inc. Coalition of Wisconsin Aging Groups Disability Rights Wisconsin Family Voices of Wisconsin Greater Wisconsin Agency on Aging Resources, Inc. Lutheran Social Services of Wisconsin and Upper Michigan, Inc. Mental Health America of Wisconsin People First Wisconsin Wisconsin Alliance for Retired Americans Wisconsin Association of Area Agencies on Aging Wisconsin Association of Benefit Specialists</p>	<p>Wisconsin Association of Family & Children's Agencies Wisconsin Board for People with Developmental Disabilities Wisconsin Branch of the International Dyslexia Association Wisconsin Coalition Against Domestic Violence Wisconsin Coalition Against Sexual Assault Wisconsin Coalition of Independent Living Centers, Inc. Wisconsin Council on Children and Families Wisconsin Council of the Blind & Visually Impaired Wisconsin Council of Churches Wisconsin Counties Association Wisconsin County Human Services Association Wisconsin FACETS Wisconsin Family Care Association Wisconsin Personal Services Association</p>
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Regional Agencies

<p>Alzheimer's Association - Greater Wisconsin Chapter Alzheimer's Association of Southeastern Wisconsin Arc - Winnebago County Disability Association ARC of Greater Milwaukee Autism Society of Southeastern Wisconsin Badger Association of the Blind and Visually Impaired Bell Therapy, Inc. Carefinders, Inc. Catholic Charities Community Advocates Easter Seals Southeast Wisconsin Genesis Behavioral Services, Inc. Geriatric Support/Pathway Care Grand Avenue Club, Inc. GT Independence IndependenceFirst Independent Living Resources, Inc. Interfaith Older Adult Programs Jewish Community Relations Council of the Milwaukee Jewish Federation Jewish Family Services JFS Housing, Inc. La Causa, Inc. Legacy Center, UA - Corporate Guardianship Services Legal Aid Society of Milwaukee</p>	<p>Milwaukee County Disability Resource Center Oversight Committee Milwaukee Mental Health Task Force Midwest Community Services, Inc. Milwaukee County Aging and Disability Resource Center Board Milwaukee County Combined Community Services Board Milwaukee County Commission on Aging Milwaukee County Department of Family Care Milwaukee Mental Health Task Force NAMI Greater Milwaukee North Country Independent Living Options for Independent Living Project Access, Inc. Society's Assets St. Croix Valley Disability Coalition Stowell Associates SelectStaff Inc. The Arc of Racine County, Inc. Transit Express Transitional Living Services United Cerebral Palsy of Southeastern Wisconsin Wisconsin Community Services, Inc. Wisconsin Latino Action Coalition Wisconsin Upside Down Women's Psychotherapy Centre of WI, LLC</p>
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