



December 27, 2017

VIA EMAIL

Mr. Casey Himebauch
Interim Medicaid Director, Wisconsin Department of Health Services
Division of Medicaid Services
1 West Wilson Street, Room 350, P.O. Box 309
Madison, WI 53707-0309
Email: wisconsin1115clawaiver@dhs.wisconsin.gov

RE: Wisconsin's Request to Extend BadgerCare's 1115Reform Demonstration Waiver

Dear Mr. Himebauch:

On behalf of the Wisconsin Chapter of the American College of Emergency Physicians (WACEP), its parent organization, the American College of Emergency Physicians (ACEP), and the Emergency Department Practice Management Association (EDPMA), we appreciate the opportunity to voice our concerns with the proposed amendment to Wisconsin's Section 1115 Medicaid waiver application relating to emergency department use and copays.

Emergency physicians and the organizations that support the practice of emergency medicine appreciate the insight of the Wisconsin Department of Health Services (DHS) in proposing an amendment to Wisconsin's Section 1115 Medicaid waiver that aims to not only ensure that we continue to have a sustainable health care safety net, but also encourages members to utilize appropriate health care services.

We continue to have concerns, however, with the implications of the proposed copayments for childless adults who visit the emergency department. We expressed these concerns in our May 17th letter to the Wisconsin DHS urging the State to incorporate and reiterate the Prudent Layperson Standard in deliberating whether copayments were appropriate and consider alternatives. We then followed up with similar concerns in our July 15th letter to Centers for Medicare and Medicaid Services (CMS).

While we appreciate DHS choosing not to pursue the proposed \$25 copayment for second and subsequent use of emergency departments, we continue to be concerned with the state charging an \$8 copayment for emergency department use because of the implications it may have in discouraging appropriate use and access to emergency care.

We remain concerned that the \$8 copay may violate EMTALA and the Prudent Layperson Standard and that this proposed policy would discourage patients from seeking care in the emergency department even when it is the appropriate site of care. We are writing to urge you to incorporate and reiterate the well-established Prudent Layperson Standard in any approved waiver.

It is unclear to us what level of financial obligation will deter patients from using the emergency department, even for symptoms that could represent true emergencies, but we believe that a beneficiary who seeks emergency care should not be denied coverage for emergency services if the final diagnosis does not turn out to be an emergency medical condition. Beneficiaries with multiple chronic conditions or behavioral health disorders may also be disproportionately affected.

CMS has concluded that Emergency Department (ED) use is driven by beneficiaries in need of emergency services; better access to primary care and care management in in community settings is the most cost-effective method for reducing ED use by Medicaid beneficiaries - not the imposition of financial barriers that do nothing other than violate prudent layperson standards and have the unintended consequence of dissuading individuals from seeking necessary emergency care.

Notwithstanding a recent analysis by the Lewin Group which purported to show that an increase in emergency department copayments in Indiana also resulted in decreased use of the emergency department for non-emergent conditions, this analysis incorrectly defined non-emergent care based on an algorithm using final diagnoses, not on the patient's presenting medical complaint. Therefore, the Lewin copayment study, is, in our view, inconsistent with the legally mandated methods of determining a non-emergency under the Prudent Layperson Standard utilized by the Healthy Indiana 2.0 Program (HIP 2.0). Further misleading is the fact that HIP 2.0, in subsequent CMS Waiver applications, did not address the effect that their increased emergency department copayment had on admission rates for ambulatory care sensitive conditions, which serves as an integral CMS healthy outcome measure.

Research is undecided as to whether implementation of ED copayments reduce *unnecessary* use of the ED. Researchers comparing ED use among Medicaid beneficiaries in states implementing ED copays for nonurgent visits compared to those without ED copays was not able to detect a statistically significant change in annual ED admissions per Medicaid enrollee. The research looked at a 10 year period following the passage of the Deficit Reduction Act which provided states with the authority to implement such copays.¹ Another study identified a small decrease in ED use overall (and no decrease for low-acuity conditions) after a \$20 surcharge was imposed for nonemergency ED use in Alabama's State Child Health Insurance Program.² Moreover, using a difference in difference approach comparing Medicaid enrollees in states that enacted copays and comparing to ED use in states that did not enact copays, researchers did not detect differences in Medicaid enrollees' nonemergency use of ED.³

We would also encourage your office to evaluate the frequency at which beneficiaries attempt to access the healthcare system in an ambulatory care setting, yet, are redirected to an emergency department as a more appropriate setting for evaluation and treatment.

¹ Siddiqui, M., et al., May 2015, The Effect of Emergency Department Copayments for Medicaid Beneficiaries Following the Deficit Reduction Act of 2005, *JAMA Internal Medicine*.

² Becker, D., et al., June 2013, Co-payments and the Use of Emergency Department Services in the Children's Health Insurance Program, *Medical Care Research and Review*.

³ Mortensen, K., September 2010, Copayments did not reduce Medicaid enrollees' nonemergency use of emergency departments, *Health Affairs*, 29, no.9.

Because we believe Wisconsin's Department of Health Services does not have a clear precedent on which to base its emergency department copayment policy, we urge you not to approve the increased copayment for emergency visits until proper analysis of other states' similar copayments on health outcomes and access to care is complete.

We appreciate the opportunity to comment on Wisconsin's request to extend BadgerCare's 1115 Reform Demonstration Waiver. Ultimately, emergency physicians in Wisconsin are proud to practice in a state where our Medicaid program is the only one in the nation to cover childless adults up to 100% of the federal poverty level even without increased federal funding under ACA Medicaid expansion. We look forward to working with you in continuing to provide improved healthcare value for the residents of Wisconsin.

Sincerely,

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About our organizations:

The Emergency Department Practice Management Association (EDPMA) is one of the nation's largest professional physician trade associations focused on the delivery of high-quality, cost-effective care in the emergency department. EDPMA's membership includes emergency medicine physician groups, billing, coding and other professional support organizations that assist healthcare providers in our nation's emergency departments. Together, EDPMA's members deliver (or directly support) health care for about half of the 136 million patients that visit U.S. emergency departments each year. We work collectively and collaboratively to deliver essential healthcare services, often unmet elsewhere, to an underserved patient population who often has nowhere else to turn.

The American College of Emergency Physicians (ACEP) is the national medical specialty society representing emergency medicine. ACEP is committed to advancing emergency care through continuing education, research and public education. Headquartered in Dallas, Texas, ACEP has 53 chapters representing each state, as well as Puerto Rico and the District of Columbia. A Government Services Chapter represents emergency physicians employed by military branches and other government agencies.

Wisconsin Chapter of the American College of Emergency Physicians (WACEP) represents a diverse group of over 500 Wisconsin emergency physicians, residents and medical students in the state. WACEP is committed to protecting the interests of emergency physicians, the profession of emergency medicine, and especially patients needing emergency medical treatment. WACEP promotes policies that preserve the integrity of the profession and supports collaboration with other specialties, healthcare organizations, academic institutions and governmental agencies.