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Department of Social Services, MO HealthNet Division  
P.O. Box 6500  
Jefferson City, MO 65102-6500  
Via Email: [Ask.MHD@dss.mo.gov](mailto:Ask.MHD@dss.mo.gov)

Attention: Gateway Comments

Dear MO HealthNet Division:

Thank you for the opportunity to comment on the proposed phase-out of Section 1115 Demonstration Gateway to Better Health as part of Missouri's implementation of Medicaid Expansion. We are faculty and student members of the Saint Louis University School of Law Center for Health Law Studies. For a decade, our Health Law, Policy, and Advocacy initiative has advocated to improve access to Medicaid. Our experience staffing the Medicaid Expansion HelpLine for St. Louis City and St. Louis County informs our comments. We have already assisted many Gateway members in their attempt to transition from Gateway coverage to Medicaid Adult Expansion Group coverage.

We note that the State proposes to begin the Gateway Demonstration phase-out on October 1, 2021, and finalize the process by December 31, 2021, in violation of the Special Terms and Conditions (STCs) of the Gateway demonstration project (as amended: November 2, 2020). STCs Paragraph 9 requires explicitly that the "state must obtain CMS approval of the phase-out plan prior to the implementation of the phase-out activities." Implementation may begin no sooner than 14 days after CMS approval of the phase-out plan. The State may not submit a draft phase-out plan to CMS until the close of a 30-day public comment period, which ends November 30, 2021. The draft phase-out plan submitted to CMS must include a summary of *each* public comment received, the State's response to each comment, and how the State incorporated the received comment into a revised phase-out plan.

We share the state agency's eagerness to begin enrolling Gateway members in Medicaid expansion coverage. However, the proposed phase-out contains provisions that violate the STCs of the Gateway Demonstration and other federal laws. The proposed notices to Gateway members also violate federal law and are unnecessarily confusing. During the week of November 22, 2021, our Medicaid Expansion HelpLine was especially busy answering questions from Gateway members confused about phase-out letters (see Appendix A of the proposed phase-out plan) received that week. Many members calling us believe that they are about to lose the Gateway coverage.

Our ten comments focus on four significant shortcomings in the proposed phase-out of Gateway now that low-income adults in Missouri can qualify for coverage under Medicaid expansion, termed Adult Expansion Group (AEG) coverage.

- The earliest date that coverage under the Gateway Demonstration can end is March 31, 2022, or the conclusion of the COVID-19 Public Health Emergency if later.
- Gateway enrollees transitioned to AEG coverage should be eligible effective July 1, 2021.
- The Gateway phase-out should include additional steps to ensure that FSD uses updated addresses, so notices related to the phase-out are more likely to reach Gateway members.
- The Gateway phase-out plan should provide processes and protections for Gateway members who file new applications.

### **1. Gateway coverage must continue until March 31, 2022, or until the suspension of the COVID-19 public health emergency if later.**

The proposed Phase-Out Plan, page 3, *incorrectly* states that the Gateway demonstration will end on December 31, 2021, and that all Gateway providers will be notified of that termination date. Under the Gateway Demonstration's STCs, paragraph 9, the State must submit a notification letter and draft phase-out plan to CMS no less than five (5) months before the Demonstration's termination. The State provided this notice on October 28, 2021. Therefore, the earliest date the Gateway demonstration can end is March 31, 2022.

Moreover, Missouri has accepted millions of dollars in federal Medicaid money authorized by the federal Families First Cares Act on the condition that no one is to lose Medicaid coverage during the COVID-19 public health emergency (except if they die, move out of State, or request in writing to be dis-enrolled). Under this continuous coverage requirement, the State may move enrollees from the limited benefit package offered by Gateway to Better Health to the more comprehensive coverage provided to the new AEG group. However, the State may not terminate coverage for those now enrolled in Gateway as long as the COVID-19 public health emergency is in effect.

*Recommendation:* The Phase-out Plan and all notices should clearly and consistently state that no Gateway member will lose Gateway coverage until March 31, 2022, or the end of the public health emergency continuous coverage requirement, if later.

### **2. AEG coverage for Gateway enrollees should begin July 1, 2021.**

The phase-out plan is unclear and confusing about when AEG coverage begins for Gateway members.

- The Phase-out Plan, page 3, provides that Gateway enrollees will have a start date for Medicaid coverage "of the first of the month in which they are made eligible."
- Two paragraphs later, the Phase-out Plan says that the review of Gateway members for conversion to AEG will include review for eligibility for prior quarter coverage and that

"[t]he start date of coverage under the Adult Expansion Group will be the first day of the month of services not to begin prior to July 1, 2021."

- Appendix C, the notice that a Gateway member qualifies for AEG coverage, has a coverage start date of July 1, 2021. It does not mention prior quarter coverage or how a member can request Medicaid coverage of unpaid medical bills.

Missouri residents ages 19-64 with incomes up to 138% of the federal poverty line have a state constitutional right to Medicaid effective July 1, 2021. This means that all Gateway enrollees have a constitutional right to Medicaid expansion coverage effective July 1, 2021.

Gateway enrollees should be treated differently from people not covered by Medicaid and newly applying for AEG coverage who are eligible only for three months prior quarter coverage from the date of their application. Gateway enrollees transitioned to AEG coverage, whether through an administrative review or Mo HealthNet application, should have a start date for coverage of July 1, 2021.

*Recommendation:* The Phase-out Plan should clearly state that AEG coverage for all Gateway members dates from July 1, 2021, assuming financial and other eligibility requirements are met for each month. All notices should make clear that coverage begins on July 1, 2021, and how to submit unpaid medical bills for Medicaid payment.

### **3. Gateway members are unlikely to receive notices from FSD because the state agency has outdated addresses.**

We know that there has been a massive movement of low-income people during the COVID-19 pandemic, with many people changing addresses multiple times. FSD likely has out-of-date addresses for many, maybe most, Gateway members. Phase-out letters asking people for additional information to determine their eligibility for AEG coverage are likely to end up going to the wrong address or being returned as undelivered.

The FQHCs probably have more current address information for Gateway members than does FSD. Every Gateway member is signed up with an FQHC, and FQHCs know which of their patients are Gateway members. FSD should obtain updated addresses for Gateway members from the FQHCs to mail Gateway transition and phase-out notices.

The phase-out plan should also specify that FSD will prepare transition and phase-out letters for FQHCs to mail their Gateway members. The STCs for the waiver specify that the phase-out plan must include information about such community outreach materials.

*Recommendation:* The phase-out plan should ensure that FSD obtains updated addresses from FQHCs for Gateway members. The phase-out plan should also include details and sample notices for FQHCs to send to Gateway members about the transition to AEG.

#### **4. Gateway Phase-out plan should provide processes and protections for Gateway members who file new applications.**

By court order, Missouri began accepting applications for AEG coverage on August 10, 2021. For more than two months, from August 10 to October 28, 2021, when the State posted the Phase-out Plan for Gateway, consumers, and advocates did not know how or when the State planned to transition Gateway members to AEG coverage. As a result, we and others have advised Gateway members to submit applications for AEG coverage. Filing an AEG application assures Gateway members that the State should make an AEG eligibility determination in 45 days as required by federal law. See, 42 C.F.R. §435.912.

Under the phase-out plan, the State is administratively reviewing over 16,000 Gateway members. Members have no way of knowing when the State will review their eligibility for AEG. As the COVID-19 pandemic continues, many people are reluctant to visit a state office or FQHC in person. We have received numerous calls on our St. Louis City and St. Louis County Medicaid Expansion HelpLine from Gateway members and others who cannot get through the long wait times on the State's Medicaid phone line to get advice from DFS. With the state phone line backed up, it is nigh on impossible for Gateway members to know where they are in the transition process and whether they need to submit additional information to gain AEG coverage. Gateway members found eligible for AEG based upon an application should not be treated less favorably than those determined eligible through the review process proposed in the Phase-out Plan.

*Recommendation:* The Phase-out Plan should provide that Gateway members who are determined eligible for AEG based upon an application will have an eligibility date of July 1, 2021, and Medicaid coverage for unpaid medical bills accrued since July 1, 2021, during any month in which the member would have been eligible for AEG. FSD should inform those determined ineligible for AEG coverage based upon an application that their Gateway coverage will continue until March 31, 2022, or until the end of the COVID-19 Public Health Emergency if later.

#### **5. Appendix A, request for information letter to determine eligibility for AEG, incorrectly and inappropriately threatens Gateway members with loss of coverage. It should encourage people to return the needed information quickly to determine eligibility for enhanced AEG benefits.**

Appendix A is the letter that requests additional information from Gateway members to determine their eligibility for AEG coverage. It states.

**"To ensure ongoing benefits, please return this form within 60 days.**

If FSD receives the information and discovers that you are not eligible for the Adult Expansion Group, your GTBH benefits will be closed. You will get a closing letter with more details." (emphasis in original)

This notice violates the continuous coverage requirement of the federal Families First Cares Act that no one is to lose Medicaid coverage during the COVID-19 public health (except if they die, move out of State, or request in writing to be dis-enrolled). The State may move enrollees from the limited benefit package offered by Gateway to Better Health to the more comprehensive coverage provided to the new AEG group. However, the State may not terminate coverage for those now enrolled in Gateway as long as the COVID-19 public health emergency is in effect. Under recently revised CMS guidance, the State must complete a redetermination after the PHE ends before taking an adverse action for any Medicaid beneficiary. CMS, GUIDANCE RELATED TO PLANNING FOR RESUMPTION OF NORMAL STATE MEDICAID, SHO 21-002 (August 13, 2021), page 4.

Also, the 60-day time limit for returning the form signals Gateway members that there is no need or reason to hurry to get the form back to FSD. Federal regulations require that states provide beneficiaries eligible based on MAGI methodologies with 30 days to return their renewal form and any requested information. 42 C.F.R. § 435.916(a)(3)(i)(B). Since there is no risk of loss of coverage, we recommend that the letter simply suggest that the information be submitted as soon as possible without stating any deadline.

*Recommendation:* The Appendix A language should be changed to read:

**You may be eligible for enhanced coverage through Medicaid Expansion. Please return this form as soon as possible.** The sooner you return the enclosed form, the sooner you may get additional benefits, including hospital care.

If you are not eligible for Medicaid Expansion coverage at this time, you will NOT lose Gateway coverage. Gateway coverage will continue until at least March 31, 2022, or later if the COVID-19 public health emergency continues beyond that date.

#### **6. Annual Renewal Form for providing requested additional information should be pre-populated with information available to FSD.**

The proposed phase-out plan, page 2, indicates that the form included with Appendix A is the MO HealthNet Annual Review Form. Federal regulations require that states provide beneficiaries eligible based on MAGI methodologies renewal forms that are "pre-populated." 42 C.F.R. § 435.916(a)(3)(i)(B). Pre-populated forms include reliable information available to the state agency so that individuals need only provide information not already available to the state agency.

*Recommendation:* The phase-out plan should clarify that the Annual Review Form sent to Gateway members will be pre-populated.

#### **7. Phase-out plan should include a time limit for FSD to complete the AEG eligibility determination after a member submits additional information in response to the Appendix D letter requesting additional information to determine eligibility.**

Under the proposed phase-out plan, FSD plans to review all 16,000 Gateway members for AEG eligibility by December 31, 2021. (Page 2) However, the state agency will need to request

additional information from most Gateway members because the Gateway application did not gather information about household tax filer status, information required to determine eligibility for AEG using MAGI rules.

FSD plan to send the request for information by December 31, but the proposed phase-out does not set a time limit for the agency to determine a Gateway member's AEG eligibility after submitting the requested additional information.

Federal law requires states to determine eligibility for an application for AEG within 45 days. See, 42 C.F.R. §435.912. State agency policy sets a 30-day time frame for deciding applications for other MAGI-linked eligibility. MO. DEPT. SOC. SERVS., 1802.050.00, FAMILY MO HEALTHNET (MAGI) MANUAL (2021). The State should be able to make an AEG renewal determination for Gateway members in less than 30 days.

*Recommendation:* The phase-out plan should include a deadline of 15 days for the State to determine AEG eligibility after submission of additional information.

**8. Appendices B & C should be combined into one letter that notifies Gateway members they now have AEG coverage with enhanced coverage.**

The Phase-out Plan proposes to send Gateway members found eligible for AEG coverage two letters. Appendix B notifies Gateway members they are "no longer eligible for Gateway" and their right to a hearing. Appendix C provides "Good News for you!" that the member qualifies for AEG coverage.

Sending two letters, one with bad news and one with good news, will inevitably confuse people. It also runs the risk that the "good news" letter may get lost in the mail, with the Gateway member getting only the bad news.

*Recommendation:* Combine Appendices B & C into one notice that says:

You qualify for Adult Expansion Group coverage beginning 07/01/2021. You are being transferred from Gateway to Better Health to the Adult Expansion Group. You are also eligible for coverage for unpaid medical bills since July 1, 2021, from any doctor, clinic, or other health care provider who accepts MO HealthNet for services covered by MO HealthNet, including hospital care, prescription drugs, and doctor's visits.

**9. Appendix D letters should state that Gateway members will not lose coverage until at least March 31, 2021, or later if the COVID-19 public health emergency continues beyond that date.**

Two Appendix D letters notify Gateway members found ineligible for transition to the new AEG coverage group. Both letters tell people "member does not qualify for MO HealthNet coverage" but fail to mention anywhere that the member remains eligible for Gateway coverage.

Nowhere do the letters explain that the member remains eligible for Gateway coverage. The section on "How we made the decision" talks about the member failing to qualify for "MO HealthNet Adult Expansion Group" and "MO HealthNet for Families." However, the letter will lead to massive confusion among Gateway members who may not read below the first sentence that says they do not qualify for coverage and may not realize they remain eligible for Gateway.

*Recommendation:* Rewrite Appendix D letters to say:

You do not qualify for MO HealthNet Adult Expansion Group coverage, but you will continue to get Gateway coverage until at least March 31, 2022, or later if the COVID-19 public health emergency continues beyond that date.

**10. The Phase-out Plan should make clear that FDS will review Gateway members for eligibility under all categories of MO HealthNet, not just MAGI-linked categories.**

The Phase-out Plan, page 2, says that FSD will review Gateway members for eligibility for MAGI-related Medicaid categories, but does not mention checking for eligibility for non-MAGI categories, termed Aged, Blind, and Disabled (ABD) in Missouri. The Annual Renewal Form requests information that allows that State to determine both MAGI and non-MAGI eligibility categories. MO. DEPT. SOC. SERVS., 1865.040.10, FAMILY MO HEALTHNET (MAGI) MANUAL (2021). FSD should determine eligibility for both types of MO HealthNet Coverage.

*Recommendation:* Amend Page 2 as follows:

FSD will use this updated information to run a determination of eligibility for both MAGI and non-MAGI programs, including eligibility for the marketplace.

Conclusion:

Thank you for the opportunity to provide input into the transition and phase-out of Gateway as Missouri implements Medicaid expansion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darian Diepholz', with a stylized, cursive script.

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