NSCLC
National Senior Citizens Law Center
PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

October 15, 2013

Donald B. Moulds
Acting Assistant Secretary for Planning and Evaluation
Office of the Secretary
Department of Health and Human Services
Hubert H. Humphrey Building, Room 446F.8
200 Independence Avenue, SW
Washington, DC 20201

Re: Comments on HHS Strategic Plan (2014-2018)
Submitted via e-mail to strategicplanning@hhs.gov

Dear Mr. Moulds:

The National Senior Citizens Law Center (NSCLC) appreciates the opportunity to comment on the Department of Health and Human Services 2014-2018 Strategic Plan. NSCLC is a non-profit organization whose principal mission is to protect the rights of low-income older adults through advocacy, litigation and the education and counseling of local advocates.

Goal 1: Strengthen Health Care

Objective A: Make coverage more secure for those who have insurance, and extend affordable coverage to the uninsured

An important missing element in this objective is working with states to ease transitions of individuals who are receiving expansion Medicaid or Exchange subsidies and then become eligible for Medicare. Individuals facing this "eligibility cliff" could easily lose needed access to health care benefits both because of differing eligibility standards and because of the complexity of asset and income verification procedures for traditional Medicaid categories. Work is needed to simplify criteria and documentation requirements for traditional Medicaid categories, including Medicare Savings Programs. Work also is needed to ensure that transitioning individuals receive appropriate notices and are routinely screened for all applicable benefit programs. Further, in addition to technical and programmatic changes within the existing statutory framework, HHS should be developing policy initiatives around legislative change to more closely align eligibility criteria, particularly income and asset criteria, for traditional Medicaid with expansion Medicaid. We ask that this issue be included both in the discussion of the objective and in the strategies section.

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We urge that the 12th strategy bullet be more comprehensive, or perhaps broken into two parts. The bullet provides for assessing the impact of co-pays on the non-elderly, thus looking at co-pay impact only in the context of ACA implementation. We urge data collection on the impact of co-pays (including prescription drug co-pays) on all groups, including those who are 65 and over and others who qualify for Medicare. Good and consistent data across all population groups on the impact of even modest co-pays both on economic security and on adherence to health and drug regimens is particularly important for policy development.

Objective B: Improve healthcare quality and patient safety

We urge that the second bullet specifically add "the rights of those with limited English proficiency to translation and interpretation services" to the list of items to be included in a curriculum for the education of health care professionals. Though we recognize that the references to health disparities and cultural competency encompass language access, we think it is important for HHS to specifically educate health care professionals about the fact that language access is a civil right of their patients, not just a tool to address health needs.

For the twelfth bullet, we appreciate the reference to coordination of Medicare and Medicaid and suggest adding a reference to evaluating the impact of alternate models.

Objective C: Emphasize primary and preventive care, linked with community prevention services

We suggest adding a bullet to evaluate the effect that the ACA "bump up" of Medicaid payment rates for primary care to Medicare levels has on access to primary care. The evaluation should look at impact both on Medicaid beneficiaries for whom Medicaid is primary payer and on dual eligibles.

Objective D: Reduce the growth of healthcare costs while promoting high-value, effective care

We suggest that the discussion of this objective include mention of the accelerating trend in the states of moving dual eligibles into Medicaid managed care. It should also talk about the need to develop evidence of the impact of these changes, both on costs and on access to long-term services and supports.

We also suggest adding a bullet specifically about evaluating the impact of Medicaid managed care, particularly the impact on long-term services and supports, looking at cost, quality, outcomes, and consumer experience.

In the second bullet, we also suggest including testing and evaluation of the effectiveness of various alignment strategies.

Objective E: Ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations

In this objective, we think it is important that, when addressing health disparities and vulnerable populations, HHS also address LGBT populations, particularly those who are Medicare and Medicaid beneficiaries. Advocates report a particularly strong need for cultural competency in the workforce around LGBT issues and prevention of discrimination by providers, including providers of long-term services and supports.

In this objective, we also ask for inclusion of a specific discussion of OCR's responsibility to timely investigate and take appropriate action on civil rights complaints as an important tool in protecting access for vulnerable populations. Advocates have noted that there is a real need to increase the number and improve the timeliness of such investigations by OCR. Including these goals in the strategic plan is an important way to highlight that need. In addition to discussion in the text, we also ask that a bullet be added providing for timely handling of civil rights complaints and compliance reviews to ensure program and provider access.

Goal 2: Advance Scientific Knowledge and Innovation

Objective A: Accelerate the process of scientific discovery to improve health

We note, except for reference to clinical trials, that there is an absence of any reference to the diseases and conditions of aging. This seems to us to be a serious omission.

Goal 3: Advance the Health, Safety and Well-Being of the American People

Objective B: Promote economic and social well-being for individuals, families and communities

We appreciate the strategy to provide legal supports, training, and advocacy support to individuals with disabilities and older adults to help ensure their ability to exercise their rights to make choices, contribute to society and live independently. This strategy will be particularly important in the next four years as Medicaid managed care for long-term services and supports dramatically expands. To ensure that beneficiaries in new care systems exercise their rights to make choices, beneficiaries need independent, conflict-free ombudsmen helping them to understand and exercise rights and responsibilities, as well as access covered benefits. HHS recently provided some states with funding to build up ombudsman programs to provide this individual assistance in new dual eligible demonstration programs. As HHS advances Goal 3, we urge it to continue to support the strategy of providing legal supports, training and advocacy support to older adults and individuals with disabilities.

Objective C: Improve the accessibility and quality of supportive services for people with disabilities and older adults

We commend HHS for prioritizing long-term services and supports (LTSS), and for the thoughtful strategy outlined in this objective. The focus on expanding options for LTSS in the community and improving the delivery of HCBS by enhancing the quality and scope of programs is an important strategy, and we believe this should be a top HHS priority in 2014-2018.

With respect to the third bullet, "expand options to help consumers prevent and delay the need for institutionalization;" we agree with this strategy and recommend strengthening the Aging and Disability Resource Centers as a method to advance this goal.

Aging and Disability Resource Centers (ADRCs) assist consumers with arranging and maintaining LTSS; however, HHS funding for ADRCs has been limited in scope and centers face uncertainty about future funding. To truly support consumer decision-making, funding should be adequate to support further ADRC development and maintenance in the foreseeable future.

In the last bullet, "promote access to plain language, accessible health information for individuals with disabilities and their caregivers," we note that one difficulty in providing plain language information to consumers is the complexity of the programs being explained. The root of consumer confusion often is not the program's terminology, but the complexity of program design itself, particularly eligibility standards. We urge HHS, in conjunction with its plain language initiatives, to also set a goal of simplifying program design so that programs are easier for individuals to access and easier to explain.

Objective F: Protect Americans' health and safety during emergencies and foster reliance to withstand and respond to emergencies

We appreciate the last bullet, ensuring the needs of older adults are met in emergencies through effective integration of these populations into planning, response and recovery efforts.

Goal 4: Ensure Efficiency, Transparency, Accountability and Effectiveness of HHS Programs

Objective A: Strengthen program integrity and responsible stewardship by reducing improper payments, fighting fraud, and integrating financial, performance and risk management

We support HHS efforts to ensure program integrity and reduce improper payments. We ask, however, that HHS include explicit language to ensure that program integrity

initiatives also protect access to care. We recommend including the following strategy: "Ensure that all program integrity methodologies are consistent with Medicare and Medicaid patient access and freedom of choice. Monitor beneficiary access to care and address provider responses that jeopardize such access."

HHS' use of recovery audit contractors (RACs) to evaluate Medicare hospital stays is a program integrity initiative that illustrates the issue that concerns us. RACs review hospital decisions on patient status, and if the RAC determines that a patient should have been classified as an outpatient, the hospital receives virtually no reimbursement from the Medicare program for the service it provided. Because of the significant financial consequences of a RAC's reversal of an inpatient decision, hospitals are increasingly using—and abusing-- "observation status" as a way to retain outpatient classification. As a result, hundreds of families are on the hook for subsequent nursing home costs that Medicare would have covered if the individual had been admitted as an inpatient in the hospital. For this and similar situations, we urge HHS to establish a policy of accompanying any major fraud initiative with close monitoring and swift action to ensure that provider response and over response to HHS initiatives do not negatively affect consumers.

As HHS implements this strategic plan, it is imperative that future methods to combat fraud and reduce improper payments do not threaten access to Medicare and Medicaid services.

Objective B: Enhance access to and use of data to improve HHS programs and support requirements in the health and well-being of the American people

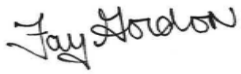
We appreciate the focus in the first bullet on improving evaluation and sharing data with the public and key audiences. We suggest strengthening this strategy with an emphasis on sharing evaluation information in a consumer-friendly manner. We support the effort to make evaluation information public, and believe the natural next step is allowing consumers to use the data to make decisions about their care. As Medicare and Medicaid move away from fee-for-service into managed care, a particular concern is consumer access to information to help them understand their new care systems and make informed choices about their Medicare and Medicaid managed care providers.

We suggest amending the first bullet under strategies to read: "Assess data needs, gaps and opportunities. Improve data quality; develop plans and recommendations for evaluation and performance information; and identify ways to share existing *and new information and data with consumers to assist consumers in decisions about their care;* to the extent authorized by law."

We also recommend including "older adults" into the description of enhanced data collection efforts, so that the strategy will read: "improve data collection efforts to monitor the health and health status for population subgroups such as racial and ethnic populations, persons with disabilities, the reentry population, rural populations, LGBT populations and older adults."

Thank you for the opportunity to comment. Please contact Georgia Burke (GBurke@nsclc.org) or Fay Gordon (FGordon@nsclc.org) for more information.

Sincerely,



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