

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

October 11, 2021

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Submitted via email: [dmahs.cmwcomments@dhs.state.nj.us](mailto:dmahs.cmwcomments@dhs.state.nj.us)

Re: New Jersey 1115 FamilyCare Comprehensive Demonstration Draft Proposal

Justice in Aging appreciates the opportunity to comment on New Jersey's Section 1115 Medicaid demonstration renewal proposal. Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults in New Jersey and older adults nationwide. We use the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources, particularly populations that have been marginalized and excluded from justice such as women, people of color, LGBTQ individuals, and people with limited English proficiency. We have decades of experience with Medicaid and working with advocates who represent low-income older adults in New Jersey.

We especially appreciate New Jersey's focus on equity in its proposal. As acknowledged in the proposal, systemic barriers to health based on age, race or ethnicity, sex, sexual identity, disability, socioeconomic status, and geographic location are all contributors to health disparities.<sup>1</sup> Our comments focus specifically on ensuring that equity is in fact centered throughout the proposal's initiatives for older adults.

## Eligibility & Enrollment Flexibilities

New Jersey has implemented a number of initiatives that we believe will be beneficial in expanding eligibility and enrollment in Medicaid for older adults. We support, for example, the elimination of the five-year look back for MLTSS applicants who have income at or below

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<sup>1</sup> Office of Disease Prevention and Health Promotion, *Disparities*, HEALTHY PEOPLE available at <https://www.healthypeople.gov/2020/about/foundation-health-measures/Disparities>.

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100 percent of the federal poverty level. We also support New Jersey's use of the Qualified Income Trust (QIT) to expand access, but urge the state to take more steps in ensuring that this route to eligibility is equitably available based on age, race/ethnicity, disability, sexual orientation and gender identity (SOGI). As the proposal acknowledges, the QIT is administratively burdensome. It is well-documented that administrative burdens disproportionately impede access for marginalized populations.<sup>2</sup> We therefore urge the state to collect and report data on who is benefiting from the QIT and to evaluate whether current policies or any proposed policy changes to the QIT provisions ensure equitable availability of the QIT and ultimate access to MLTSS.

We also anticipate that the Office of Public Guardian Pilot Program will act to expedite Medicaid enrollment and access to MLTSS. We again, however, urge the state to collect and report data on who is qualifying through the pilot and ensure that policies are in place that ensure that the rights of the most at-risk older adults are not violated.

### Managed LTSS Benefits

We recognize that New Jersey has taken significant steps to expand access to Medicaid HCBS for older adults through MLTSS. We continue to be concerned, however, that services available through MLTSS are more medicalized and fewer services are available through MLTSS to ensure older adults are connected to their communities. For example, adjunct services outlined in the proposal (p. 18) for individuals with intellectual and developmental disabilities (I/DD) including art therapy, aquatic therapy, and music therapy would be equally beneficial for older adults in MLTSS. Similarly, as isolation is a risk for older adults,<sup>3</sup> they could especially benefit from services provided to I/DD populations through the supports program such as community inclusion services and support coordination.

We also urge the state to continue its efforts to improve oversight of MLTSS. In its June 2020 report, the Office of Inspector General found that New Jersey is not ensuring that managed care organizations are adequately providing for enrollees' needs for long-term services and supports.<sup>4</sup> In the absence of conflict free case management in MLTSS, there is significant risk for managed care organizations to improperly reduce services and fail to adequately coordinate or monitor quality of care. Ineffective care management can result in or perpetuate disparities in access and health outcomes based on age, disability, race, SOGI, and geographic location.

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<sup>2</sup> Pamela Herd & Donald Moynihan, *How Administrative Burdens Can Harm Health*, HEALTH AFFAIRS Health Policy Brief, October 2, 2020, <https://www.healthaffairs.org/doi/10.1377/hpb20200904.405159/full/>.

<sup>3</sup> *Loneliness and Social Isolation Linked to Serious Health Conditions*, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/aging/publications/features/lonely-older-adults.html>.

<sup>4</sup> *New Jersey Did Not Ensure That Its Managed Care Organizations Adequately Assessed and Covered Medicaid Beneficiaries' Needs for Long-Term Services and Supports*, OFFICE OF INSPECTOR GENERAL, June 2020, <https://oig.hhs.gov/oas/reports/region2/21701018.pdf>; see also,

We therefore encourage the state to take steps to increase oversight including, but not limited to, tracking and publicly reporting the number of MLTSS enrollees whose services are decreased (including by age, disability, race/ethnicity, SOGI, and geographic location) as well as publicly reporting on the entirety of the state's monitoring and evaluation of MLTSS plans on a consistent basis (e.g. annually). We also encourage the state to continue strengthening care management requirements in its contracts with managed care organizations to improve person-centeredness in MLTSS. For example, considering the disparities in access to HCBS and high risk for institutionalization that individuals with Alzheimer's and dementia experience, MLTSS contracts could require designated care coordination staff in dementia care management.<sup>5</sup>

### Rebalancing MLTSS and HCBS Spending

Available data shows that there is still much room to improve rebalancing for older adults.<sup>6</sup> New Jersey's progress towards rebalancing is noteworthy – particularly with regard to increasing access to HCBS for individuals with I/DD including transitions utilizing Money Follows the Person (MFP) funding.<sup>7</sup> However, it is not clear how successful rebalancing has been for older adults, especially for older adults of color or other identities.

The proposal indicates that the nursing facility census declined by 5% between 2014 and 2019 while New Jersey's older adult population grew by 12%. Yet, the latest federal LTSS expenditure data for FY 2018 indicates that New Jersey is spending 21% on HCBS for older adults versus 79% on institutional care for older adults.<sup>8</sup> This raises the question whether the census decline is in fact a result of older adults being diverted or transitioned out of these facilities, or whether the change reflects the success New Jersey has had in increasing HCBS

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<sup>5</sup> See, for example, California's Financial Alignment Initiative three-way contract between its managed care organizations, state Medicaid agency, and the Centers for Medicare & Medicaid Services available at <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/Downloads/CAContract.pdf>. The contract requires MCOs to employ specially designated Care Coordination staff in dementia care management including but not limited to: understanding dementia; symptoms and progression; understanding and managing behaviors and communication problems caused by dementia; caregiver stress and its management; and, community resources for Enrollees and caregivers.

<sup>6</sup> Damon Terzaghi, *State Survey Demonstrates Rebalancing Successes and What Remains to be Done*, AARP, <https://www.longtermcarecard.org/blog/2020/04/state-survey-demonstrates-rebalancing-successes-and-what-remains-to-be-done>.

<sup>7</sup> Elizabeth Lewis et al., *Selected Characteristics of 10 States with the Greatest Change in Long-Term Services and Supports System Balancing, 2012–2016*, MEDICAID INNOVATION ACCELERATOR PROGRAM (Apr. 2019), <https://www.medicaid.gov/sites/default/files/2019-12/lts-toptenreport.pdf>.

<sup>8</sup> Caitlin Murray et al., *Medicaid Long Term Services and Supports Annual Expenditures Report: Federal Fiscal Years 2017 and 2018*, Mathematica, January 7, 2021, <https://www.medicaid.gov/sites/default/files/2021-01/ltssexpenditures-2017-2018.pdf>.

for individuals with disabilities under the age of 65. New Jersey should collect and report intersectional rebalancing data including age, disability, race/ethnicity, SOGI, and geographic location to both identify disparities in rebalancing among populations and to inform policies to address those disparities.

### Housing Supports

We strongly support New Jersey's inclusion of housing supports in the waiver proposal. Without housing, HCBS cannot be delivered. Older adults are severely rent burdened and that burden increases with age and by race. Such instability is driving a surge in homelessness among older adults and particularly older adults of color. In many parts of the United States, older adults represent the fastest growing age segment of the homeless population with nearly half becoming homeless for the first time after age 50.<sup>9</sup>

We support New Jersey's proposal to include additional contractual requirements for MCO housing specialists and standards as well as the creation of a state Medicaid housing unit with a commitment to enhance engagement between Medicaid and housing stakeholders.

In determining whether an individual is eligible for targeted housing-related services, we strongly recommend that assessments be conducted and initiated by MCOs at transitions (out of incarceration; into and out of nursing facilities and other institutional settings). The burden to request an assessment should not be on the beneficiary or their case manager during a period of particularly high disruption and health uncertainty. We support at least two yearly assessments for all MLTSS members to advance rebalancing goals. MCOs should be evaluated on how they are meeting this requirement and whether there are disparities in who is receiving assessments based on age, race, disability, SOGI, and geographic location; and then implementing targeted interventions to address the disparities.

It also critical that New Jersey evaluate how equitably available the housing and tenancy supports are to all Medicaid beneficiaries with robust data collection and reporting. Likewise, data collection and reporting on the availability of rental units through the Healthy Homes Initiative is needed to ensure access is equitable. Lastly, it is vital that MCOs ensure that enrollees know they have access to these services and programs through strong education and outreach initiatives.

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<sup>9</sup> Patti Prunhuber & Vivian Kwok, *Low-Income Older Adults Face Unaffordable Rents, Driving Housing Instability and Homelessness*, JUSTICE IN AGING (Feb. 2021), <https://justiceinaging.org/wp-content/uploads/2021/02/Older-Adults-Rental-Housing-Burdens.pdf>.

## Nursing Home Diversion and Transition

We want to ensure that nursing home diversion and transition programs are equitably available to older adults. The MFP program has demonstrated marked success; however, the majority of transitions have been for individuals with I/DD or physical disabilities. Older adults have been transitioned out of facilities at lower rates. For example, as of 2019, 997 older adults, 987 people with physical disabilities, and 959 people with I/DD transitioned out of facilities despite the higher number of older adults in institutional settings.<sup>10</sup>

Accordingly, we urge New Jersey to collect and report robust demographic data on who the transition and diversion programs are serving to identify disparities based on intersecting identities including age, race, disability, SOGI, and geographic location. Simultaneously, we urge New Jersey to employ strategies to ensure equitable access to transition and diversion programs for all Medicaid populations. For example, Black older adults with Alzheimer's or dementia are at particularly high risk for institutionalization.<sup>11</sup> New Jersey could employ targeted transition and diversion strategies that address this disparity. Such a strategy could resemble the Olmstead resource team that provides intensive supports to people with intellectual disabilities during their first days back in the community from a facility in place today, but trained specifically in Alzheimer's and dementia.

We are supportive of the efforts to improve nursing home diversion and transition outlined in the proposal including nutritional supports and increased respite to caregivers. Again, we encourage data collection and reporting on who receives these services. We also encourage New Jersey to analyze who is able to utilize the short-term stay provisions that allow nursing home residents to retain their income to pay towards housing while in a nursing facility or institutional setting. Equitable access to this program ensures that nursing facility residents are able to retain housing to return to.

## Data Strategy

Data collection for each of these initiatives is critical to ensuring the demonstration equitably provides benefits and services, and in reducing health disparities. While it is vital to evaluate impact by race and ethnicity, it is equally important to collect and report data employing an intersectional analysis of age, disability, SOGI, geographic location in addition to race and ethnicity. Without collecting this data, it is impossible to ensure equitable access

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<sup>10</sup> Kristie Liao & Victoria Peebles, *Money Follows the Person: State Transitions as of December 31, 2019*, MATHEMATICA at 6 <https://www.medicaid.gov/medicaid/long-term-services-supports/downloads/mfp-2019-transitions-brief.pdf>.

to the Medicaid program and its benefits. Data must also be publicly reported to ensure transparency and accountability.

Thank you again for the opportunity to provide feedback on New Jersey's 1115 proposal. Please feel free to reach out to Valencia Sherman-Greenup with any questions regarding our comments at [vshermangreenup@justiceinaging.org](mailto:vshermangreenup@justiceinaging.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Amber C. Christ". The signature is cursive and somewhat stylized.

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