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Better Services for Better Aging

April 15, 2016

To: Senator Alberta Darling and Representative John Nygren, Co-Chairs
Members, Joint Committee on Finance

From: John Sauer, President/CEO
Tom Ramsey, Vice President of Public Policy and Advocacy

Subject: Department of Health Services Family Care/IRIS 2.0 Concept Paper

The not-for-profit long-term care providers which comprise the membership of LeadingAge Wisconsin would like to commend the Department of Health Services (DHS) for their significant efforts in attempting to transform programs with the importance and complexities of Family Care and IRIS and for providing stakeholders with numerous opportunities to share their thoughts and concerns as they relate to Family Care/IRIS 2.0. The tremendous amount of DHS time and effort which resulted in the concept paper now before the Joint Committee on Finance (JFC) is fully recognized by LeadingAge Wisconsin members.

When the JFC introduced 2015 Senate Bill 21, the 2015-17 state budget bill, on February 3, 2015, questions from Family Care/IRIS enrollees, their families, and service providers quickly arose when the Family Care/IRIS 2.0 provisions became public. The JFC and the Legislature recognized those stakeholder concerns and established parameters in the biennial budget which guide the transformation of a Family Care/IRIS program which currently serves over 60,000 frail elderly, intellectually disabled, and physically disabled individuals.

2015 Wisconsin Act 55 requires the JFC to approve the DHS Family Care/IRIS 2.0 Concept Paper before the Department can submit its Medicaid waiver application to revamp Family Care/IRIS for approval of the federal Centers for Medicare and Medicaid Services (CMS). The budget also prohibits the JFC from modifying the Concept Paper prior to its vote to either approve or disapprove the paper. The JFC's options to address the Family Care/IRIS 2.0 Concept Paper were outlined in an April 5, 2016 memo from Legislative Fiscal Bureau (LFB) Director Bob Lang to JFC members.

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In light of LFB Director Lang's April 5th memo, LeadingAge Wisconsin recommends the JFC seek additional information from DHS before voting on the Family Care/IRIS 2.0 concept paper. While LeadingAge Wisconsin does not oppose changes to Family Care and IRIS, the lack of specifics in the DHS Concept Paper creates great uncertainties for those who will utilize these new services and those that will provide them. Therefore, seeking additional information from DHS before voting on the Family Care/IRIS Concept Paper appears to be a prudent and necessary request.

LeadingAge Wisconsin testified before the DHS and provided extensive comments to the Department (please see: www.leadingagewi.org/media/29465/LeadingAge-Wisconsin-FCI-20-Comments-FINAL.pdf) on Family Care/IRIS 2.0. Most of our recommendations were not addressed in the Concept Paper and we remain uncertain whether those recommendations were opposed by the Department or simply were not included in the Concept Paper but will be part of the waiver application submittal to CMS if the JFC votes to approve the Concept Paper.

Among our key recommendations are the following:

- **"Any Willing Provider" –** The Concept Paper states the following: "DHS will require IHAs ("Integrated Health Agencies") to adhere to Act 55 requirements to contract with any willing and qualified provider of long-term care services, which preserves the current provision in MCO (Family Care "Managed Care Organizations" which would be replaced by IHAs under Family Care/IRIS 2.0) contracts regarding any willing provider. As required by Act 55, this provision will be in place for a minimum of three years. DHS will assess the need to extend the 'any willing and qualified provider' requirement beyond the initial three-year period after Family Care/IRIS 2.0 has been fully implemented and operational in all zones for at least two years."

  LeadingAge Wisconsin members appreciate this further clarification by the DHS, especially the pronouncement that the decision to extend (or not to extend) the "any willing provider" provision beyond three years will be the Department's, not the IHA's. But the "any willing provider" concept is also known by a different name: "Return to Home." While providers no doubt would prefer the uncertainty be lifted as to whether they will remain in an IHA's provider network after three years, Family Care enrollees deserve the certainty that they will be able to remain in their "home" and not be forced to move because their provider is no longer part of their IHA's network. Therefore, we urge the JFC to recommend that the DHS seek a statutory change to eliminate the three-year sunset of the Family Care "any willing provider" provision and to include that change in any Family Care/IRIS 2.0 waiver submittal to CMS.

- **Medical Loss Ratio –** LeadingAge Wisconsin has recommended that Family Care/IRIS 2.0 impose an 85:15 medical loss ratio (MLR) similar to that proposed in the Medicaid managed care rule released by CMS in June 2015. In its comments on the proposed rule, CMS has provided an excellent argument to buttress our recommendation:

"As of 2015, Medicaid and CHIP are the only health benefit coverage programs to not utilize a minimum MLR for managed care plans .... We believe that 85 percent is the appropriate minimum threshold and is the industry standard for MA and large employers in the private health insurance market. **We believe that considering the MLR as part of the rate setting process would be an effective mechanism to ensure that program dollars are being spent on health care services, covered benefits, and quality improvement efforts rather than on potentially unnecessary administrative activities."** (Emphasis added).

We might express the same thing a little less delicately: IHAs should not be permitted to accrue significant reserves or profits on the backs of the frail elderly, persons with a disability or the Wisconsin taxpayer. We also have recommended that if an IHA fails to meet the 85:15 MLR, any amounts falling below the 85% standard must be reinvested in rates paid to providers.

The DHS Concept Paper is silent on the imposition of a MLR: is the DHS opposed to implementing a MLR or does the Department plan to impose a MLR but simply chose not to include that recommendation in the Concept Paper?

- **Provider Appeals Process –** Under the current Family Care program, there is no appeals process for providers. The only thing that even remotely approaches a provider appeals process comes indirectly through the enrollee discharge process. LeadingAge Wisconsin members continue to argue that Family Care/IRIS 2.0 should include both an enrollee and a provider appeals process, specifically a rate appeals process. Under a rate appeals process, both the enrollee and the provider should have the right to appeal a rate, compelling the IHA to share details on how it arrived at a given rate, including copies of the Family Care enrollee's functional screen and assessment scoring sheets and the IHA's rationale for establishing a new rate or changing an existing rate. Rate appeals denied by an IHA would be reviewed and ultimately ruled upon by the DHS. Once again, the Concept Paper does not include any reference to a provider appeals process: is that by design, an oversight, or a topic to be addressed more fully in the state's Medicaid waiver application?

- **Capitation Rate-Setting Transparency –** Under the current Family Care program, there is little-to-no transparency in how capitation rates are set for MCOs or how provider rates are set by MCOs. LeadingAge Wisconsin continues to recommend that Family Care/IRIS 2.0 contains rate-setting transparencies. Specifically, we recommend that the capitation rate-setting methodology for IHAs, the IHA rates paid to providers, and IHA-incurred expenses all be reported and tracked by individual client groups, i.e., frail elderly, intellectually disabled, and physically disabled, and that assumptions and projections on provider-related costs should be both stated explicitly and factored in by the DHS-contracted actuaries in determining IHA capitation rates. There is no mention of capitation rate transparency in the DHS Family Care/IRIS 2.0 Concept Paper.

- **Provider Rate Increases –** Almost since Family Care's inception, LeadingAge Wisconsin has raised concerns regarding the method by which MCO capitation rates are established. Specifically, capitation rates under Family Care have been based on past

program expenses incurred by MCOs to purchase care and services for Family Care enrollees, not on the actual costs of providing care and services to those individuals. One of the results of that flawed methodology became crystal clear in a recent survey of Family Care assisted living providers: of the 297 respondents, 95.3% received either Family Care rate freezes (84%) or rate cuts (11.3%) during the 2010-14 time period. There is nothing contained in the Concept Paper which suggests the DHS is considering a modification to the Family Care capitation rate-setting methodology.

LeadingAge Wisconsin recommends that Family Care/IRIS 2.0 utilize a capitation rate-setting methodology which factors in historical provider care and service costs and that a portion of the capitation rate be earmarked specifically for provider rate increases. At a time when Wisconsin assisted living providers are facing vacancy rates on average of 11.3% for certified nurse aides (CNA) and 14.3% for other direct care workers, the primary caregivers in assisted living, failure to invest in the caregiving workforce will dash the well-intentioned promise of Family Care/IRIS 2.0 to improve clinical outcomes and the quality of life of the frail elderly, intellectually disabled, and physically disabled enrollees of the Family Care and IRIS programs whatever form they eventually take.

The above are not insignificant details to the LeadingAge Wisconsin provider community. How these details are addressed will determine not only the quality of care and services provided under Family Care/IRIS 2.0 but also whether providers will continue to serve Family Care enrollees or will be able to remain fiscally solvent because they chose to serve this population. With that in mind, we hope the members of the JFC will seek additional information from DHS on these and related issues before voting on the Family Care/IRIS 2.0 Concept Paper.

LeadingAge Wisconsin, an affiliate of LeadingAge, is a statewide membership association of not-for-profit organizations principally serving seniors and persons with a disability. Membership is comprised of 195 religious, fraternal, private and governmental organizations which own, operate and/or sponsor 185 nursing homes, 6 intermediate care facilities for the intellectually disabled, 182 assisted living facilities, 114 apartment complexes for seniors and over 300 community service agencies which provide programs ranging from Alzheimer's support, adult and child day care, home health, home care and hospice to Meals on Wheels. LeadingAge Wisconsin members employ over 38,000 individuals who provide compassionate care and service to over 48,000 residents/tenants/clients each day. For further information, please contact John Sauer (jsauer@LeadingAgeWI.org) or Tom Ramsey (tramsey@LeadingAgeWI.org) at 608-255-7060.