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TO: Matt Cate, CSAC Executive Director

FROM: Kelly Brooks-Lindsey, Partner

Re: Medicaid Section 1115 Waiver Renewal: Medi-Cal 2020 Update

California is in the midst of negotiating a renewal to its existing "Bridge to Reform" Medicaid Section 1115 Waiver. The Department of Health Care Services (DHCS) submitted the waiver renewal, dubbed Medi-Cal 2020, to the Centers for Medicare and Medicaid Services (CMS) on March 27, 2015. The negotiations between DHCS and CMS began in earnest earlier this summer.

DHCS and CMS put together a schedule for regular discussions about specific waiver topics. The following is an outline of the joint plan for discussions over the summer and fall:

Month	Topics
July	▪ Public Safety Net Global payments for the remaining uninsured ▪ Managed care transformation incentive program ▪ Accountability measures, including metrics for measuring achievements during the five-year waiver
August	▪ Financing, including budget neutrality ▪ Federal/state shared savings concept ▪ Public hospital transformation incentives (aka Delivery System Reform Incentive Payment successor)
September	▪ Fee-for-service proposal (dental and maternity care) ▪ Housing ▪ Whole Person Care

FINANCING ISSUES

It is unclear how quickly some of the major financing questions will be settled; many of the financing issues will impact the policy portions of the waiver. It's important to keep in mind that California's existing Medicaid Section 1115 Waiver expires on October 31, 2015. California is seeking $17 billion over the next five years, which is $7 billion more than California received under the existing waiver. DHCS is anticipating further detail and comment from CMS on the financing proposals in mid to late August. The outcome of the financing discussions will affect the remainder of the negotiations.

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***Shared Savings*.** California is proposing to test a new investment strategy with the federal government by initiating a federal-state shared savings model. CMS continues to raise doubts about its authority to approve the federal-state shared savings component. California's shared savings proposal would be precedent-setting and allow other states the opportunity to make similar requests in 1115 waiver submissions. Many stakeholders are pessimistic about this proposal ultimately being included in the final waiver agreed to by the state and federal governments.

If the federal-shared savings proposal is not approved, approximately $5 billion in policy initiatives under the state's waiver submission will need a source of non-federal match. The state did not commit any state General Fund to the current $10 billion waiver, and $2 billion of the current waiver directly benefits the state General Fund. If some of those policy initiatives continue to be included in the waiver, the state will need to identify a source of match.

Budget Neutrality. CMS also indicated to California that they are developing a national policy on budget neutrality that includes the concept of rebasing away from the use of fee-for-service (FFS) assumptions. Part of the budget neutrality calculation requires states to calculate their costs without the waiver and then to update those costs with the waiver. The difference between the "without" waiver and "with" waiver costs is the basis for budget neutrality. States use the budget neutrality calculation to inform how they approach CMS in asking for additional federal funds. California is proposing to continue to calculate budget neutrality by using a comparison of FFS costs with managed care costs, which is how the state calculates budget neutrality in the existing waiver.

While CMS has indicated that moving away from FFS is their policy goal, it is not clear what that may mean for California's waiver proposal. CMS is still developing policy on budget neutrality and it is unknown whether the policy will be drafted for purposes of the budget neutrality calculation discussion slated to occur with California in August. CMS has assured the state that it is not their intention to zero out California's waiver savings. California is not aware of CMS raising the new policy with other states in waiver negotiations.

PENDING MANAGED CARE REGULATIONS & WAIVER IMPACTS

CMS is proposing new managed care regulations that will impact California's Medi-Cal program and may have serious implications for the waiver renewal. Public comments were due to CMS on July 27. The proposed regulations could be finalized anytime between December 2015 and summer of 2016.

California, like other states, has traditionally used the flexibility of supplemental payments to support its core Medicaid programs. The proposed regulation would fundamentally change how payments are made to Medi-Cal providers – destabilizing the delivery system and interrupting plans and providers, particularly public safety net providers.

First, the draft regulations prohibit the state from directing health plan payments. If interpreted broadly (as it is written), the proposal would impact the hospital fee, intergovernmental transfers and other supplemental payments, amounting to over $2 billion in California. Second, CMS is seeking to have actuaries certify to a specific rate – not a rate range, as is the practice today. The regulations would prohibit providers, like counties and fire districts, from paying above the lower bound since there would no longer be a range. This is another mechanism by which public systems have supplemented their rates.

The annual financial impact of the proposed managed care regulation on California's public hospitals alone is estimated to be between $750 million and $1 billion. The managed care regulation would severely limit, if not eliminate, potential benefits from a waiver renewal.

<u>POLICY ISSUES</u>

DHCS has said very little publicly about the policy issues being raised by CMS in the negotiations. Many of the policy proposals are being discussed in September. Below is additional detail about the only policy issues that DHCS has shared significant information publicly.

Public Safety Net Global Payments for the Remaining Uninsured. DHCS and CMS had detailed discussions about the public safety net global payments for the remaining uninsured in July. Recall that the Brown Administration is proposing to transform California's public safety net for the remaining uninsured by unifying the Disproportionate Share Hospital (DSH) and Safety Net Care Pool (SNCP) funding streams into a global payment system. DHCS believes they achieved the following outcomes in the global payments conversation: 1) CMS understands and is interested in the proposal and 2) DHCS has satisfactorily addressed CMS's questions. CMS has indicated they are developing a new federal policy on uncompensated care pools based on what was recently agreed to with the state of Florida. The pending federal policy likely impacts the global payments for the uninsured because the state is proposing to continue the use of SNCP revenue. It is unclear whether and how California's proposal may align with CMS's new national policy.

<u>FEDERAL & STATE NEXT STEPS</u>

CMS remains very engaged, and DHCS indicates CMS is committed to completing the waiver by November 1, 2015. When the CSAC Board of Directors meet on September 3, 60 days will remain until the existing waiver expires.

Once more is known about the CMS financing discussions with California, counties may need to engage on a federal and state communications and outreach strategy. Outreach may include members of the California's federal delegation and members of the California State Legislature – likely with the goal of influencing key officials in CMS and the White House.

Once negotiations conclude on the financing and major policy proposals, CMS will create the Special Terms and Conditions (STCs), the legal document governing the waiver. State implementation cannot begin until the STCs are complete. The state and federal governments are focused on completing negotiations in order to begin implementation in November 2015.

The Legislature remains interested in working with the Brown Administration to enact statutory changes necessary to implement a new waiver. However, timing remains a challenge. Currently, there is not enough detail from the state/federal negotiations to develop a statutory framework. AB 72 by Assembly Member Rob Bonta and SB 36 by Senator Ed Hernandez continue to work their way through the legislative process as spot bills. Substantive amendments to the bills are anticipated in late August or early September once more is known about waiver negotiations. If sufficient information is not available prior to the Legislature's departure on September 11, additional legislation could be contemplated in January 2016 when the houses reconvene for the second year of the 2015-16 session.

Hurst Brooks Espinosa will continue to provide regular policy and political updates to counties on Medi-Cal 2020 Waiver renewal details as they become available. For additional questions, please contact Kelly Brooks-Lindsey at kbl@hbeadvocacy.com or 916.272.0011.