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**NATIONAL DOMESTIC
WORKERS ALLIANCE**



Sent via first-class mail and email to dennis.schrader@maryland.gov

September 15, 2021

Dennis R. Schrader
Secretary, Maryland Department of Health
201 West Preston Street
Baltimore, Maryland 21201

Re: Lack of stakeholder engagement in submission of Initial HCBS Spending Plan

Dear Secretary Schrader,

The undersigned are members of the Wages & Benefits Task Force of the Maryland Regional Direct Services Collaborative, a network of organizations and individuals working together to build and sustain a well-trained direct services workforce in the Maryland region. We represent consumers, care workers, and providers. We write to express our disappointment with the lack of stakeholder engagement by the Maryland Department of Health (MDH) in connection with its Initial HCBS Spending Plan pursuant to Section 9817 of the American Rescue Plan Act of 2021 (ARPA), which MDH submitted to the Center for Medicaid and CHIP Services (CMCS) on July 13, 2021.

Section 9817 of ARPA provides states with a temporary 10 percentage point increase to the federal medical assistance percentage (FMAP) for certain Medicaid expenditures for home and community-based services (HCBS). States must use these federal funds to supplement existing state funds for Medicaid HCBS, and must use state funds equivalent to the amount of federal funds attributable to the increased FMAP to implement or supplement activities to enhance, expand, or strengthen Medicaid HCBS.

On May 13, 2021, the Centers for Medicare and Medicaid Services (CMS) issued a State Medicaid Director Letter providing guidance concerning states' proposals for these funds.¹ That letter stressed the importance of states engaging stakeholders before submitting their spending proposals:

CMS recognizes the importance of effective stakeholder engagement processes that can provide states with varied perspectives on how to expand, enhance, and strengthen HCBS. States may want to consider engaging a broad community of stakeholders—Medicaid and other state agency leadership, participants in HCBS programs, residents in long-term care facilities, HCBS providers, family members and other caregivers, the aging and disability network, health plans, and the direct support workforce—to provide insight, ideas, and feedback to inform the state's approach to developing and implementing activities under section 9817 of the ARP. Further, CMS expects that states will offer, in good faith and in a prudent manner, a public notice process, including tribal consultation as applicable, when implementing changes to their HCBS programs.²

Other states established and implemented organized, public processes for stakeholder engagement. As just three of many such examples:

- Pennsylvania released its proposed spending plan for public comment on June 16, 2021,³ provided an organized process for stakeholders to submit comments on it, and then posted all such comments on a public-facing webpage.⁴
- North Carolina issued a request for public comment with an email box permitting any stakeholder to submit comments, held a virtual listening session, conducted seven stakeholder forums, and released a detailed analysis of stakeholder feedback.⁵
- Massachusetts issued a Request for Information leading to the submission of 203 proposals, met with stakeholders on June 8, 2021 to provide an overview of its Initial Spending Plan, and met again with stakeholders on July 16, 2021 to share additional details.⁶

However, MDH did not engage stakeholders before submitting its proposal. MDH did not issue a public notice of its proposed plan before it sent the proposal to CMS. MDH did not meet with

¹ SMD# 21-003 Re: Implementation of American Rescue Plan Act of 2021 Section 9817: Additional Support for Medicaid Home and Community-Based Services during the COVID-19 Emergency, Appendix B: Home and Community-Based Services Eligible for the ARP Section 9817 Temporary Increased FMAP, *available at* <https://www.medicaid.gov/federal-policy-guidance/downloads/smd21003.pdf>.

² *Id.* at 5.

³ Pennsylvania Department of Human Services, Department Of Human Services Announces Public Comment Period For Home And Community-Based Services Federal Funding Available Through American Rescue Plan Act, *available at* https://www.media.pa.gov/pages/dhs_details.aspx?newsid=720.

⁴ Comments to Pennsylvania proposed spending plan, *available at* [https://www.dhs.pa.gov/coronavirus/Documents/HCBS%20ARPA%20email%20comments%20%20for%20redaction\(2\).Redacted.pdf](https://www.dhs.pa.gov/coronavirus/Documents/HCBS%20ARPA%20email%20comments%20%20for%20redaction(2).Redacted.pdf).

⁵ North Carolina Spending Plan for Implementation of ARPA Section 9817, *available at* <https://dhhr.wv.gov/bms/News/Documents/WV%20State%20ARP%20HCBS%20Spending%20Plan.pdf>.

⁶ Massachusetts Executive Office of Health and Human Services, Strengthening Home and Community Based Services and Behavioral Health Services Using American Rescue Plan (ARP) Funding, *available at* <https://www.mass.gov/info-details/strengthening-home-and-community-based-services-and-behavioral-health-services-using-american-rescue-plan-arp-funding>.

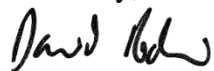
stakeholders concerning the proposal or otherwise conduct listening sessions. MDH did not establish a process by which stakeholders could submit written comments on how the money should be spent. Nor has MDH published the letters that some stakeholders nevertheless sent to MDH outside of a formal process. In short, MDH did not establish any process for stakeholder input whatsoever.

In the section on “stakeholder input” in Maryland’s Initial HCBS Spending Plan, MDH simply notes that the Maryland General Assembly responded to the ARPA in its fiscal year 2022 budget, putting certain limits on how the money could be spent. In particular, the budget requires that 75% of the funds be spent on a one-time rate increase and remaining funds be spent on waiver slot expansion “and other efforts to ensure the enhancement, strengthening, and expansion of Medicaid home- and community-based services”⁷ *But these spending parameters do not negate the need for meaningful stakeholder engagement.* The budget expressly leaves open the opportunity to spend up to a quarter of the federal funds—totaling tens of millions of dollars—on “other efforts” to improve HCBS; MDH should have given stakeholders the chance to weigh in on these efforts. Further, the budget is silent on how to implement rate increases. While all signatories to this letter may not support wages pass-throughs (i.e., a requirement that a certain percentage of a rate increase be used to increase workers’ wages), they are an example of a policy that CMS permits states to implement, falls within the parameters of Maryland’s budget language, and some stakeholders in Maryland support.

Maryland’s lack of stakeholder input concerning its Initial HCBS Spending Plan stands as a stark contrast to that of nearly every other jurisdiction that submitted a plan. **We ask that MDH immediately establish an organized, public process to engage, seek input from, and update stakeholders concerning these critically important federal funds and any future federal funds for HCBS.**

We hope you will consider this request. If you have questions, please contact David Rodwin at rodwind@publicjustice.org.

Sincerely,



David Rodwin
Staff Attorney, Public Justice Center

Signatory organizations:

1199SEIU – Maryland/DC Division

AARP – Maryland

Alzheimer’s Association – Greater Maryland and National Capital Area Chapters

Caroline Center

Maryland Center on Economic Policy

Maryland National Capital Homecare Association

Maryland Association of Centers for Independent Living

⁷ The Maryland Budget Reconciliation and Financing Act of 2021, House Bill 588, pages 106-08, *available at* <http://mgaleg.maryland.gov/2021RS/bills/hb/hb0588E.pdf>.

National Domestic Workers Alliance – DC, Maryland and Virginia Chapter
Public Justice Center
Resilience for All Ages

cc: Daniel Tsai, Deputy Administrator & Director, CMCS
Alissa Mooney DeBoy, Director of Disabled & Elderly Health Programs Group, CMCS
Secretary Carol A. Beatty, Maryland Department of Disabilities
Secretary Rona E. Kramer, Maryland Department of Aging
Deputy Secretary Steven R. Schuh, Department of Health Care Financing, MDH
Deputy Director Tricia Roddy, Medicaid, MDH
Director Marlana R. Hutchinson, Office of Long-Term Support Services, MDH
Sen. Guy Guzzone, Chair, Budget and Taxation Committee
Sen. James C. Rosapepe, Vice-Chair, Budget and Taxation Committee
Sen. Melony Griffith, Chair, Health & Human Services Subcommittee
Sen. Delores Kelley, Chair, Senate Finance Committee
Sen. Brian Feldman, Vice-Chair, Senate Finance Committee
Del. Maggie McIntosh, Chair, House Appropriations Committee
Del. Mark Chang, Vice-Chair, House Appropriations Committee
Del. Kirill Reznik, Chair, Health & Human Resources Subcommittee
Del. Shane Pendergrass, Chair, Health & Government Operations Committee
Del. Joseline Peña-Melnyk, Vice-Chair, Health & Government Operations Committee
Del. Ariana Kelly, Chair, Health Occupations & Long-Term Care Subcommittee