March 15, 2017

New Mexico Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

VIA EMAIL AND POSTAL MAIL

Comments on State Plan Amendment 17-001
Medicaid Premiums & Cost Sharing

Dear New Mexico Human Services Department,

We submit these comments on behalf of the undersigned organizations to express our strong opposition to the Human Services Department's (HSD) proposal to implement higher co-pay fees for Medicaid patients, specifically targeting low-income adults, working disabled individuals and children in the Children's Health Insurance Program.

We urge you to rescind this State Plan Amendment proposal. Higher fees for Medicaid are a direct hit to the pocketbooks of our families. They fly in the face of the values expressed by Governor Martinez who repeatedly assured the public that our families would not be "penalized" or asked to "carry the burden" for the state's budget challenges. Co-pays impose hidden fees on those least able to bear the costs – low-income families with children and people with disabilities.

HSD's own subcommittee of stakeholders and experts rejected a similar proposal last year when the agency was deliberating ways to save costs. We are disappointed that the Department is moving forward in spite of the subcommittee's recommendations.

Co-pay fees are counter-productive because they reduce access to care, shift costs to healthcare providers, and create long-term costs for the State. The fees yield minimal savings for the burden put on families and providers.

I. Imposing higher co-pay fees in Medicaid will reduce patient access to care and contribute to more emergency room visits.

The State has recognized the harms of imposing cost-sharing and actually chose not to implement a law in 2009 that would have imposed co-pays on non-emergency uses of the emergency room. At that time, HSD, itself, cited the following concerns: "...negative consequences for recipients, causing individuals to delay or forgo needed care."; "cost sharing can be a barrier to access"; "imposing cost sharing could lead to higher costs overall, can lead to poorer health outcomes for recipients"; and "co-pays would create

additional administrative burden for providers and could also lead to revenue losses for some providers."[1]

These harms recognized by the State are also confirmed by a wide body of research, showing that shifting costs to low-income Medicaid patients results in them losing access to medically necessary care and difficulties in filling essential prescriptions. This results in untreated conditions, which lead to adverse consequences that include poorer health and higher use of far more expensive services, such as emergency rooms.

The RAND Health Insurance Experiment (HIE) - the landmark study on this issue – followed families for over a decade, assigning them randomly to either a health insurance plan that required co-pays or a no-cost plan. While the HIE showed that imposing patient fees reduced overall use of services and total health spending, the reduction came from essential and nonessential care in roughly equal proportions. With reductions in essential care, the HIE found that the patient fees correlated with worse health outcomes in several areas for the poorest and sickest recipients.[2]

In Minnesota, a small survey (62 patients) found that more than half of the patients reported being unable to get their prescriptions on at least one occasion in the previous six months because of co-payments. Around one-third of those who failed to get essential medications saw increased use of the emergency room and hospital admissions for related medical issues.[3] In 2003, Oregon implemented comprehensive and substantial co-payments for its adult Medicaid recipients. Research there found Medicaid patients avoided preventative care and instead used more costly hospital emergency care.[4]

Another study published in the Journal of the American Medical Association looked at the consequences of imposing co-payments on prescriptions for adults receiving public assistance in Quebec. The study found that after the fees were imposed, low-income adults filled fewer prescriptions. This led to a significant increases in adverse events, including death and hospitalization as well as emergency room use.[5]

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[1] NM Legislative Finance Committee, Fiscal Impact Report for HB 438 "Medicaid Cost Sharing for Emergency Room Services, 2 (Mar. 6, 2009), *available at* http://www.nmlegis.gov/Sessions/09%,20Regular/firs/HB0438.pdf.

[2] Robert H. Brook et al., Rand Corp., *The Health Insurance Experiment: A Classic Rand Study Speaks to the Current Health Care Reform Debate*, at 2 (2006).

[3] Melody Mendiola, et. al., *Medicaid Patients Perceive Copays as a Barrier to Medication Compliance,* Hennepin County Medical Center, Minneapolis, MN.

[4] Neal T. Wallace et al., *How Effective Are Copayments in Reducing Expenditures for Low-Income Adult Medicaid Beneficiaries? Experience from the Oregon Health Plan*, HEALTH SERV. RES. 43(2): 515–530 (Apr. 2008), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2442363/pdf/hesr0043-0515.pdf

[5] Robyn Tamblyn, et. al., *Adverse Events Associated with Prescription Drug Cost-Sharing among Poor and Elderly Persons,* JOURNAL OF THE AMERICAN MEDICAL ASSOC., 285(4): 421-429 (Jan. 2001).

II. Co-pay fees penalize low-income New Mexicans, especially those with chronic health conditions and disabilities, and patients living in places where healthcare services are limited or unavailable.

Medicaid fees penalize New Mexican families who are doing the best they can with limited resources. Despite what may seem like a nominal fee, for example $5 for an office visit, co-pay fees can be unmanageable for low-income people who have to use much more of their limited incomes to meet other basic needs. This is especially true for low-income individuals with disabilities or chronic health conditions who must make multiple visits to the doctor or need to fill multiple prescriptions. This forces New Mexicans into choices no person should ever have to make between rent, food, gas, medicine and other necessities.

Co-pays for hospital visits and "non-emergent" use of emergency rooms also penalize patients living in areas where primary and preventive care is limited or unavailable. Patients throughout New Mexico, especially in rural areas, often end up hospitalized or in the emergency room to seek care because they cannot find primary care or other services in their community due to severe shortages in healthcare practitioners. 32 of New Mexico's 33 counties have been designated as Health Professional Shortage Areas (HPSAs) for primary care, dental care, and mental health.[6] According to the Legislative Finance Committee, New Mexico faces statewide shortages of at least 2,000 physicians, about 400 to 600 primary care physicians, over 3,000 registered nurses, and 155 dentists.[7] The workforce shortages are heaviest in rural and frontier areas, where over 30% of the population lives.[8]

Although the Human Services Department may be expecting that hospitals will comply with federal requirements that co-pays can only be charged in the emergency room if a patient had alternative sources of care that were available and accessible to the patient, but were not used,[9] these alternatives do not exist throughout New Mexico. As a result, hospitals will be unable to collect the co-pays in many cases, thereby shouldering additional uncompensated care costs, or they may charge the co-pays wrongfully. Unfortunately, HSD's proposal does not clarify standards for hospitals to determine when patients may be charged co-pays, and does not provide an appeals or grievance process for patients if they are wrongfully charged co-pays.

III. The State Plan Amendment will negatively impact healthcare providers.

The harmful impacts from imposing cost-shifting on Medicaid patients are not limited to low-income families. In a 2004 study from Oklahoma, providers reported collecting only 29% of the co-payment amounts from Medicaid recipients.[10] This meant healthcare providers were forced to bear the burden of providing uncompensated services.

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[6] New Mexico Health Care Workforce Committee Report, 2015 Annual Report, at 6 (Oct. 1, 2015) *available at* http://www.nmms.org/sites/default/files/images/nmhcwfc_2015report_final.pdf.

[7] New Mexico Legislative Finance Committee, Adequacy of New Mexico's Healthcare Systems Workforce, at 6-7 (May 15, 2013).

[8] New Mexico Healthcare Workforce Committee Report, 2015 Annual Report, at 6 (Oct. 1, 2015), available at: http://www.nmms.org/sites/default/files/images/nmhcwfc_2015report_final.pdf.

[9] 42 U.S.C. 1396o-1(e)(1)(A).

[10] Health Care Not Welfare Project, *Appropriate Rate Structure for Services Rendered and Estimated Percent of Co-Pays Collected Under the Medicaid Program*, Submitted to the Oklahoma Health Care Authority (Jan. 2004), *available at*

For New Mexico, this proposal will act as an additional, hidden provider rate cut to the already low rates that were cut in fiscal year 2017. Instead of collecting the co-pays directly through Medicaid, the agency expects hospitals and healthcare providers to obtain the payments. The administrative costs of attempting to collect the fees will further strain hospitals, private practices, and clinics, resulting in fewer providers willing to take Medicaid patients. This will put our state at even more of a disadvantage when we face severe workforce shortages and our healthcare providers are already strained to provide services.[11]

IV. Imposing cost-shifting fees will increase healthcare costs for the State.

While states may see small short term financial gains from imposing or increasing cost-shifting fees, they tend to see long term negative effects on state revenues and healthcare costs due to uncollected fees, untreated and aggravated conditions, increased use of emergency rooms, more uncompensated costs for hospitals and providers when the costs of the uninsured or co- pays are shifted to them, and overwhelming pressure on community-based services and free clinics. In the Oregon study (referenced in Section I), because Medicaid patients went without preventive care and instead used costlier services, imposing patient fees did not provide the budget savings that the state expected.[12] New Mexico should expect to see similar results.

V. The cost savings are minimal compared to the cost burdens for patients, healthcare providers, and the State.

By imposing these fees, New Mexico will lose federal matching funds that generate tax revenue and sustain jobs in the healthcare industry. To gain $1.5 million to $3 million of "savings", the State loses $6 to $12 million of federal matching funds that would have gone into New Mexico's healthcare system. Due to healthcare reform, especially Medicaid expansion, New Mexico was on the path to making much needed investments into healthcare facilities and the workforce. These gains will be undercut by shifting more costs onto providers and patients. The savings are miniscule compared to the overall Medicaid budget that tops $5.5 billion per year. Meanwhile, copays can multiply into large burdens for low-income families with limited budgets and for healthcare providers that are unable to collect the fees.

Finally, any savings that New Mexico is able to gain from shifting costs to patients and healthcare providers may be negated by the administrative costs to implement the proposal. The State must seek federal authority for a State Plan Amendment, develop a regulatory framework and informational materials for insurance companies and healthcare providers, develop processes to calculate the amounts of co-pays that have been collected by medical

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http://www.statecoverage.org/files/Appropriate%20Rate%20Structure%20for%20Services%20Rendered%20and%20Estimates%20Percent%20of%20Co-Pays%20Collected%20under%20the%20Medicaid%20Program.pdf.

[11] New Mexico Legislative Finance Committee, Health Note: Medicaid Managed Care Provider Networks and Access to Care (April 2016), *available at* http://www.nmlegis.gov/lcs/lfc/lfcdocs/health%20notes%20-%20access%20to%20care.pdf (detailing New Mexico Medicaid recipients' struggles in accessing the healthcare system).

[12] *Supra* note 4.

providers and hospitals, develop processes to avoid improper charges, and so forth. The administrative costs may negate a large portion of $1.5 million in savings.

Again, we urge the Department to rescind its State Plan Amendment proposal to impose cost-shifting fees on Medicaid patients. Should you have any questions, please contact the Center on Law and Poverty at 505-255-2840 or email Abuko D. Estrada, abuko@nmpovertylaw.org, or Sireesha Manne, sireesha@nmpovertylaw.org.

Respectfully,

Abuko D. Estrada, Esq. Sireesha Manne, Esq.

On behalf of the following organizations: