Department of Health & Human Services
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, Illinois 60601-5519

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

DEC 13 2011

Mr. Brett Davis
Medicaid Director
Division of Health Care Access and Accountability
1 West Wilson Street
P.O. Box 309
Madison, Wisconsin 53701

Dear Mr. Davis:

The Centers for Medicare & Medicaid Services (CMS) is currently reviewing the State of Wisconsin's proposed amendments to the Wisconsin Family Care and Self-Directed Supports Waiver Programs (CMS control numbers 0367.R02.01, 0368.R02.02, 0484.R01.0, and 0484.R01.01).

Please note that these types of waiver amendments, even if potentially approvable, may receive only a prospective approval date. Until specific approval of an amendment is received, the State is required to continue to operate the waiver as described in the currently-approved 1915(c) waiver application (see 42 CFR §430.25(h)(1)).

Because the currently approved waiver includes an entitlement to waiver services, we are instructing the State to operate the waiver as it was approved by CMS. Therefore, we are directing the State to identify any individuals not currently enrolled onto the Family Care or Self-Directed Supports waivers since the July 1, 2011 implementation of the newly instituted enrollment caps, and immediately enroll those individuals in the waiver programs. This includes individuals living in any counties who had or would have had an entitlement to the waivers as of July 1, 2011, and includes individuals who were or would have otherwise been selected for enrollment from other participating counties.

During our review, we will continue to evaluate:

- the potential implications of the amendments on the State's compliance with Maintenance of Effort (MOE) requirements under sections 1902(a)(74) and 1902(gg) of the Social Security Act, added by section 2001(b) of The Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, P.L. 111-152;

- whether appropriate tribal consultation occurred as required consistent with section 1902(a)(73) of the Social Security, added by section 5006(e) of the American Recovery and Reinvestment Act of 2010, P.L. 111-5; also see Presidential Executive Order 13175 (2000), Executive Memorandum on Tribal Consultation (November 5, 2009) and HHS Tribal Consultation Policy (December 14, 2010); and

- whether the amendments raise other issues, comments or concerns that the State must address before CMS can consider approval.

We look forward to hearing from the State regarding its plan for immediate identification and enrollment of the individuals described above.

If you have further questions or concerns, please contact me at (312) 353-1133 or Ralph Lollar, Director, Division of Long Term Services and Supports, Disabled and Elderly Health Programs Group, at 410-786-0777.

Sincerely,

Verlon Johnson
Associate Regional Administrator
Division of Medicaid and Children's Health Operations

cc: Beth Wroblewski, DHS
Pris Boroniec, DHS
Mindy Morrell, CMCS