

Stopping Medicaid Work Requirements A Guide to Advocacy Strategies

Introduction

On January 11, 2018, the federal Centers for Medicare and Medicaid Services (CMS) issued guidance detailing criteria states should consider if they want to implement proposals to take away health coverage from individuals who do not meet new work requirements.¹ The guidance reversed a long-held position by CMS – shared by many presidential administrations of both parties – that taking health coverage away from people who can’t prove they are working a certain number of hours each month is not in line with Medicaid’s congressionally mandated objectives. Since releasing its guidance, CMS has approved several Medicaid Section 1115 waivers (“1115 waivers” or “waivers”) for work requirements, and others remain pending. Arkansas was the only state to implement work requirements in 2018 and disenroll people for non-compliance. Other states, including New Hampshire and Indiana, are planning to implement similar requirements in 2019. In March 2019, a federal judge halted the implementation of work reporting requirements in Arkansas and Kentucky. Those cases are currently on appeal by CMS.

Many Medicaid advocacy organizations have made a compelling case that proposals to take away health coverage from individuals who don’t meet these requirements would be ineffective and harmful, and several have successfully defeated work requirement legislation in their state.² Moreover, since work requirements are inconsistent with the legislative objectives of Medicaid, advocates are challenging the legality of CMS approving them and states implementing them.³ Nevertheless, states are continuing to draft work requirement proposals, submit waivers to CMS, and prepare for implementation of approved waivers.⁴

This guide will focus on strategies to defeat state legislation on work requirements and/or prevent state Medicaid agencies or governors from drafting 1115 waivers. If your state is planning to move ahead with work requirements, please contact Rachelle Brill at rbrill@communitycatalyst.org and Suzanne Wikle at swikle@clasp.org for next steps beyond advocacy efforts to prevent them.

Strategies for Preventing a Medicaid Work Requirement from Becoming Law

The primary advocacy goal for Medicaid work requirements is to prevent them from advancing in your state legislature or stop an executive action to draft a waiver. To assist you in these efforts, we suggest strategies that recent focus group tests and advocacy efforts have proven to be effective with the public, press, and policymakers for pushing back against work requirements.

¹ Centers for Medicare & Medicaid Services, *SMD: 18-002 Re: Opportunities to Promote Work and Community Engagement among Medicaid Beneficiaries*, January 11, 2018, <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf>

² John Raby, *Medicaid work bill dies in West Virginia House*, Associated Press, February 27, 2019, <https://www.apnews.com/d17bab4400b848fb88f3302c7d749d1f>. Jesse Paul, *Republicans’ Effort to Create Colorado Medicaid Work Requirement Fails at First Hurdle After Drawing Outrage From Democrats*, Denver Post, March 29, 2018, <https://www.denverpost.com/2018/03/29/colorado-medicaid-work-requirement-fails/>. *Wolf Vetoes Medicaid Work Requirements*, Philadelphia CBS Local, October 22, 2017, <http://philadelphia.cbslocal.com/2017/10/22/wolf-vetoes-medicaid-work-requirements/>

³ See 42 U.S.C. 1315, which provides that any Section 1115 demonstration must be “likely to assist in promoting the objectives of Medicaid.” See also 42 U.S.C. 1396a(a)(10), which states the Medicaid program must make “medical assistance available” to all eligible populations, including the expansion population.

⁴ Kaiser Family Foundation, *Medicaid Waiver Tracker: Which States Have Approved and Pending Section 1115 Medicaid Waivers?* July 17, 2018, <https://www.kff.org/medicaid/issue-brief/which-states-have-approved-and-pending-section-1115-medicaid-waivers/>

Lead with the fact that these policies will result in coverage losses

The concept of “work requirements” taps into a deeply held American value – work – and can sound reasonable to the average person or policymaker if they do not understand the effect of these reporting requirements on Medicaid enrollees. Recent focus groups have uncovered that support for work requirements wanes when people are told that failing to meet the requirements can lead to such consequences as not being able to see a doctor or obtain needed services, treatment, or medication.⁵ Another effective way of demonstrating the harm and ineffectiveness of work requirements is by collecting data on projected coverage losses⁶ and citing data from states that have experienced coverage losses.⁷ Overall, conveying the harm these proposals will cause can be a critical strategy for defeating them.

Reiterate that work requirements are a “paperwork penalty” rather than a jobs program

The CMS guidance does not require states to help individuals meet work requirements in any way. Instead, work requirements primarily represent a new administrative or paperwork requirement that can cause people to lose coverage for not submitting the right type or amount of paperwork by the right deadline, even if they *are* working. Powerful stories from Arkansas show that those with jobs were harmed by the requirement.⁸ In addition, seasonal workers and the self-employed or others who work irregular hours may also lose coverage simply because they don’t meet their state’s required minimum work hours for one or more months. Overall, meeting strict reporting requirements would be hard or impossible for many low-wage workers. Advocates in several states have adopted the phrase “work reporting requirements” to emphasize how the administrative burden is the core of these requirements.

Assert that Medicaid work requirements are not effective

Additionally, there is no evidence that taking health coverage away from people who don’t meet work requirements will increase employment or improve health outcomes. For example, work requirements in Temporary Assistance for Needy Families (TANF) and the Supplemental Nutrition Assistance Program (SNAP) did little to improve work outcomes.⁹ Lessons from these programs demonstrate that work requirement policies are not effective in connecting people to living-wage jobs that provide affordable health insurance.¹⁰ In addition, advocates can cite recent data from Arkansas showing that while over 18,000 individuals lost coverage in 2018, only a very small percentage reported being newly employed as a result of the work requirement.¹¹ Not only that, but in most Medicaid non-expansion states with coverage gaps, individuals will be placed in a harmful “catch-22” in which they will lose Medicaid for both meeting the work requirement (because their income will exceed the income eligibility limit) and not

⁵ Community Catalyst, *Medicaid Makes the Difference: Communications Toolkit*, April 2018

⁶ Rachana Pradan, *Judge Strikes Down Medicaid Work Rules in Arkansas, Kentucky*, Politico.com, March 27, 2019, <https://www.politico.com/story/2019/03/27/work-requirements-medicaid-1240074>

⁷ Benjamin Hardy, *Over 18,000 Lost Coverage in 2018 Due to Medicaid Work Rule, But Only Fraction Have Re-Applied*, Arkansas Times, January 15, 2019, <https://www.arktimes.com/ArkansasBlog/archives/2019/01/15/over-18000-lost-coverage-in-2018-due-to-medicaid-work-rule-but-only-fraction-have-reapplied>

⁸ Catherine Rampell, Leah Nagy and Jason Kane, *With New Work Requirement, Thousands Lose Medicaid Coverage in Arkansas*, PBS New Hour, November 19, 2018, <https://www.pbs.org/newshour/show/with-new-work-requirement-thousands-lose-medicaid-coverage-in-arkansas>

⁹ LaDonna Pavetti, *Work Requirements Don’t Cut Poverty, Evidence Shows*, Center on Budget and Policy Priorities, June 2016, <https://www.cbpp.org/research/poverty-and-inequality/work-requirements-dont-cut-poverty-evidence-shows>

¹⁰ Jessica Gehr, *Doubling Down: How Work Requirements in Public Benefit Programs Hurt Low-Wage Workers*, CLASP, June 2017, <http://www.clasp.org/resources-and-publications/publication-1/Doubling-Down-How-Work-Requirements-in-Public-Benefit-Programs-Hurt-Low-Wage-Workers.pdf>

¹¹ Robin Rudowitz, MaryBeth Musumeci, Cornelia Hall, *January State Data for Medicaid Work Requirements in Arkansas*, Kaiser Family Foundation, February 25, 2019, <https://www.kff.org/medicaid/issue-brief/state-data-for-medicaid-work-requirements-in-arkansas/>

meeting the work requirement.¹² Overall, a much better focus for public policy is to develop skills and training for jobs that are in high demand, pay living wages, help people get the education they need to climb their career ladder, and foster an economy that creates jobs.

Emphasize the costs and bureaucratic elements of work requirements

The high cost of administering a work requirement is also a compelling argument to policymakers and the public alike. In some fiscal notes attached to work requirements bills, as well as in Medicaid Section 1115 waiver applications, states are projecting savings from individuals losing coverage, but also finding that the administrative costs of work requirements—along with the potential uncompensated care and other costs that would result from disenrollment—are higher than initially projected. The bottom line is that states would have to spend tens or hundreds of millions of dollars to track work requirements that apply to only a very small segment of their Medicaid population.¹³ In Virginia, the governor’s office estimated that it could cost up to \$100 million to implement work requirements and supports for only 6,000 people,¹⁴ while Tennessee advocates discovered costs to the state of almost \$40 million to track whether only a few thousand individuals were working.¹⁵ In West Virginia, advocates used the media to highlight both the administrative costs and the lost federal funding from having fewer individuals enrolled in Medicaid.¹⁶ Advocates should call out as wasteful and unnecessary the administrative spending and new levels of government bureaucracy needed solely to create red tape. Another strategy for highlighting the true costs of work requirements is to have local or county social service administrators testify about how work requirements would increase personnel costs and operating expenses for their departments. At a hearing in Colorado on a proposed work requirement bill, county administrators testified about the excessive burden of work requirements on their already-reduced budgets and limited staff bandwidth, which contributed to the bill’s ultimate failure.¹⁷

Clarify that work requirements will affect more than just the “able-bodied”

Much of the rhetoric used by work requirements proponents focuses on how the requirements would only be applied to “able-bodied” Medicaid enrollees, and therefore will only affect those who (allegedly) *can* work.¹⁸ This rhetoric is inaccurate and should be countered as such. First, states are proposing that work requirements apply to more than just “childless” and “able-bodied” adults. In non-expansion states, it’s

¹² Rachele Brill, *Medicaid Work Reporting Requirements: A One-Way Ticket to the Coverage Gap*, Community Catalyst, March 2019, <https://www.communitycatalyst.org/resources/publications/document/2018/Community-Catalyst-Work-Requirements-and-Medicaid-Eligibility-in-Non-Expansion-States-Analysis.pdf>

¹³ Rachele Brill, *Let’s Call The Alleged ‘Savings’ from Work Requirements What They Really Are: People Losing Access to Health Care*, Community Catalyst, April 2, 2018, <https://www.communitycatalyst.org/blog/lets-call-the-alleged-savings-from-work-requirements-what-they-really-are-people-losing-access-to-health-care#.Wy1ES1VKjkk>. Rachele Brill, *Think Medicaid Work Requirements Will Save Money? Think Again*, Community Catalyst, April 3, 2018, <https://www.communitycatalyst.org/blog/think-medicaid-work-requirements-will-save-money-think-again#.WyLUYVVKh0w>.

Aviva Aron-Dine, *Proposed Medicaid Eligibility Restrictions Have Costly Unintended Consequences*, Center on Budget and Policy Priorities, May 23, 2018, <https://www.cbpp.org/blog/proposed-medicaid-eligibility-restrictions-have-costly-unintended-consequences>. Jennifer Wagner, Judith Solomon, *States’ Complex Medicaid Waivers Will Create Costly Bureaucracy and Harm Eligible Beneficiaries*, Center on Budget and Policy Priorities, May 23, 2018, <https://www.cbpp.org/research/health/states-complex-medicaid-waivers-will-create-costly-bureaucracy-and-harm-eligible>

¹⁴ Virginia Department of Planning Budget, HB 338 Fiscal Impact Statement, <https://lis.virginia.gov/cgi-bin/legp604.exe?181+oth+HB338FH1122+PDF>

¹⁵ Tennessee General Assembly Fiscal Review Committee, Fiscal Note HB 1551 SB 1728, <http://www.capitol.tn.gov/Bills/110/Fiscal/HB1551.pdf>

¹⁶ Jake Flatley, *Groups speak out against Medicaid work bill*, MetroNews, February 25, 2019, <http://www.metronews.com/2019/02/25/groups-speak-out-against-medicaid-work-bill/>

¹⁷ Colorado General Assembly 2018 Senate Health and Human Services Archived Audio, March 29, 2018, <http://leg.colorado.gov/committee/granicus/1220101>

¹⁸ Op-Ed by Seema Verma, *Making Medicaid a Pathway Out of Poverty*, The Washington Post, February 4, 2018, stating, “[w]e believe that if Medicaid is going to be used as the vehicle to offer substantial taxpayer benefits to healthy, working-age Americans, then we must allow the program to be more flexible.”

very-low income parents who would be subject to work requirements.¹⁹ Medicaid also uses its own definition of “disability”²⁰ that many individuals with such chronic or debilitating conditions as cancer or diabetes may not meet. Additionally, since Medicaid covers adults up to 65, many older adults who might have difficulties competing in the labor market would be subject to work requirements. Finally, depending on how a state is proposing to implement its work requirement, people who are exempt may still be subject to a reporting requirement to prove their exempt status, and are therefore just as vulnerable to losing coverage for failure to meet the requirement as non-exempt individuals.

Package work requirements in the context of other harmful changes to Medicaid

Work requirements, which affect more enrollees than some may think, are also one of many barriers to Medicaid coverage that states wish to impose. States are also seeking to impose higher premiums and cost-sharing, lock people out of coverage for failing to meet one or more eligibility requirements (referred to as a “lockout” period), and waive retroactive eligibility. Recent focus groups with conservative-leaning voters found that participants’ support of work requirements declined when they learned about lockout periods. Therefore, describing work requirements as part of an overall package of harmful changes and barriers to coverage can be another way to lessen or diminish support for them.

Demonstrate public opposition to work requirements

Advocates should also consider conducting surveys or polling to document public opposition to work requirements and recruit individuals, families, and stakeholders to testify during public hearings on work requirements. For a hearing in Idaho on a work requirement bill, advocates organized community members and stakeholders to testify in opposition. Of the 51 people who testified, 49 spoke out against the bill.²¹ A second strategy for demonstrating public opposition is to generate as many public comments as possible during the comment period for an 1115 waiver seeking work requirements. After Kentucky’s waiver was initially struck down in July 2018 and HHS re-opened the comment period, advocates were instrumental in getting over 8,000 public comments submitted in opposition, which outweighed the comments in favor by a ratio of 20:1.²²

Offer a voluntary work or job referral/training program as an alternative

While they understand work requirements are deeply damaging, some policymakers are concerned about being portrayed as “anti-work” if they express opposition. Advocates can suggest a work referral program as an alternative. With a voluntary program, a state would dedicate resources to serve people who are seeking employment assistance. Voluntary programs may offer an array of services, including in-depth job coaching and training. Because voluntary programs would serve fewer people than mandatory programs, they may allow for greater investment in each person seeking services and are less likely to use “busy work,” such as filling out the same job applications each week. Montana successfully implemented HELP-Link²³, a voluntary work program offering individualized job-support services. In its first two years, HELP-Link contributed to a 6 to 9 percent increase in workforce participation among Medicaid expansion enrollees.²⁴ This data can demonstrate that access to health coverage, combined with tailored work support services, can be a winning formula in helping Medicaid enrollees work.

¹⁹ 42 U.S.C. 1396u-1

²⁰ 42 U.S.C. 423(d)(1)(A)

²¹ Rebecca Boone, *Idahoans Largely Opposed to Work Requirements For Medicaid Expansion During Hearing*, Associated Press, March 8, 2019, <https://www.idahostatesman.com/news/politics-government/state-politics/article227316309.html>

²² Dustin Pugel, *Commenters on Kentucky’s Proposed Barriers to Medicaid Coverage Are over 20 to 1 Against Re-approval*, Kentucky Center for Economic Policy, August 27, 2018, <https://kypolicy.org/commenters-on-kentuckys-proposed-barriers-to-medicaid-coverage-are-over-20-to-1-against-re-approval/>

²³ Hannah Katch, *Promising Montana Program Offers Services to Help Medicaid Enrollees Succeed in the Workforce*, Center on Budget and Policy Priorities, April 25, 2018, <https://www.cbpp.org/research/health/promising-montana-program-offers-services-to-help-medicaid-enrollees-succeed-in-the>

²⁴ University of Montana Bureau of Business and Economic Research, *The Economic Impact of Medicaid Expansion in Montana*, April 2018, https://mthcf.org/wp-content/uploads/2018/04/BBER-MT-Medicaid-Expansion-Report_4.11.18.pdf

Use compelling stories to highlight the harmful effects of work requirements

Another method for conveying the harm of work requirements is collecting and sharing stories of people who would lose their health coverage, despite complying with the work requirement or making a good faith effort to comply. For example, the story of Danielle, a Tennessee mother whose son was born with a rare congenital disorder, helped persuade the state Senate to delay the vote on its work requirement bill in March 2018.²⁵ Since Tennessee did not expand Medicaid, the work requirement would primarily apply to very low-income parents and caretakers, and the bill only proposed to exempt parents with children under six years old. Once Danielle's son turned six, she'd have to choose between paying for expensive child care so she could keep health coverage for her family or caring for her son but losing their health coverage. This unfair and harmful choice helped illustrate the lived experiences and potential hardships Medicaid enrollees and their families might experience from a work requirement.

Cultivate a robust and diverse coalition of stakeholders

Educating coalition partners about the dangers of work requirements, as well as identifying and cultivating new partners, will be critical for developing strong activism and engagement. When thinking about engaging new partners, it is worth engaging stakeholders who work with people who would be harmed by a work requirement. Anti-hunger or anti-poverty advocates who have experience with SNAP and TANF work requirements may be particularly helpful. Other groups to consider include:

- health care providers, including physicians and health plans like managed-care organizations (MCOs)
- hospitals and hospital associations
- medical/health associations and/or the state chapters (Primary Care Associations, American Academy of Pediatrics)
- voluntary health advocates such as American Cancer Society or American Heart Association
- older adult advocates or direct service providers such as AARP, local Areas on Aging
- advocates for people living with disabilities
- advocates for people living with mental health challenges
- county officials
- food banks
- Workforce Development Boards
- children's advocates
- faith organizations/leaders
- advocates for individuals with substance use disorders or addiction, and providers who specialize in treating substance use disorders
- advocates or service providers working with the justice-involved or re-entry populations
- homelessness advocates or housing providers
- oral health advocates

Conclusion

Medicaid is facing a significant new threat with the introduction of work requirements. Advocacy efforts outlined in this guide that clearly articulate the bureaucratic complexity and danger of work requirements will be necessary to curb this threat. Elevating harms through compelling stories, media outreach and monitoring, active use of social media, and tracking the true human impact of work requirements will be crucial to building a comprehensive administrative record for future legislatures and administrations about why this harmful policy should be reversed. Medicaid advocates have a long history of protecting and expanding the program for those in need. While today's threat is new, there is no doubt the advocacy community will respond forcefully to continue protecting access to affordable health care.

²⁵ Joel Ebert, *Caregiver, Health Care Advocates Fear Impact of TennCare Work Requirement Proposal*, Tennessee.com, March 21, 2018, <https://www.tennessean.com/story/news/politics/2018/03/21/caregiver-health-care-advocates-fear-impacts-tenncare-work-requirement-proposal/443993002/>