



Policy solutions that work for low-income people

June 13, 2018

Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Re: Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver

Dear Administrator Verma,

I am writing on behalf of the Center for Law and Social Policy (CLASP). CLASP is a national, nonpartisan, anti-poverty nonprofit advancing policy solutions for low-income people. We work at both federal and state levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty. In particular, these comments draw on CLASP's deep expertise with Temporary Assistance for Needy Families (TANF) and the Supplemental Nutrition Assistance Program (SNAP), two programs where many of the policies proposed in this waiver have already been implemented – and been shown to be significant barriers to low-income people getting and retaining benefits. These comments also draw on CLASP's experience in working with six states under the Work Support Strategies project, where these states sought to dramatically improve the delivery of key work support benefits to low-income families, including health coverage, nutrition benefits, and child care subsidies through more effective, streamlined, and integrated approaches. From this work, we learned that reducing unnecessary steps in the application and renewal process both reduced burden on caseworkers and made it easier for families to access and retain the full package of supports that they need to thrive in work and school.

CLASP submits the following comments in response to the 1115 Waiver Demonstration Application and raises serious concerns about the effects of the waiver, as proposed, on the coverage and health outcomes of low-income Medicaid beneficiaries in Ohio. Medicaid plays a critical role in supporting the health and well-being of low-income adults and children. Many work in low-wage jobs where employer-sponsored health care is not offered or is prohibitively expensive. Others may have health concerns that threaten employment stability, and without Medicaid, would be denied access to the medical supports they need to hold a job, such as access to critical medications.

The Medicaid statute is clear that the purpose of the program is to furnish medical assistance to individuals whose incomes are not enough to meet the costs of necessary medical care and furnish such assistance and services to help these individuals attain or retain the capacity for independence and self-care. States are allowed in limited circumstances to request to "waive" provisions of the rule but the Secretary of Health and Human Services (HHS) may only approve a project which is "likely to assist in promoting the objectives" of the Medicaid Act.¹ A waiver that does not promote the provisions of health care would not be permissible.

This waiver proposal's request to implement a work requirement and community engagement initiative for the Medicaid expansion population will result in thousands of adults losing needed coverage, poor health outcomes, and higher administrative costs. Based on analysis conducted by the Center for Community Solutions, Ohio's proposed work requirements increase the administrative burden and expense of counties

by an estimated \$370 million.² Also, there is extensive and strong literature that shows, as a recent New England Journal of Medicine review concludes, “Insurance coverage increases access to care and improves a wide range of health outcomes.”³ This waiver is therefore inconsistent with the Medicaid purpose of providing medical assistance and improving health and should be rejected. Moreover, losing health coverage will also make achieving work and education goals significantly more difficult for beneficiaries.

Work Requirements

CLASP does not support Ohio’s proposal to implement work requirements for the Medicaid expansion population. Our comments focus on the harmful impact the proposed work requirements will have on Ohioans and the state. Ohio is proposing to implement a work requirement for “Group VIII” Medicaid enrollees (the expansion population). Medicaid enrollees will be deemed exempt or compliant with the work requirement if they are exempt or compliant with SNAP and/or TANF work requirements. Those who are subject to the work requirement will have to work or participate in other qualifying activities for 20 hours per week in order to stay enrolled in Medicaid. The penalty for not complying with the work requirement is disenrollment from Medicaid.

CLASP strongly opposes work requirements for Medicaid beneficiaries and urges Ohio to reconsider their approach to workforce development. Work requirements—and disenrollment for failure to comply—are inconsistent with the goals of Medicaid because they would act as a barrier to access to health insurance, particularly for those with chronic conditions and disabilities, but also for those in of high unemployment or who work the variable and unpredictable hours characteristic of many low-wage jobs. The reality is that denying access to health care makes it less likely that people will be healthy enough to work. This provision would also increase administrative costs of the Medicaid program and reduce the use of preventive and early treatment services, ultimately driving up the costs of care while also leading to worse health outcomes.

Work Requirements Do Not Promote Employment

Lessons learned from TANF, SNAP, and other programs demonstrate that work requirement policies are not effective in connecting people to living-wage jobs that provide affordable health insurance and other work support benefits, such as paid leave.⁴ A much better focus for public policy is to develop skills training for jobs that are in high demand and pay living wages, help people get the education they need to climb their career ladder, and foster an economy that creates more jobs.

Another consequence of a work requirement could be, ironically, making it harder for people to work. When additional red tape and bureaucracy force people to lose Medicaid, they are less likely to be able to work. People must be healthy in order to work, and consistent access to health insurance is vital to being healthy enough to work.⁵ As the state’s application highlights, Medicaid expansion enrollees from Ohio⁶ reported that having Medicaid made it easier to look for employment and stay employed. Similar data is true of Medicaid enrollees in Michigan.⁷ Making Medicaid more difficult to access could have the exact opposite effect on employment that supporters of work requirements claim to be pursuing.

Work Requirements Grow Government Bureaucracy and Increase Red Tape

The addition of a work requirement to Medicaid would add new red tape and bureaucracy to the program and only serve as a barrier to health care for enrollees. Tracking work hours, reviewing proof of work, and keeping track of who is and is not subject to the work requirement is a significant undertaking that will require new administrative costs and possibly new technology expenses to update IT systems. Lessons from other programs show that the result of this new administrative complexity and red tape is that **eligible** people will lose their health insurance because the application, enrollment, and on-going processes to maintain coverage are too cumbersome.

According to Ohio's waiver language, a mere five percent of Group VIII Medicaid enrollees will be subject to the work requirement because they will not be exempt or in compliance with SNAP or TANF work requirements. Of those five percent, the state estimates that half will ultimately lose their Medicaid coverage. While the administrative costs of implementing the work requirement are not part of the 1115 waiver language, it is reasonable to assume that the cost to implement the work requirement will be substantial and cost millions – perhaps hundreds of millions – of dollars. The administrative overhead costs will be substantial and arguably a poor allocation of resources.

Additionally, some individuals who should be exempt under Ohio's proposal are likely to fall through the cracks because they will have difficulty navigating the appraisal process. Ohio says each person who does not have SNAP benefits will have 30 days to complete an in-person appraisal where they will receive information about how they can meet the work requirement. There is evidence from Medicaid waivers in Indiana, Iowa, and Michigan showing that states have done a poor job of informing enrollees in an understandable manner of what they need to do to maintain their coverage.⁸ Ohio's Medicaid program is administered by its counties, yet the burden on them for doing these appraisals is not factored into the state's proposal. Ohio's counties estimate the appraisal process will create millions of dollars in new costs, and there will naturally be wide variation in how well the appraisals are handled across the state.⁹

Furthermore, because the bureaucracy and red tape created by the work requirement would likely cause eligible people to lose coverage, the state's estimates of how many Ohioans would lose Medicaid coverage is likely an underestimate. This is exactly what happened with Ohio reinstated their ABAWD time limit. The state initially estimated only 134,000 recipients would be affected. Since implementation, nearly 400,000 Ohioans no longer receive SNAP benefits.¹⁰

Work Requirements Do Not Reflect the Realities of Our Economy

Work requirements do not reflect the realities of today's low-wage jobs. For example, seasonal workers may have a period of time each year when they are not working enough hours to meet a work requirement and as a result will churn on and off the program during that time of year. Or, some may have a reduction in their work hours at the last minute and therefore not meet the minimum numbers of hours needed to retain Medicaid. Many low-wage jobs are subject to last-minute scheduling, meaning that workers do not have advance notice of how many hours they will be able to work.¹¹ This not only jeopardizes their health coverage if Medicaid has a work requirement but also makes it challenging to hold a second job. If you are constantly at the whim of random scheduling at your primary job, you will never know when you will be available to work at a second job.

Work Requirements are Likely to Increase Churn

The addition of work requirements is likely to increase churn. As people are disenrolled from Medicaid for not meeting work requirements, possibly because their hours get cut one week or they have primarily seasonal employment (like construction work), they will cycle back on Medicaid as their hours increase or the seasons change. People may be most likely to seek to re-enroll once they need healthcare, and be less likely to receive preventive care if they are not continuously enrolled in Medicaid.

Work Requirements Will Harm Persons with Illness and Disabilities

Many people who are unable to work due to disability or illness are likely to lose coverage because of the work requirement. Even though Ohio proposes to exempt people with disabilities or those receiving Supplemental Security Income (SSI), many people who are not able to work due to disability or unfitness are not likely to receive an exemption because of the complexity of paperwork. A Kaiser Family Foundation study found that 36 percent of unemployed adults receiving Medicaid—but who are not receiving Disability/SSI—

reported illness or disability as their primary reason for not working.¹² In Ohio, this rate increases to 58 percent.

An Ohio study found that one-third of the people referred to a SNAP employment program that would allow them to keep their benefits reported a physical or mental limitation. Of those, 25 percent indicated that the condition limited their daily activities,¹³ and nearly 20 percent had filed for Disability/SSI within the previous 2 years. Additionally, those with disabilities may have a difficult time navigating the increased red tape and bureaucracy put in place to administer a work requirement, including proving they are exempt. The end result is that many people with disabilities will in fact be subject to the work requirement and be at risk of losing health coverage.

Implementation Timeline Raises Concerns

Ohio is proposing to implement the work requirement on July 1, 2018. This timeline is completely unrealistic given that the comment period to CMS does not end until June 14. The timeline is also particularly aggressive given the state's current technology transitions. Because the full transition to incorporate SNAP, TANF and Medicaid into the same eligibility system, OhioBenefits, is delayed until at least late July 2018, it is precarious and ill-advised to implement a major program change, such as work requirements, concurrently with a major technology change. This is especially true in Ohio since exemptions and compliance for work requirements in TANF and SNAP will be directly applied to Medicaid. Rushing implementation of the work requirement is likely to cause many people who would be exempt or in compliance to inadvertently lose their Medicaid coverage. Furthermore, the transition to OhioBenefits is a large task and adding the implementation of Medicaid time limits during the same time period will put tremendous pressure on Ohio's Medicaid agency.

The summary of the work requirement proposal on the state's health transformation website includes an analysis of how many people will be exempt due to different criteria and how many will be subject to the work requirement.¹⁴ Importantly, the source information for figure 1 states, "Going forward all of this information will be available in OhioBenefits." Despite Ohio's claim that they do not anticipate IT capacity challenges, we have significant concerns for the following two reasons. First, the planned conversion of all data to OhioBenefits is behind schedule and will not occur before the July 1 implementation date for the Group VIII work requirement. Second, even after the conversion of data happens, people who are enrolled in Medicaid and another program, likely SNAP, will have different case numbers for their Medicaid case and their other benefits. This could present significant data matching challenges to ensure that exemptions and participation information are correctly applied. Collectively, these factors lead us to believe that implementation will be much more challenging than the state anticipates, likely causing tens of thousands of more people than estimated to lose Medicaid coverage.

State Public Comment Period Established Opposition to Ohio's Proposal

Ohio notes that 93 percent of comments submitted during the state comment period opposed the waiver (only 4 percent were in support). The comments focused on the harm to beneficiaries, especially vulnerable populations such as people with disabilities, those with chronic health conditions, people experiencing homelessness, and veterans. Commenters also noted the burden a work requirement would place on providers, and the increased cost and burden on the state and its counties. Despite the overwhelming opposition to the waiver and the specific issues raised in the comments, the state failed to make any changes admitting that "the Waiver has not been modified other than for changes to the budget neutrality estimates and revisions to improve clarity."

Conclusion

Our comments include citations to supporting research and documents for the benefit of CMS in reviewing

our comments. We direct CMS to each of the items cited and made available to the agency through active hyperlinks and attachments, and we request that these, along with the full text of our comments, be considered part of the formal administrative record on this proposed rule for purposes of the Administrative Procedures Act.

Thank you for considering CLASP's comments. Contact Suzanne Wikle (swikle@clasp.org) with any questions.

All sources accessed June 2018.

- ¹ Jane Perkins, "Section 1115 Demonstration Authority: Medicaid Act Provisions That Prohibit a Waiver," National Health Law Program, 2017, <http://www.healthlaw.org/issues/medicaid/waivers/sec-1115-demonstration-authority-medicaid-provisions-that-prohibit-waiver#.WhRIBFWnHIU>.
- ² The Center for Community Solutions, "Medicaid Work Requirement Waiver Analysis Budget Neutrality," The Center for Community Solutions, 2018, <https://www.communitysolutions.com/research/medicaid-work-requirement-waiver-analysis-budget-neutrality/>.
- ³ Benjamin D. Sommers, M.D., Ph.D., Atul A. Gawande, M.D., M.P.H., and Katherine Baicker, Ph.D., Health Insurance Coverage and Health — What the Recent Evidence Tells Us, New England Journal of Medicine, July 21, 2017, <http://www.nejm.org/doi/full/10.1056/NEJMs1706645>.
- ⁴ Jessica Gehr, "Doubling Down: How Work Requirements in Public Benefit Programs Hurt Low-Wage Workers," CLASP, June 2017, <https://www.clasp.org/sites/default/files/publications/2017/08/Doubling-Down-How-Work-Requirements-in-Public-Benefit-Programs-Hurt-Low-Wage-Workers.pdf>.
- ⁵ Jessica Gehr and Suzanne Wickle, "The Evidence Builds: Access to Medicaid Helps People Work," February 2017, CLASP, <https://www.clasp.org/publications/fact-sheet/evidence-builds-access-medicaid-helps-people-work>.
- ⁶ The Ohio Department of Medicaid, "Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly," January 2017, <http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf>.
- ⁷ Renuka Tipirneni, Jeffrey Kullgren, John Ayanian, Edith Kieffer, Ann-Marie Rosland, Tammy Chang, Adrienne Haggins, Sarah Clark, Sunghie Lee, and Susan Goold, "Medicaid Expansion Helped Enrollees Do Better at Work or in Job Searches," University of Michigan, June 2017, <http://ihpi.umich.edu/news/medicaid-expansion-helped-enrollees-do-better-work-or-job-searches>.
- ⁸ Judith Solomon, "Complex Medicaid Changes Likely to Cost Many People Coverage," Center on Budget and Policy Priorities, May 30, 2018, <https://www.cbpp.org/blog/complex-medicaid-changes-likely-to-cost-many-people-coverage>.
- ⁹ Loren Anthes, "Medicaid Work Requirements Public Testimony," Center for Community Solutions, March 12, 2018, <https://www.communitysolutions.com/research/medicaid-work-requirements-public-testimony/>.
- ¹⁰ Loren Anthes, "Work Requirement Waiver," The Center for Community Solutions, February 2018, <https://www.communitysolutions.com/work-requirement-waiver/>.
- ¹¹ Liz Ben-Ishai, "Volatile Job Schedules and Access to Public Benefits" CLASP, September 2015, <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/2015.09.16-Scheduling-Volatility-and-Benefits-FINAL.pdf>.
- ¹² Rachel Garfield, Robin Rudowitz, and Anthony Damico, "Understanding the Intersection of Medicaid and Work, February 2017, <http://kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work/>.
- ¹³ Ohio Association of Foodbanks, Comprehensive Report: Able-Bodied Adults Without Dependents, 2015, http://admin.ohiofoodbanks.org/uploads/news/ABAWD_Report_2014-2015-v3.pdf.
- ¹⁴ The Ohio Department of Medicaid et al.