

September 26, 2018

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

Re: Career Connector: A South Dakota 1115 Demonstration Proposal

Dear Secretary Azar,

I am writing on behalf of the Center for Law and Social Policy (CLASP). CLASP is a national, nonpartisan, anti-poverty nonprofit organization 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 South Dakota. 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 attempt to transform Medicaid and reverse its core function will result in parents

losing needed coverage, poor health outcomes, and higher administrative costs. There is an 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.”² 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.

Proposals to Take Health Coverage Away from Parents Who Do Not Meet New Work Requirements

CLASP does not support South Dakota’s proposal to take away health coverage from parents who do not meet new work requirements. Our comments focus on the harmful impact the proposed work requirements will have on South Dakotans and the state. South Dakota is proposing to implement a work requirement for adult recipients age 19 to 59 in Minnehaha and Pennington Counties, unless they qualify for an exemption. After three months of non-compliance, Medicaid enrollees will be disenrolled and locked out of coverage for 90 days if their eligibility is not reinstated within 30 days of non-compliance.

South Dakota’s proposal is likely to exacerbate health disparities. An estimated 34 percent of the state’s total population lives in the two target counties, but approximately 47 percent of the state’s Hispanic population and approximately 68 percent of the state’s Black population live in these two counties.³ The disproportionate representation of minorities in these two counties is likely to be reflected in the population who is subject to the new work requirements, and therefore those who are likely to become uninsured if South Dakota’s waiver is approved. A lack of insurance is a primary factor in not being able to access the right care, and a loss of insurance increases mistrust in the system, and affects key contributors to staying healthy. Therefore, imposing work requirements will increase health disparities. Eliminating health disparities is a guiding principal in the South Dakota Department of Health’s strategic plan.⁴

South Dakota’s proposal describes an individualized employment and training plan that includes individual assessments and monthly milestones. While CLASP acknowledges that any employment and training program needs to be flexible to meet the needs of participants, the vagueness in this application and *the punitive measure of eliminating health insurance* for those who do not comply is troublesome. It is possible that expectations will vary among case workers and the likelihood of complying with the program will hinge on the case manager’s discretion. Furthermore, CLASP notes that *the only component of this program for which South Dakota needs a waiver from CMS is to implement their punitive measure of disenrolling people from Medicaid*. All components other than the punitive measure of Medicaid disenrollment of the case management related to promoting work can be implemented under the current Medicaid program.

CLASP strongly opposes work requirements for Medicaid beneficiaries and urges South Dakota 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 areas 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.

Proposals to Take Health Coverage Away from Parents Who Do Not Meet New Work Requirements Do Not Promote Employment

Lessons learned from TANF, SNAP, and other programs demonstrate that proposals to take away health coverage from parents who do not meet new work requirements are not effective in connecting people to living-wage jobs that provide affordable health insurance and other work support benefits, such as paid leave.⁵ 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.⁶ Making Medicaid more difficult to access could have the exact opposite effect on employment that supporters of work requirements claim to be pursuing.

Proposals to Take Health Coverage Away from Parents Who Do Not Meet New Work Requirements Grow Government Bureaucracy and Increase Red Tape

South Dakota's proposal to take away health coverage from parents who do not meet new work requirements 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. South Dakota's approach with individualized case management and monthly milestones that differ between Medicaid enrollees will add to this administrative complexity and burden. 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. Evidence from Medicaid waivers in Indiana, Iowa, and Michigan show that states have done a poor job of informing enrollees in an understandable manner of what they need to do to maintain their coverage.⁷

The administrative overhead costs associated with South Dakota's waiver will be substantial and arguably a poor allocation of resources. According to South Dakota's waiver language, the state plans to connect all program participants with a case manager, who will connect individuals to support services, promote preventative health services available through Medicaid coverage, and remind individuals of Career Connector program elements. In total, the state estimates approximately 1,300 individuals to enroll in the Career Connector program annually. Establishing an entirely new bureaucratic system of paperwork, verifications, case management, and IT systems for such a small segment of the Medicaid population is wasteful and an irresponsible use of administrative dollars.⁸

Lastly, recent evidence from Arkansas' first three months of implementing work requirements also suggests that bureaucratic barriers for individuals who already work or qualify for an exemption will lead to disenrollment. Over 4,300 beneficiaries lost coverage on September 1st, likely becoming uninsured because they didn't report their work or work-related activities. These individuals represent about 17 percent of the state's first cohort of Medicaid beneficiaries subject to the work requirement.⁹ As reported by the Center on Budget and Policy Priorities, many of those who failed to report likely didn't understand the reporting requirements, lacked internet access or couldn't access the reporting portal through their mobile device, couldn't establish an account and login, or struggled to use the portal due to disability.¹⁰

Proposals to Take Health Coverage Away from Parents Who Do Not Meet New Work Requirements Do Not Reflect the Realities of Our Economy

Proposals to take away health coverage from parents who do not meet new 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.

Proposals to Take Health Coverage Away from Parents Who Do Not Meet New Work Requirements are Likely to Increase Churn

South Dakota's proposal to take away health coverage from parents who do not meet new 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 (after their 90-day lock-out period) 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.

Disenrollment and lock out would lead to worse health outcomes, higher costs

After three months of non-compliance, enrollees subject to new work requirements will be disenrolled from Medicaid. If they are not able to comply within 30 days following disenrollment, they will be locked out of coverage for 90 days. Even if someone comes into compliance with the work requirement during their 90 day lock-out period, they will still be ineligible for coverage for the duration of the 90-day period. The lock-out period serves no purpose other than to be punitive and does not encourage work. Once terminated from Medicaid coverage, beneficiaries will likely become uninsured. Needed medical services and prescription drugs, including those needed to maintain positive health outcomes, may be deferred or skipped. Because people without health coverage are less likely to have regular care, they are more likely to be hospitalized for avoidable health problems and to experience declines in their overall health.¹² Further, during the lock-out period, these now-uninsured patients present as uncompensated care to emergency departments, with high levels of need and cost—stretching already overburdened hospitals and clinics.

Persons are likely to remain uninsured following the end of the 90-day period because they are not aware they may be eligible for Medicaid if they are working and meet the work requirement. This will only lead to poorer health outcomes and higher uncompensated costs for providers.

Children are likely to lose coverage

Research shows that when parents have health insurance their children are more likely to have health insurance.¹³ South Dakota's proposal to disenroll parents from Medicaid for not meeting a work requirement will reduce the number of parents with health insurance, which the evidence suggests will lead to children becoming uninsured.

South Dakota states in their proposal, “Closure of the participant’s Medicaid eligibility will not affect the eligibility of a child, spouse, or other household member that is not required to participate.” This is not likely to hold true. When a parent loses coverage they may not understand that their children remain eligible for Medicaid. Should South Dakota move forward with their work requirement proposal, they should track enrollment of children whose parents are disenrolled from Medicaid.

Proposals to Take Health Coverage Away from Parents Who Do Not Meet New 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 South Dakota proposes to exempt people with disabilities or those determined disabled by the Social Security Administration, 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.¹⁴ In South Dakota, this rate is nearly one-third (29 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,¹⁵ 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.

Proposals to Take Health Coverage Away from Parents Who Do Not Meet New Work Requirements Would Create an Affordability Cliff in South Dakota

Proposals to take health coverage away from parents who do not meet new work requirements are harmful, regardless of whether the state has expanded Medicaid. However, in non-expansion states, such as South Dakota, work requirements create a catch-22.¹⁶ If a family receives enough hours of work to satisfy the eligibility rules they will earn too much to qualify for Medicaid; if they don’t work enough hours they will also lose their health care. South Dakota proposes a premium assistance program to mitigate this cliff effect, but the state’s proposal does not solve the problem.

Following 12 months of transitional Medicaid, the state proposes to provide people a monthly subsidy to purchase health insurance on the Marketplace or through an employer. The subsidy amount will be equal to the monthly cost of the previous year of transitional Medicaid. The state’s projections show this subsidy amount will be between \$400 and \$450 dollars per month.

This proposal has several problems and does not solve the subsidy cliff Administrator Verma referenced.¹⁷ People who are eligible for this subsidy will be earning between 50 and 100 percent of poverty, which means they are *ineligible* for Advance Premium Tax Credits (APTCs) and Cost-Sharing Reductions (CSRs) through the marketplace. Furthermore, the amount of the state subsidy (equal to the previous year’s PMPM cost for Transitional Medicaid) will likely not cover the cost of a monthly premium for a plan purchased through the Marketplace. These factors combined mean that someone who is eligible for the premium assistance subsidy from the state will be responsible for the following costs: The difference between the subsidy and the actual premium cost each month, the full deductible for a plan,

co-payments, and co-insurance until their out-of-pocket maximum is reached. These costs will add up to thousands of dollars, effectively making the premium assistance option from the state completely ineffective.

The state's assumption that the proposed premium assistance program will be used to purchase employer-sponsored coverage is erroneous. In 2017, only 24 percent of workers with earnings in the lowest 10 percent of wages were offered employer insurance, and only 14 percent actually received coverage under their employer-offered insurance.¹⁸

South Dakota's proposal does not eliminate the subsidy cliff created by imposing work requirements on Section 1931 parents. The only solution to truly eliminate the subsidy cliff is for South Dakota to expand Medicaid as intended by the Affordable Care Act (ACA).

Budget neutrality information is insufficient

The state's proposal does not include budget neutrality information that is necessary to evaluate the anticipated impact of the waiver. The state's budget neutrality documents state that expenditures for the LIF population with and without the waiver would be identical. This is implausible on the face of it, as all other states with similar waiver proposals have suggested that there would be savings due to decreases in enrollment. Without further explanation this claim is impossible to evaluate. The state should provide detail about the anticipated change in enrollment in the pilot counties and corresponding budget implications. Without this detail, it is impossible to fully understand the impact of the waiver.

Recent Reports that Claim to Provide Supporting Evidence for Taking Away Health Insurance from People Who Don't Meet Work Requirements are Deeply Misleading

The White House Council on Economic Advisors (CEA) and the conservative Foundation for Government Accountability recently released reports that provide a deeply misleading view of Medicaid and work requirements. Several analyses paint a picture of low-wage work that contradicts claims in the CEA report. These reports find that many people who need assistance from programs like Medicaid are working, but characteristics of low-wage jobs mean this population faces job volatility, higher unemployment and less stability in employment.¹⁹

The CEA report does not even address health insurance coverage and never mentions the well-known data showing that most Medicaid beneficiaries who can work do work. Further, when examining the share of Medicaid beneficiaries that work the CEA report chose to focus on one month (December 2013), which gives a much lower rate of employment than another report from the Kaiser Family Foundation that uses the same data set but looks at employment over the course of a year. It's also important to note that the Medicaid data cited in the report pre-dates the Medicaid expansion, which dramatically affects the composition of the caseload.

Additionally, the CEA and FGA reports consider all Medicaid beneficiaries who do not receive disability benefits as "able-bodied," ignoring data and research that show that substantial numbers of Medicaid beneficiaries who do not receive disability benefits face significant personal or family challenges that limit the amount or kind of work they can do. In reality, barriers to work are significant and common. Five million Medicaid beneficiaries have disabilities but do not receive disability benefits, meaning that they could be subject to work requirements under the Administration's guidance.²⁰ Moreover, large majorities of non-working Medicaid beneficiaries report that they are unable to work due to disability or illness, caregiving responsibilities, or because they are in school.²¹

Lastly and most notably, the CEA and FGA reports do not offer any actual evidence to support the claim that taking away health care or other basic supports from people who fail to work a minimum number of hours will cause them to work more. In fact, the report ignores the ample evidence, as cited earlier in these comments, that work supports such as Medicaid make it easier for people to work. While the FGA report alludes to “success” with work requirements in other programs, their analyses have been called out as flawed and misleading.²²

Conclusion

Our comments include citations to supporting research and documents for the benefit of South Dakota’s Department of Social Services in reviewing our comments. We direct the Centers for Medicare and Medicaid to each of the items cited and made available to the agency through active hyperlinks, and we request that these, along with the full text of our comments, be considered part of the formal administrative record on this proposal 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 September 2018.

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⁵ 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>.

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¹⁰ Jennifer Wagner “Commentary: As Predicted, Eligible Arkansas Medicaid Beneficiaries Struggling to Meet Rigid Work Requirements” Center on Budget and Policy Priorities, July 2018, <https://www.cbpp.org/health/commentary-as-predicted-eligible-arkansas-medicaid-beneficiaries-struggling-to-meet-rigid>.

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¹² Kaiser Family Foundation, “Key Facts About the Uninsured Population” September 2017, <http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

¹³ Stephanie Schmit, Rebecca Ullrich, Patricia Cole, and Barbara Gebhard “Health Insurance: A Critical Support for Infants, Toddlers, and Families” (Washington, DC: CLASP and Zero to Three, 2017)

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¹⁴ 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/>.

¹⁵ Ohio Association of Foodbanks, Comprehensive Report: Able-Bodied Adults Without Dependents, 2015,

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¹⁷ Virgil Dickson “CMS warns non-expansion states to rethink Medicaid work rules” (*Modern Healthcare*, 2018) <http://www.modernhealthcare.com/article/20180501/NEWS/180509987>.

¹⁸ U.S. Department of Labor, “Table 2. Medical care benefits: Access, participation, and take-up rates,” Bureau of Labor Statistics, December 2017, <https://www.bls.gov/news.release/eb2.t02.htm>.

¹⁹ LaDonna Pavetti “Evidence Counters CEA Claims on Work Requirements” Center on Budget and Policy Priorities, July 2018, <https://www.cbpp.org/blog/evidence-counters-cea-claims-on-work-requirements>.

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