August 3, 2018

U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, DC 20201

Re: 1115 Primary Care Network Demonstration Waiver

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 advancing policy solutions for low-income people. We work at both the federal and state levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty. CLASP submits the following comments in response to Utah's request to amend its section 1115 Primary Care Network (PCN) demonstration project and raises serious concerns about the effects of the amendment, as proposed, on the coverage and health outcomes of low-income Medicaid beneficiaries in Utah.

In particular, these comments draw on CLASP's deep experience with Temporary Assistance for Needy Families (TANF) and the Supplemental Nutrition Assistance Program (SNAP), two programs where many of the policies proposed in this proposal 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 (WSS) 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.

Medicaid plays a critical role in supporting the health and well-being of low-income adults and children. In fact, many Medicaid enrollees 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.

Among Utah's professed goals for the proposal is to "improve the health and well-being of individuals through incentivizing work engagement." However, this proposal's attempt to transform Medicaid and reverse its core function by taking away health care from people who don't meet new work requirements and other harmful provisions will result in Medicaid enrollees losing needed coverage, poor health outcomes, and higher costs. 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."[2] Moreover, losing health coverage will also make achieving work and education goals significantly more difficult for beneficiaries. This amendment is therefore inconsistent with the Medicaid purpose of providing medical assistance and improving health and should be rejected.

Capped Enrollment

Utah is proposing to cap enrollment "to stay within its appropriated budget." This cap is driven entirely by budget constraints and not at all by the needs of the population. It creates a de facto lottery for health care, providing unequal access to health care. The caps on enrollment will have negative consequences for Utahans and providers alike. Utahans who are denied access to care due to the capped enrollment will delay needed care – including substance use treatment. Given that adults who need substance use treatment are central to the "adults without dependent children" eligibility criteria, delaying or denying this critical care for substance use is immoral.

An enrollment cap is an extreme disincentive for an enrollee to increase their earnings and creates a steep "cliff effect." An individual who takes a job and therefore earns too much to qualify for this program will have no guarantee of being able to restore coverage if the job ends. Capping enrollment takes away the security of the safety-net, causing those who are enrolled to prioritize remaining enrolled over increasing their income, particularly if they know the job may not be permanent. The fear that enrollment will be capped, leaving someone unable to re-enter the program should they experience another financial downturn is counterproductive to many of the goals alluded to throughout the proposal. Similarly, those who lose coverage due to procedural or bureaucratic practices may not be able to re-enroll, even if they remain eligible.

Limited Expansion

Utah is proposing to limit the increase of Medicaid eligibility to adults with incomes up to 100 percent of poverty line. This means that all adults between 101-138 percent of FPL who should be eligible for Medicaid under the Affordable Care Act will lose out on more affordable and comprehensive coverage.

Utah's proposal is simply a shift of costs to the federal government (assuming that people become eligible for premium tax credits under the Affordable Care Act (ACA)). Further, this limitation on eligibility will result in an increase in the number of low-income individuals who churn between Medicaid, the marketplace, and being uninsured. This will have negative health consequences, as changes in coverage often require changes in health care providers and can lead to interruptions in treatment. In one recent study, even among those who churned with no gap in coverage, 29 percent reported a decrease in their overall quality of care as a result of the transition.[3] This is particularly harmful for those with significant health conditions.

Changes in employment, income, and family structure all impact churn. Low-income individuals are more at risk of churning from one type of coverage to another[4] because low-wage work is increasingly variable in hours and/or seasonal.[5] The Affordable Care Act deliberately created an overlap between the eligibility levels for Medicaid and the premium subsidy tax credits in order to reduce the need for consumers to frequently switch between coverage under Medicaid and the Marketplace.

Further, Medicaid provides continuous enrollment year-round, whereas enrollment in Marketplace coverage is limited to select weeks of the year and when people are eligible for a special enrollment period. For this population group, especially those with complex medical and life conditions, signing up for coverage during a time-limited period may not be realistic. Medicaid ensures that these individuals don't lose out on coverage by allowing them to enroll at any point during the year.

As discussed below, the likelihood of people churning on and off coverage is increased by the burdensome work requirements included in this proposal. Even people who continue to be eligible will fall through the cracks as the paperwork burden increases.

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

CLASP does not support Utah's proposal to take away health coverage from individuals who do not meet new work requirements. Our comments focus on the harmful impact the proposed job search and training requirements will have on Utahans and the state. Utah is proposing to implement a work requirement for Medicaid beneficiaries who able-bodied adults, unless they qualify for an exemption, within the first three months of enrollment (or within the first three months of the policy being implemented). Medicaid enrollees will be deemed exempt or complaint with the work requirement if they are:

- Age 60 or older;
- Physically or mentall unable to work;
- Parents or other members of households with the responsibility of a dependent child under age six;
- Responsible for the care of an incapacitated person;
- Receiving Unemployment Insurance benefits or has applied and/or waiting for a decision and has registered for work at the Department of Workforce Services (DWS);
- Participating regularly in a substance use disorder treatment program, including involvement in intensive outpatient treatment;
- A student enrolled at least half time in any school or training program;
- Participating in refugee employment services;
- TANF recipients;
- Individuals issued a Family Employment Program (FEO)/TANF diversion payment;
- Individuals working at least 30 hours a week or earning at least Federal Minimum Wage times 30 hours a week.

Those who are subject to the work requirement will have to complete an evaluation, receive online job training, perform online job searches, and make job contacts. Medicaid enrollees will also be required to complete these job search and training requirements every 12 months to continue to receive Medicaid. The penalty for not complying with the work requirement is disenrollment from Medicaid.

CLASP strongly opposes work requirements for Medicaid beneficiaries and urges Utah to reconsider their approach to workforce development. Job search and training 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 Individuals Who Do Not Meet New 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.[6] 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 job search and training requirements 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.[7] Further, Medicaid expansion helped low-income Michigan residents look for employment and stay employed. In particular, the study highlights that most (55 percent) of those who were out of work said that coverage made them better able to look for a job and, among those who had jobs, 69 percent said they did better at work once they got covered.[8] Making Medicaid more difficult to access could have the exact opposite effect on employment that supporters of work requirements claim to be pursuing.

Further, we note that the type of low-intensity job search program proposed under this waiver is unlikely to help beneficiaries obtain stable high-quality employment that offers employer-sponsored health coverage. Overall, the evidence from many rigorous evaluations of welfare-to-work programs shows that employment increases among recipients subject to work requirements were modest and faded over time. Even among those who found work, stable employment at a living wage was rare, and the clear majority remained poor.[9] If approved, the main consequence of work requirements in Medicaid would be that people will lose access to health coverage.[10]

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

Taking away health coverage from Medicaid enrollees who do not meet new job search and training requirements would add new red tape and bureaucracy to the program and only serve as a barrier to health care for enrollees. Utah's proposal would require Medicaid enrollees subject to new work requirements to complete job search and training requirements annually. One of the key lessons of the Work Support Strategies initiative is that every time that a client needs to bring in a verification or report

a change adds to the administrative burden on caseworkers and increases the likelihood that clients will lose benefits due to failure to meet one of the requirements. In many cases, clients remain eligible and will reapply, which is costly to families who lose benefits as well as to the agencies that must process additional applications. The WSS states found that reducing administrative redundancies and barriers used workers' time more efficiently and helped with federal timeliness requirements.

Lessons from the WSS initiative is that the result of Utah's 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. Additional evidence from Arkansas' first month of implementing work requirements also suggests that they create bureaucratic barriers for individuals who already work or qualify for an exemption. Over 7,000 Medicaid beneficiaries now have one month of non-compliance of the new requirement and will lose coverage if they have two more. 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.[11]

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

Utah's proposal to take away health coverage from Medicaid enrollees who do not meet new work requirements is likely to increase churn. As people are disenrolled from Medicaid for not meeting work requirements, they will cycle back on Medicaid as they participate in job search and training requirements. 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 would lead to worse health outcomes, higher costs

Failure to comply with the requirement will result in a loss of Medicaid eligibility. 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, these now-uninsured patients present as uncompensated care to emergency departments, with high levels of need and cost—stretching already overburdened hospitals and clinics. 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] Utah's proposal to disenroll Medicaid enrollees from health coverage 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. Utah's plan would only exempt parents of a child under 6 years of age, putting at risk the health care of all parents and their children 6 years of age and older.

Support services will be inadequate

Child care is a significant barrier to employment for low-income parents. Many low-income jobs have variable hours from week to week and evening and weekend hours, creating additional challenges to finding affordable and safe child care. Under Utah's proposal, parents whose children are older than 5 years are subject to the work requirements. Finding affordable and safe child care for children is difficult and a barrier to employment. Requiring job search and training requirements in order to maintain health care, but not providing adequate support services such as child care, sets a family up for a no-win situation. Even with the recent increase in federal child care funding, Utah does not have enough funding to ensure all eligible families can access child care assistance.[14]

Proposals to Take Health Coverage Away from Individuals 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 job search and training requirements. Although Utah proposes to exempt individuals who are physically or mentally unable to work, in reality many people who are not able to work due to disability or unfitness are likely to not receive an exemption due to 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. In Utah, this rate increases to 39 percent. [15]

Research shows a correlation between Medicaid expansion and an increased employment rate for persons with disabilities.[16] In states that have expanded Medicaid, persons with disabilities no longer must qualify for SSI in order to be eligible for Medicaid. This change in policy allows persons with disabilities to access health care without having to meet the criteria for SSI eligibility, including an asset test. Other research that shows a drop in SSI applications in states that have expanded Medicaid supports the theory that access to Medicaid is an incentive for employment.[17] Jeopardizing access to Medicaid for persons with disabilities by the policies proposed in Utah's proposal will ultimately create a disincentive for employment among persons with disabilities.

Further, 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,[18] 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 result is that many people with disabilities will in fact be subject to the work requirement and be at risk of losing health coverage.

Similarly, repeated studies of TANF programs have found that clients with physical and mental health issues are disproportionately likely to be sanctioned for not completing the work requirements.[19] Such clients may not understand what is required of them or may find it difficult to complete paperwork or travel to appointments to be assessed for exemptions.

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 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.

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