



December 1, 2017

The Honorable Eric D. Hargan, Acting Secretary
Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201

Dear Secretary Hargan,

Families USA appreciates the opportunity to provide comments on New Hampshire's request to amend its 1115 waiver, the New Hampshire Health Protection Program Premium Assistance.

Families USA is a national health care advocacy organization that supports policies and programs at the state and federal levels to expand access to quality, affordable health care, with a particular focus on policies that affect lower income individuals.

We are extremely supportive of New Hampshire's decision to accept federal funds to expand its Medicaid program. That decision has had an extremely positive impact state residents' access to health insurance and medical care, with nearly 52,000 Granite Staters covered through the program. However, we do not support this amendment.

The requested amendment, "Work Promotion and Personal Responsibility," is inconsistent with the purpose of the Medicaid program, inconsistent with the requirements of section 1115 of the Social Security Act, and outside of the Secretary's authority to approve. It should be denied.

Adding a work requirement is outside of the Secretary's approval authority.

The state seeks to amend its current waiver to condition program eligibility on an individual satisfying a work requirement (Section IV of the application outlines the ways a work requirement can be satisfied).

A work requirement is in conflict with the objectives of the Medicaid program, would be an abuse of the Secretary's Section 1115 demonstration authority, and should be denied. Additionally, the proposed amendment would not further the goals articulated by the state.

Granting a work requirement is contrary to Medicaid law and would be an abuse of the Secretary's Section 1115 authority and must be denied.

The relevant statutory provisions for this analysis are Section 1115 of the Social Security Act and section 1901 of the Act.

Section 1115, "Demonstration Projects", outlines the Secretary's authority to grant demonstration waivers. Section 1115 gives the Secretary the authority to "waive compliance with any of the requirements of section1902" of the Social Security Act for any

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experimental, pilot, or demonstration project which, in the judgment of the Secretary, “is likely to assist in promoting the objectives of title....XIX.”¹

Section 1901, Appropriations, states the purpose of federal Medicaid funding, i.e., the program’s objectives. It states that federal Medicaid dollars are for the purpose of enabling states “to furnish (1) medical assistance on behalf of [statutorily eligible individuals], and (2) rehabilitation and other services to help such [individuals] attain or retain capability for independence or self-care...”²

While HHS has recently updated its website to redefine the objectives of 1115 waivers, statutory language has precedence over any language changes the Secretary or his or her agents might post on a website.

- A work requirement is unrelated to Medicaid’s objectives as defined in statute. The language in the statute is clear. Federal Medicaid dollars are to be used *to furnish* medical, rehabilitation, and long-term services. Requiring work as a condition of program participation is not in any way related *to the state furnishing* medical services or *to the state furnishing* rehabilitative or other services—indeed it achieves the opposite goal of withdrawing medical and rehabilitative services from otherwise eligible low-income people. It is therefore outside of the Secretary’s authority to approve under 1115 authority.
- Adding a work requirement is beyond the Secretary’s authority to “waive” requirements in section 1902. Section 1115 gives the Secretary authority to waive requirements in Section 1902. It does not grant the Secretary the authority to add new program requirements that are not mentioned in 1902 and that are unrelated to the program’s statutory purpose of furnishing medical or rehabilitative services. Section 1902 does not mention engaging in work or the related activities outlined in the New Hampshire request as a condition of eligibility.
- A mere nexus between an activity and health is not a sufficient basis for the Secretary to add that activity as a requirement for Medicaid eligibility under section 1115. In its amendment, New Hampshire discusses work and community engagement as ways to help Medicaid enrollees improve their health. Regardless of the effect of work on health, a connection between an activity and health is not a basis to make Medicaid eligibility conditional upon that activity. The objectives of the Medicaid program are to furnish medical care and rehabilitative and other services. The purpose of 1115 waivers is to allow the Secretary to waive requirements that would better enable states to accomplish those objectives.

There are numerous activities have been shown in one or more studies to have some connection to an individual’s health: diet; exercise; marital status; friendships; work and type of work (eg, some professions present safety or health hazards)—to list a few. For this, or any subsequent administration, to go down the path of adding any extra-statutory

¹ Social Security Act, section 1115 [42 U.S.C. 1315].

² Social Security Act Sec. 1901. [42 U.S.C. 1396].

condition on Medicaid eligibility that it deems appropriate because it might arguably be related to individual health is gross regulatory overreach.

A Community Service requirement violates other federal laws

New Hampshire lists several activities that could satisfy the state's requested work requirement. Among those are unpaid employment (unsubsidized employment). In areas with few employment opportunities matching specific enrollees' skills sets, that may be the only option available to unemployed individuals seeking Medicaid coverage.

Medicaid is health insurance. As such, it is something that an enrollee may or may not use in a given time period, depending on whether an enrollee is sick or has an accident. Therefore, in any given time period, it may provide no monetary value to the enrollee—it is there as insurance against potential future costs. When Medicaid enrollees do use health services, payment is made to the physician or other health care provider who provided those services, rather than the enrollee.

In other words, health insurance coverage is not in any way akin to wages. Federal and New Hampshire law require employers to pay a minimum wage for work performed. Unpaid employment with Medicaid coverage, rather than wages, as compensation would violate federal and state minimum wage laws and should not be approved.

The proposed requirement is inconsistent with the state's objectives for the program.

The state asserts that goals of the amendment are to promote work opportunities; improve individuals' financial health, and put participants on the path to move out of poverty. Taking health coverage away from New Hampshire residents will not promote those goals. It would, in fact, have the opposite effect.

- Medicaid coverage in and of itself has been shown to enhance enrollees' financial stability and help enrollees reenter or remain in the work force. In its application, New Hampshire justifies the addition of a work requirement stating "gaining financial stability will enable some participants to mitigate negative and environmental factors that can contribute to poor health."³ However, data show that Medicaid coverage enhances individuals' financial stability by providing insurance against excessive medical costs. By helping individuals afford the medical care they need, Medicaid coverage helps program enrollees to work.

Eliminating coverage based on work status would reduce individuals' financial stability and lessen their long-term employment prospects, the exact opposite of the New Hampshire's stated goals.

- Numerous studies show that, by enrolling against medical costs, Medicaid coverage is associated with improved financial health—fewer bills sent to collection,

³ Waiver application, page 10.

reduced medical debt, improved credit scores, and better terms for available credit.⁴

- Experience from the state of Ohio found that coverage through Medicaid helps enrollees' employment opportunities. In surveying beneficiaries of the state's Medicaid expansion, Ohio reported that three-quarters of beneficiaries who were looking for work said Medicaid made it easier for them to do so. For those who were currently working, more than half said that Medicaid made it easier to keep their jobs.⁵
- Evidence from work requirements in other social services programs indicates that they do not result in sustained employment and any employment increases faded over time.⁶ In fact, individuals with the most significant barriers to employment often do not find work.⁷
- Terminating individuals from Medicaid will not promote work opportunities. The state lists promoting work opportunities as a goal of its work requirement.⁸ Terminating health coverage will not promote work opportunities.

Most New Hampshire residents eligible for the Medicaid expansion who can work, do so. Approximately 85 percent of New Hampshire's expansion eligible population is either working or not capable of working, and the vast majority are working.⁹ For those who are not working, a better approach would be to determine the reasons individuals are not working, and address those rather than ending health coverage and increasing individuals' financial strain.

For all of the reasons outlined above, the Secretary must deny this request.

⁴ See: Kenneth Brevoort, et al., "Medicaid and Financial Health," the National Bureau of Economic Research Working Paper 24002, Issued November 2017, online at <http://www.nber.org/papers/w24002.pdf>; LuoJia Hu, et al, "The Effect of the Patient Protection and Affordable Care Act Medicaid Expansions on Financial Wellbeing," the National Bureau of Economic Research Working Paper 22170, Issued April 2016 and revised August 2017, online at <http://nber.org/papers/w22170>; Nicole Dussault, et al., "Is Health Insurance Good for Your Financial Health?" Liberty Street Economics, June 6, 2016 online at http://libertystreeteconomics.newyorkfed.org/2016/06/is-health-insurance-good-for-your-financial-health.html#.V2fhz_krLct.

⁵ Ohio Department of Medicaid, "Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly," <http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf>.

⁶ LaDonna Pavette, *Work Requirement Don't Cut Poverty, Evidence Shows* (Washington, DC: Center of Budget and Policy Priorities, June 2016) online at <https://www.cbpp.org/sites/default/files/atoms/files/6-6-16pov3.pdf>

⁷ *Ibid.*

⁸ Waiver application page 4.

⁹ Families USA analysis of American Community Survey data for 2011-2013 expansion eligible population.

Thank you for the opportunity to submit these comments. If you have any questions, please contact us at 202-628-3030.

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