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THE VOICE FOR HEALTH CARE CONSUMERS

October 21, 2018

The Honorable Alex Azar, Secretary
United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

**Re: Alabama Medicaid Workforce Initiative Application for a Section 1115 Demonstration**

**Submitted electronically via Medicaid.gov**

Dear Secretary Azar:

Families USA appreciates the opportunity to provide comments on Alabama's 1115 Demonstration Waiver Application for the state's Medicaid Workforce Initiative, initially submitted July 31, 2018 and updated on September 10, 2018. We request that these comments and all supporting citations be incorporated into the administrative record.

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.

In its waiver application, Alabama is requesting approval to take Medicaid health coverage away from two mandatory categories of Medicaid enrollees if they do not meet a work requirement. Those groups are parents and caretaker relatives with incomes below the state's income eligibility level of 18 percent of poverty and parents and caretaker relatives who qualify for Transitional Medical Assistance (TMA) because of an income increase above the Medicaid level due to employment or higher earnings.

Alabama's proposal would, if approved, result in a large number of low-income Alabama parents and caretaker relatives to become uninsured. The state's proposed program would cause parents and caretaker relatives to become uninsured if the do not meet the work requirement as well as if they do, because meeting the work requirement would result in higher earnings that would exceed the state's Medicaid income eligibility level yet still place them below the poverty level and therefore ineligible for subsidized assistance for marketplace coverage. This outcome, an increase in the uninsured, is inconsistent with the statutory requirements for approval of an 1115 waiver request, and therefore must be denied.

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**Framework for the Analysis: Statutory Requirements for 1115 Waivers**

Section 1115 of the Social Security Act (the Act) gives the Secretary broad authority to approve state waiver requests. However, that authority is not unlimited. The Act places specific limits on what the Secretary can and cannot waive.

Section 1115 gives the Secretary the authority to "**waive** compliance with any of the requirements of section …..1902" of the Social Security Act for any experimental, pilot, or demonstration project which, in the judgment of the Secretary, "is likely to **assist in promoting the objectives of title….XIX** [Medicaid]."[1] [Emphasis added.]

The Secretary is bound by law to review waiver requests within the parameters of the Act.[2]

Alabama's request fails to meet the requirements of section 1115, is outside of the Secretary's authority, and must therefore be denied.

**The proposed program would not further Medicaid's objectives**

The objectives of the Medicaid program are set forth in section 1901 of the Social Security Act, "Appropriations." That section states that federal Medicaid funds 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…."[3] In the context of the statute, it is absolutely clear that "independence or self-care" refers to federal funding enabling states to provide care that can help individuals attain or retain independence that has been compromised because of *health related* conditions.

In evaluating waivers affecting any population covered through the Medicaid program, the Secretary must analyze whether it promotes those objectives. In the recent *Stewart v. Azar* decision, which vacated HHS' approval of Kentucky's waiver proposal to take coverage away from adults who did not meet a work requirement, pay premiums, or renew their coverage or report changes on time, the court found that Medicaid's primary objective is to provide coverage to people who otherwise wouldn't have it. The court also stated that, at a minimum, the Secretary must adequately analyze the coverage impacts of waiver approvals: would the project cause recipients to lose coverage and would the project help promote coverage.[4]

There is no analysis under which Alabama's proposal would promote's the state's provision of health care to low-income parents/caretaker relatives. It would increase the number of low-income uninsured in the state.

***Alabama estimates that many will lose Medicaid coverage.*** In its waiver application, Alabama estimates that the program will result in a 20 percent drop in Medicaid enrollment. A program that results in such dramatic coverage reductions and that has cutting individuals off medical assistance as one of its core features is completely

[1] Social Security Act, section 1115 [42 U.S.C. 1315].
[2] CMS has made changes to the Medicaid.gov website and issued guidance that includes language expanding the objectives of the Medicaid program. However, it is the statute, not website language or agency guidance, that governs the limits on the Secretary's authority.
[3] Social Security Act Sec. 1901. **[**42 U.S.C. 1396**].**
[4] Memorandum in Support of Federal Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, *Stewart v. Azar,* Civil Action No. 1:18-cv-152 (JEB), District Court for the District of Columbia, filed April 25, 2018.

inconsistent with Medicaid's objectives of *furnishing* medical care.

***The argument that work promotes health is not supported by social science research.*** As a rationale for its program, in its application Alabama asserts that increasing employment will improve health outcomes. Social science research does not conclusively support that.

- *The literature studying the correlation between work and health is not conclusive—much of the impact depends on the type of job.* A survey of the literature finds that while some studies show a positive connection between work and health, others show no relationship.[5] Most studies note major limitations in drawing conclusions on the relationship between health and work.

- *The impact of work on health depends on the type of job and low-wage jobs are much less likely to promote health.* Whether work has a positive impact on health is significantly affected by the quality and stability of that work.[6] Low-wage jobs, the type that Medicaid enrollees will by definition be engaged in, are less stable and therefore less likely to promote health.[7] Low-wage jobs often have associated and documented health risks, such as: erratic shift-work; exposure to toxic chemicals; non-standard or part-time working relationships (which are associated with higher job related stress); and, risks of physical injury associated with manual labor.[8] A significant body of research has found that when it comes to showing a positive relationship between employment and health, not all jobs are equal.

***Alabama's program would increase the uninsured and thereby worsen, not improve, health outcomes.*** The proposed program is not only not related to Medicaid's objectives of furnishing medical care, but would lead to an increase in the uninsured in the state and a worsening of health status among state residents.

- *The program Alabama is proposing would ensure that many parents and caretaker relatives will become uninsured.* Alabama is setting up a lose-lose scenario for parents in Medicaid who cannot prove that they should be exempt from the work requirement: lose coverage if you don't comply with the work requirement; lose coverage if you do.

  Alabama's Medicaid eligibility income cut off is $247/month for a family of two. A single parent with one or more dependent children who is working a minimum wage job at the required 35 hours/week would earn over $1,000 a month, no longer be eligible for Medicaid, and yet still have an income below the poverty level, and therefore not be making enough to qualify for marketplace subsidies. That single parent would lose Medicaid but the odds that he or she would have employer coverage at that minimum wage, less than full time job, are quite small.

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[5] Larisa Antonisse, et al., *The Relationship Between Work and Health: Findings form a Literature Review* (Washington, DC: Kaiser Family Foundation, August 2018) online at https://www.kff.org/medicaid/issue-brief/the-relationship-between-work-and-health-findings-from-a-literature-review/.

[6] Sarah Burgard, et al., "Perceived job insecurity and worker health in the United States,"Soc Sci Med. 2009 Sep; 69(5): 777–785, online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2757283/ and JG Grzywacz, et al., "Good jobs to bad jobs:replicated evidence of an employment continuum from two large surveys," Soc Sci Med. 2003 Apr;56(8):1749-60. Online at https://www.ncbi.nlm.nih.gov/pubmed/12639591.

[7] Robert Roy Britt, "Job Insecurity Worse for Your Health Than Unemployment," Live Science, August 2009, online at https://www.livescience.com/7856-job-insecurity-worse-health-unemployment.html.

[8] Jeanette Zeockler, *Mapping the Landscape of Low-Wage Work and Health in Syracuse*, (SUNY Upstate Medical University, The Low-Wage Workers' Health Project, Syracuse, NY, 2017) online at http://ohccupstate.org/pdfs/LWWHP%202017.pdf.

Only a little more than half of Alabama's private employers offer health insurance.[9] The odds of a job offering affordable or any health insurance fall dramatically if the job is low-wage or part-time.[10] Even though Alabama is requiring enrollees work 35 hours/week, to meet that requirement, it is predictable that many will need to work multiple jobs and thus be significantly less likely to have job-based health insurance. Since the state has not expanded Medicaid, most who lose Medicaid because of income increases will likely become uninsured.

A program that will, by design, guarantee an increase in the uninsured in a state is not consistent with objectives of the Medicaid program.

- *Medicaid connects enrollees with medical care.* Medicaid coverage increases access to health care and reduces enrollees' financial exposure to medical costs thus improving their finances, i.e., it succeeds in furnishing medical assistance.[11] Having insurance is a key factor in better health outcomes.[12] Because Alabama's proposed program guarantees an increase in the state's uninsured population, it also guarantees worse health outcomes for state residents, something clearly inconsistent with Medicaid's statuatory objectives.

- *Extending Transitional Medical Assistance (TMA) does not solve the program's inherent "lose/lose" problem*. The state's proposal to extend TMA is no solution and does not address the fact that the proposed program is at odds with Medicaid's objectives.

  Not all parents/caregivers who lose Medicaid eligibility due to income increases will qualify for transitional medical assistance (TMA). To quality, individuals would have to have met Medicaid eligibility requirements for three out of the last six months before their income increased. This would exclude many parents/caregivers, including new enrollees, people who don't meet the work requirement *every* month, people with a break in work, among others. Even for those who do qualify, at the end of TMA, they are likely to find themselves uninsured.

- *Coverage losses will be broad and include many who work or are exempt from the work requirement*. When programs, including Medicaid, add enrollee documentation requirements, participation falls across the board.[13] There is no doubt that many who lose eligibility because they don't meet the reporting requirements will be people who would be exempt.[14] In Arkansas, the first month the program began disenrolling people for

[9] Kaiser State Health Facts, "Percent of Private Sector Establishments that Offer Health Insurance to Employees," timeframe 2017, showing state specific data, online at https://www.kff.org/other/state-indicator/percent-of-firms-offering-coverage/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

[10] Center on Budget and Policy Priorities, *If Low-Income Adults are to Gain Health Coverage, States Must Expand Medicaid,* (Washington, DC: CBPP, 2013) online at https://www.cbpp.org/sites/default/files/atoms/files/Fact-Sheet-Medicaid-Expansion-and-Able-Bodied-Adults.pdf.

[11] The link between having Medicaid and access to health care was recently supported in a GAO study looking at access to care in Medicaid expansion and non-expansion states, showing that adults in expansion states reported much greater access to care. Althouth Alabama is not an expansion state, the connection between Medicaid health coverage and access to care—and the converse connection between not having Medicaid and significantly less access to care—holds true in Alabama for those adults who would predictably lose coverage because of this program. See *Access to Health Care for Low-Income Adults in States with and without Expanded Eligibility,* (Washington, DC: Government Accountability Office, September 2018) GAO-18-607 online at https://www.gao.gov/products/GAO-18-607. Also see Julia Paradise, *Data Note: Three Findings about Access to Care and Health Outcomes in Medicaid* (Washington, DC: Kaiser Family Foundation, March 2017) online at https://www.kff.org/medicaid/issue-brief/data-note-three-findings-about-access-to-care-and-health-outcomes-in-medicaid/.

[12] Julia Paradise, *op cit.*

[13] Margot Sanger Katz, "Hate Paperwork? Medicaid Recipients will be Drowning in it," New York Times, January 18, 2018 online at https://www.nytimes.com/2018/01/18/upshot/medicaid-enrollment-obstacles-kentucky-work-requirement.html

[14] Jessica Greene, "Medicaid Recipients Early Experience with the Arkansas Work Reuirement," Health Affairs Blog, September 5, 2018 online at https://www.healthaffairs.org/do/10.1377/hblog20180904.979085/full/

Medicaid for failing to submit paperwork, over 4,000 lost coverage for noncompliance with the work *or* reporting requirement.[15] That was more than 80 percent of the enrollees who were required to report (the state identified over 40,000 enrollees as meeting the work hours requirement or being exempt, and those individuals did not have to report).[16] Many were unaware of the reporting requirement.[17] In the second month, disenrollments for non-reporting were comparable.[18] There is no reason to believe Alabama will be different. Throwing people off Medicaid because they do not submit paperwork reporting work hours is not consistent with Medicaid's objective of furnishing medical care.

- *Lost coverage is both inconsistent with Medicaid's objectives and will have a negative impact on health*. By cutting people off coverage and increasing the uninsured in the state, the program is the opposite of "furnishing medical assistance." It will deepen individuals' poverty,[19] increase financial strain,[20] worsen health outcomes[21] and ultimately make it harder for people to stay healthy so that they can work.

**The statute does not allow the Secretary to add new requirements to the Medicaid program because an activity might arguably be related to health.**

Section 1115 gives the Secretary the authority to ***waive*** Medicaid requirements, not add new ones. The statute does not allow the Secretary to simply add eligibility requirements to Medicaid because an activity might be related to health.

Medicaid's purpose is to ***furnish medical assistance***; it is not to require enrollees to engage in any activity that might improve health. If that were the purpose of the program, there are numerous activities that are far more conclusively linked to improved health than work: diet[22]; exercise[23]; marital status[24]; social engagement and having friendships[25], to list only a few of the near endless activities that can impact individual health. It is regulatory overreach for this or any other administration to start adding required activities to Medicaid eligibility

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[15] Dee Mahan, "Red Tape Results in Thousands of Arkansans Loosing Coverage," Families USA September 2018 online at https://familiesusa.org/product/red-tape-results-thousands-arkansans-losing-coverage

[16] Robin Rudowitz, "A Look at State Data for Medicaid Work Requirements in Arkansas," Kaiser Famiy Foundation, October 2018, online at https://www.kff.org/medicaid/issue-brief/a-look-at-state-data-for-medicaid-work-requirements-in-arkansas/

[17] Margot Sanger Katz, *ibid.*

[18] Robin Rudowita, *ibid.*

[19] Karina Wagnerman, "Research Update: Medicaid Pulls Americans Out of Poverty, Updated Edition,"*Say Ahh!,* Georgetown Center for Children and Families, Marchy 8, 2018 online at https://ccf.georgetown.edu/2018/03/08/research-update-medicaid-pulls-americans-out-of-poverty-updated-edition/

[20]National Health Care for the Homeless Council, "Oregon Study Shows Obtaining Medicaid Improves Financial Security," online at https://www.nhchc.org/2013/05/oregon-study-shows-obtaining-medicaid-improves-financial-security/

[21] Hannah Katch, et al., *Taking Medicaid Coverage Away From People Not Meeting Work Requirements Will Reduce Low-Income Families Access to Care and Worsen Health Outcomes* (Washington, DC: Center on Budget and Policy Priorities, August 2018) online at https://www.cbpp.org/research/health/taking-medicaid-coverage-away-from-people-not-meeting-work-requirements-will-reduce

[22] For one of the myrid articles and studies on the connection between diet and health, see U.S. Department of Health and Human Services and U.S. Department of Agriculture, *2015–2020 Dietary Guidelines for Americans 8th Edition*. December 2015. Available at http://health.gov/dietaryguidelines/2015/guidelines/.

[23] US Office of Disease Prevention and Health Promotion, *Physical Activity Guidelines,* online at https://health.gov/paguidelines/.

[24] Office for the Assistance Secretary for Planning and Evaluation, *The Effects of Marriage on Health: A Synethesis of Recent Research Evidence. Research Brief* (Washington, DC: Department of Health and Human Services, 2007) online at https://aspe.hhs.gov/report/effects-marriage-health-synthesis-recent-research-evidence-research-brief.

[25] Jane Brody, "The Surprising Effects of Loneliness on Health," New York Times December 11, 2017 online at https://www.nytimes.com/2017/12/11/well/mind/how-loneliness-affects-our-health.html.

because there is some data showing that the activity might improve health. Adding eligibility requirements, such as a work requirement, to Medicaid because of an arguable connection to health stretches Medicaid's objectives and the Secretary's authority far beyond statuatory limits.

**Cutting parents off Medicaid will hurt children**

By taking health coverage away from parents and caregivers, Alabama's program would have a negative impact on children. (See discussion below.) The Secretary must consider the impact of the program across the Medicaid program broadly. For a program that will without question result in lost coverage for parents, the Secretary's analysis must include an assessment of the results on low-income children covered by or eligible for Medicaid, and whether those results would be consistent with the objectives of the program.

- *Lower health coverage rates for children.* Children are more likely to have health insurance if their parents have health coverage.[26] Because the proposed program would result in more parents without insurance, children's health coverage (and access to medical and dental care) is likely to decline as well, in turn leading to a decline in children's health. Arkansas's Medicaid program provides a recent example of how this plays out. The state started aggressively closing cases when mail was returned (such as for address change) in 2017, and in June 2018, enrollment had dropped by nearly 60,000, including an over 12,000 drop in children's enrollment.[27] Dropping adults from coverage—as will happen in Alabama—will result in less coverage for children.

- *Long term negative impact of children's economic chances*. Children with health coverage through Medicaid are more likely than their uninsured counterparts to receive needed medical care, stay healthy, and do better in school, and later in life.[28] Predictable losses in children's coverage that would be a byproduct of parents' coverage terminations would have long lasting negative impacts on the health and educational attainment of Alabama's children.

- *Less healthy parents and caregivers will have a negative impact on children*. Parents and caretaker relatives who lose health coverage are likely to suffer from more health problems, making it more difficult for them to care for their children, and increased family financial stress and economic instability.[29] Those stresses are felt

[26] "Health Coverage for Parents and Caregivers Helps Children," Georgetown University Center for Children and Families, March 2017 online at https://ccf.georgetown.edu/wp-content/uploads/2017/03/Covering-Parents-v2.pdf.
[27] Benjamin Hardy, "Scrubbed for the System: Why Medicaid Enrollment Has Dropped by almost 60,000 People in 18 months," Arkansas Times, August 9, 2018, online at https://www.arktimes.com/arkansas/scrubbed-from-the-system/Content?oid=21285998; and, Families USA analysis of Monthly Medicaid and CHIP Application, Eligibility Determination and Enrollment Reports & Data online at https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/monthly-reports/index.html.
[28] Dee Mahan, et al, *Health Coverage Matters for Children: The Role of Medicaid in the Healthy Development of America's Children* (Washington, DC: Families USA, September 2018) online at https://familiesusa.org/product/health-coverage-matters-children-role-medicaid-healthy-development-americas-children; Laura Wherry, et al., "The Role of Public Health Insurance in Reducing Child Poverty," *Academy Pedicatrics* Vol 16, No 3S, April 2016 online at https://www.academicpedsjnl.net/article/S1876-2859(15)00384-8/pdf; Sarah Cohodes, et al., "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions," National Bureau of Economic Research, Working Paper 20178, May 2014 revised October 2014 online at https://www.nber.org/papers/w20178; and, David Brown et al., "Medicaid as an Investment in Children: What is the Long-Term Impact on Tax Receipts?" National Bureau of Economic Research, Working Paper 20835, January 2015 online at https://www.nber.org/papers/w20835.pdf.
[29] 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.

by all family members, including children.[30] Increased family financial stress can have serious negative effects on children.

**There is little evidence the program will result in sustained employment**

*There is little evidence that the program would have a sustained positive impact on employment and much evidence that it would not.* 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.[31] Individuals with the most significant barriers to employment often do not find work. There is no reason to believe that results will be any different for the work requirement Alabama proposes.

**The proposed program may violate other federal laws**

*The community engagement program may violate other federal laws.* Program that require individuals to work without pay for Medicaid coverage may violate the Fair Labor Standards Act in addition to the Medicaid statute. The community service provisions are essentially requiring individuals to work for health insurance, not wages. Health insurance is nothing like wages. It is a non-cash benefit, whether and how much someone uses it (i.e., its monetary value) in any given time period is unpredictable. When it is used, payments are made to health providers, not the covered individual. In many areas of the state, and particularly in high unemployment counties, of which there are many in Alabama, individuals may have no viable employment options and if they want to keep coverage, they may have no option other than to work for free in order keep health insurance.[32]

For the reasons outlined above, Alabama's waiver application must be denied. The program would without doubt reduce health coverage and increase the rate of uninsurance among very low-income parents and caregiver relatives (a population states must cover to receive federal matching funds in Medicaid) in the state, negatively affect health outcomes, and do nothing to support Medicaid's objective of furnishing medical assistance. The request is inconsistent with the requirements of section 1115 of the Act. The request is outside of the Secretary's authority to approve.

Thank you for the opportunity to submit these comments. If you have any questions, please contact Dee Mahan at Families USA, 202-628-3030 or at dmahan@familiesusa.org.

Respectfully submitted,

Dee Mahan
Director Medicaid Initiatives

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[30] RD Conger, et al., Economic Pressure in African American Families: A Replication and Extension of the Family Stress Model," *Developmental Psychology, 38*(2), 179-193, online at http://dx.doi.org/10.1037/0012-1649.38.2.179, noting that family economic stress has a negative impact on child development across diverse populations.

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

[32] Local Area Unemployment Statistics Map for Alabama, US Department of Labor, Bureau of Labor Statistics, August 2018 county level unemployment data, accessed online October 17, 2018 at https://data.bls.gov/map/MapToolServlet?survey=la&map=county&seasonal=u.