February 22, 2018

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

Dear Secretary Azar,

Families USA appreciates the opportunity to provide comments on Mississippi's 1115 Demonstration Waiver Application, the Medicaid Workforce Training Initiative, submitted January 16, 2018. 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.

Mississippi is seeking permission to disenroll from Medicaid individuals within mandatory Medicaid eligibility groups who do not satisfy a work requirement. The state is seeking to impose this requirement on two groups that are mandatory coverage groups under Social Security Act section 1931, **[**42 U.S.C. 1396u–1**]**: parents/caretaker relatives and individuals eligible for Transitional Medicaid Assistance (TMA). In addition, the state is requesting 90 percent matching funds for a workforce training program that would support the work requirement.

For the reasons outlined below, neither request is within the Secretary's approval authority under section 1115 of the Social Security Act; therefore, both must be denied.

Work Requirement Request

The request to add a work requirement is outside of the Secretary's authority under section 1115 of the Social Security Act. In the context of the Medicaid program (Title XIX), section 1115 of the Social Security Act **[**42 U.S.C. 1315**]**, "Demonstration Projects," gives the Secretary the authority to waive state compliance with section 1902 of that Act. Waivers must be: experimental, pilot or demonstration projects; be likely to promote the objectives of the Medicaid program; be limited to compliance with requirements of section 1902 of the Social Security Act; **and** be limited to the extent necessary for the state to carry out the experimental project. The request to add a work requirement fails to meet the basic requirements of that section and, therefore, must be denied.

- *A work requirement does not promote the objectives of the Medicaid program.* The objectives of the Medicaid program, outlined in section 1901 of the Social Security Act **[**42 U.S.C. 1396**]** are to enable states to furnish medical and rehabilitative services to eligible individuals. Removing eligible individuals from health coverage if they do not meet a work requirement does relate to or support the objective of furnishing medical or rehabilitative services and is therefore inappropriate for approval through an 1115 waiver.

  Increasing employment is not within Medicaid's objectives. The fact that work requirements have no place in Medicaid law was recently noted by the Congressional Budget Office in September 2017, in a report in which they stated: "Under current law, states may not condition the receipt of Medicaid on any criteria related to a person's employment status."[1]

- *Any assertions of a link between health and employment is a red herring; it is still outside of the Secretary's authority under 1115 to add a work requirement to Medicaid.* In its January 11, 2018 State Medicaid Director letter, CMS outlined literature on a broad range of issues linked to individuals' health, work being among those.[2] It cited those studies as a basis for supporting the addition of a work requirement in Medicaid programs using 1115 authority.

  The logic articulated by CMS is antithetical to the core construct of Title XIX's establishment eligibility for medical assistance: that Medicaid coverage can be conditioned, as an incentive, on any economic or social issue that might have a bearing on the health of low-income people. There is nothing in statute to support that notion.

  The objectives of both the Medicaid program and the requirements for 1115 waivers are set out in statute. Based on the statute, the purpose of the Medicaid program which, as we have noted, is to *furnish medical assistance and rehabilitative services.* The list of things that impact individual health is nearly endless. However, the objective of the Medicaid program is considerably narrower and does not include mandating that enrollees work.

- *The state's rationale for how the requested work requirement promotes Medicaid's objectives is not supported by the program proposed.* In its application, Mississippi states, "we believe it [the proposed work requirement program] will further the objectives of the

---

[1] Congressional Budget Office, "Preliminary Analysis of Legislation That Would Replace Subsidies for Health care With Block Grants," September 25, 2017, https://www.cbo.gov/publication/53126.

[2] Centers for Medicare and Medicaid Services, "Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries" SMD 18-002, January 11, 2018, https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf.

Medicaid program by providing individuals with increased time, health security, and resources to transition from Medicaid to private healthcare." There is nothing in this application that supports any of those outcomes and much that contradicts those outcomes. Furthermore, two of those outcomes are not within Medicaid's objectives.

- Increased time. It is unclear what the state means by this objective. Assuming that it refers to increasing non-work, leisure time, that is not an objective of the Medicaid program. Even if it were, there is nothing in this proposal that would lead to that outcome. In fact, the amount of documentation that individuals will need to provide to prove that they are working, or to support exemptions, will likely consume a great deal of time, reducing the time that individuals have to pursue other activities, including work.

- Transition to private healthcare. Moving individuals from Medicaid into private insurance is not an objective of the Medicaid program. However, even if it were, the proposed program would not accomplish that even for those who work the requisite 20 hours/week at a paying job.

  Medicaid income eligibility for parents and caregivers in Mississippi is so low that individuals who work 20 hours per week would make too much to keep Medicaid coverage.[3] It is highly unlikely those low-wage individuals would transition to a job with private health insurance. Only 50.8 percent of all Mississippi private sector employers provide employees with health coverage.[4,5] Additionally, individuals meeting the 20/hours per week work requirement at minimum wage would still have an annual income that is below poverty and therefore not be eligible for assistance to purchase marketplace coverage.

  As a result, the program's structure virtually guarantees that individuals will become

[3] According to the Mississippi Division of Medicaid, income eligibility for parents/caretaker adults is so low that an individual working 20 hours a week at a minimum wage job would make too much to retain eligibility. Income eligibility is $306/monthly income for a family of two; $384 for a family of three. Working 20 hours a week at federal minimum wage would yield a monthly income of $580. Only parents/caregivers in a family of 6 or more would be able to retain Medicaid coverage under the state's proposed scheme.

[4] Kaiser Family Foundation, State Health Facts, "Percent of Private Sector Health Establishments that Offer Health Insurance to Employees, 2016," accessed January 22, 2018 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.

[5] Only 12 percent of workers with incomes below the poverty level have employer sponsored health insurance. Kaiser Family Foundation analysis of National Health Interview Survey. Available at https://www.kff.org/slideshow/employer-sponsored-insurance-offer-and-coverage-rates/

familiar with being ***uninsured*** rather than with private insurance. Waiver proposals designed to increase the ranks of the low-income uninsured are diametrically opposed to Medicaid's objectives.

- Health security. Health security is within Medicaid's objectives of furnishing medical care. However, the end result of this program will be less, not more, health security for the population the waiver covers. The state's own budget estimates in the waiver application show a reduction in member months that is equivalent to 5,000 enrollees losing Medicaid coverage in the first year.[6] Even in the impossible event that all of those individuals had gained employment, most would not gain private health insurance—most would become uninsured, as outlined in the bullet above, and lose access to medical care. Decreasing health security is contrary to Medicaid's objectives.

- *Section 1115 gives the Secretary the authority to waive requirements of section 1902 of the Social Security Act; it does not give the Secretary the authority to add a totally new requirement, such as a work requirement.* Section 1115 gives the Secretary the authority to *waive* requirements of section 1902 when the request meets conditions set out in the statute. It does not give the Secretary the authority to add new requirements to 1902. A work requirement would be the addition of a totally new eligibility requirement that is unrelated to Medicaid's objectives and is therefore not the kind of program change supported by 1115 authority.

  Linking Medicaid eligibility to work—whether requiring hours worked or a job search or job training or volunteer work—is adding a whole new aspect to Medicaid eligibility, one that would fundamentally change the program. Such a radical change to the program must be made through the legislative process, not through waivers. Indeed, Congress has recently failed to pass such a change despite recently taking up such a provision in the American Health Care Act and the Better Care Reconciliation Act. The work requirement on the TANF and SNAP programs were all enacted through Congressional legislation. The Secretary must give effect to Congress's unambiguous intent.[7]

Compensating volunteer work with health insurance rather than actual wages may violate other federal laws. Mississippi proposes using unpaid volunteer work to satisfy the work

[6] This calculation is based on the state's projections of a 58,995 reduction in member months in demonstration year 1, divided by 12 months. Because there is not a one-to-one enrollee/month match, the actual number of individuals affected is likely higher.

[7] *Comacho –v- Texas Workforce Commission,* op cit.

requirement. This is bad economic policy that could drive down wages, further impoverishing the very people this program claims it is designed to help, and result in paid employees being displaced in favor of an unpaid workforce. This may also violate federal law.

The Fair Labor Standards Act (FLSA) created a right to a minimum wage.[8] Medicaid coverage is not a substitute for wages. Medicaid is health insurance that pays doctors and other health care providers for services rendered to individuals enrolled in that program. It does not pay enrollees. Health insurance is not a substitute for wages and treating it as such may violate the FLSA.

The state does not provide evidence to support its proposed project as a "demonstration." Mississippi cites one article to support its program and the proposition that work incentives for improving health.[9] However, even that article does not support Mississippi's proposal.

The conclusion of the article cited is that: "To truly address the multiple and complex challenges facing low-income families living in troubled neighborhoods, practitioners and policy makers must work to improve a wide range of factors simultaneously." Among the factors listed in the article are unemployment, lack of assets, and ***health problems***. There is nothing in the article suggesting that a program that would result in individuals losing health insurance coverage, and the associated access to medical care, would in any way help to address the multiple challenges facing low-income families. Rather, the article supports the proposition that successful programs would ensure that low-income families have reliable access to health insurance so that they can better address health issues. As we have discussed at multiple points in these comments, Mississippi's proposal would result in more, rather than fewer, uninsured Mississippians.

The predictable outcome of this waiver will be an increase in the state's uninsured population and a decrease in residents' health status. In its waiver application, Mississippi states that it hopes that the program will result in improved health for its citizens. It is virtually guaranteed that the outcome of this program will be the exact opposite.

As we have outlined above, one of the main outcomes of the program would be an increase in the state's low-income uninsured population. It is well documented that lacking or losing health insurance has a negative impact on low-income individuals' ability to access health care

[8] The Fair Labor Standards Act of 1938, 29 U.S.C. sec 203.

[9] Austin, et al, "*Promising Practices for Meeting the Multiple Needs of Low-Income Families in Poverty Neighborhoods," Journal of Health and Social Policy,* Vol 21 (1) 2005.

services.[10] That, in turn, has a negative impact on health outcomes.[11] No further study of the issue could possibly be needed. Lacking any plausible demonstration purpose, the request must be denied.

Reducing health coverage for parents will also have a negative effect on children's health outcomes. Not only will the health of Mississippi's adult population suffer were this waiver to be approved, but the health of its children would as well. That fact should not be ignored during the waiver deliberation process.

Nearly 400,000 children receive health insurance through Mississippi's Medicaid program. The proposed work requirement program targets parents and caretaker relatives. As noted above, many would likely become uninsured as a result of the proposed program. When the individual or individuals taking care of a child lose coverage, it is likely to have a negative impact on that child in multiple ways.

- Children are more likely to have health insurance if their parents have health coverage.[12] Because the proposed program would likely result in more parents without insurance, children's health coverage is likely to decline as well, in turn leading to a decline in children's health.

---

[10] This lists a few of the many studies on this point: National Center for Health Statistics, "Health Insurance and Access to Care," February 2017, at https://www.cdc.gov/nchs/data/factsheets/factsheet_hiac.pdf; Annals of Internal Medicine, "The Relationship of Health Insurance and Mortality: Is Lack of Insurance Deadly?" 2017; 167 (6): 4240431 at http://annals.org/aim/fullarticle/2635326/relationship-health-insurance-mortality-lack-insurance-deadly#; Kaiser Family Foundation, "Key Facts About the Uninsured Population," September 19, 2017, at https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/; Julia Paradise, "What is Medicaid's Impact on Access to Care, Health Outcomes, and Quality of Care? Setting the Record Straight on the Evidence," Kaiser Family Foundation, August 2, 2013, at https://www.kff.org/report-section/what-is-medicaids-impact-on-access-to-care-health-outcomes-and-quality-of-care-setting-the-record-straight-on-the-evidence-issue-brief/.

[11] Among the many studies linking health insurance (including insurance through Medicaid) to better health outcomes are: Laura Medford-Davis, et al, "Impact of Insurance Status on Outcomes and Use of Rehabilitation Services in Acute Ischemic Stroke: Findings from Get With The Guidelines-Stroke," *Journal of the American Heart Association* 2016;5:e004282, online at http://jaha.ahajournals.org/content/5/11/e004282; a comprehensive study of the literature at, J Michael McWilliams, *Health Consequences of Uninsurance among Adults in the United States: Recent Evidence and Implications* (Milbank Quarterly: June 2009) available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2881446/; Andrew Wilper et al, "Health Insurance and Mortality in the US," *American Journal of Public Health,* December 2009 online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2775760/ (noting that uninsurance is associated with mortality); Institute of Medicine review of 130 research studies that considered health insurance as an independent variable and its effect on health outcomes for adults 18-64, published in *Care Without Coverage: Too Little, Too Late,* May 2002 online at http://www.nationalacademies.org/hmd/~/media/Files/Report%20Files/2003/Care-Without-Coverage-Too-Little-Too-Late/Uninsured2FINAL.pdf.

[12] See Hudson, Julie and Asako Moriya, "Medicaid Expansion for Adults Had Measurable "Welcome Mat" Effects on Their Children," *Health Affairs* September, 20117; Government Accountability Office, *Given the Association Between Parent and Child Insurance Status, New Expansions May Benefit Families,* February 2011 online at https://www.gao.gov/new.items/d11264.pdf. .

- Losing Medicaid coverage can have a long term impact on children. A long-term study found that children who had health coverage through Medicaid did better in school and earned more as adults than similarly situated children who were uninsured.[13]

- Parents and caretaker relatives who lose health coverage are likely to suffer from more health problems (see discussion above), making it more difficult for them to care for their children, and likely to experience greater financial stress and economic instability.[14] Those effects—less healthy parents, less economic security at home—are felt by children and have an impact on children's health and later life success.

In its waiver application, the state only considers the effect of its proposed program on adults. However, CMS must also consider the completely predictable and long-term negative effects that this program would have on children, effects that are clearly not consistent with Medicaid's objectives.

The overriding rationale for the program appears to be to reduce Medicaid enrollment; that is inconsistent with the goals and purpose of 1115 waiver authority. It appears that one of the central aims of this waiver is to remove individuals in mandatory coverage groups from the Medicaid rolls in order to save the state money. This conclusion is supported by the state's own assertion that "DOM finds it more difficult to provide the array of services necessary for the population we are charged to serve."[15] Then the state proceeds to lay out a program that will result in termination of thousands from Mississippi's Medicaid rolls. Removal of individuals in mandatory coverage groups from Medicaid coverage is not an appropriate waiver objective.[16]

---

[13] Sarah Cohodes, "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions," National Bureau of Economic Research, May 2014, online at http://www.nber.org/papers/w20178.

[14] For low income adults, gaining health coverage is associated with improved financial health. It follows that taking health coverage away would have a comparable negative impact on economic wellbeing. The two studies cited here focus on adults gaining coverage through the Medicaid expansion. However, the expansion populations studied included adults with extremely low incomes, including many as poor as or poorer than the adults in Mississippi's Medicaid program who would be at risk of losing coverage were this waiver approved. There is no question but that taking health coverage away from Mississippi's very low income parents would have a significant negative impact on families' economic health. Loujia Hu,et al. "The Effect of the Patient Protection and Affordable Care Act Medicaid Expansions on Financial Wellbeing," National Bureau of Economic Research, initially published April 2016 and revised February 2018, online at http://nber.org/papers/w22170; and, 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.

[15] Waiver application page 2.

[16] Beno v. Shalala, 30 F.3d 1057 (9th Cir.1994). The Court held that a program to save the state money without a finding of a demonstration value is an inappropriate use of 1115 authority.

As we have noted above, there is no plausible demonstration value to this program that is related to the objectives of Medicaid; and, some predictable outcomes that are directly in opposition to those objectives.

Enhanced funds for workforce training activities.

The request for enhanced federal matching funds for workforce training activities is not allowable and must be denied. The recent State Medicaid Director letter is clear that workforce training activities are not eligible for federal Medicaid matching dollars at either the state's regular or an enhanced match.[17] We agree with this interpretation and anticipate that you will follow the policy that the SMD clearly articulated and deny this request.

For the reasons outlines above, Mississippi's request must be denied.

We appreciate the opportunity to provide these comments and thank you for your consideration.

If you have any questions or would like additional information, please contact either Dee Mahan (dmahan@familiesusa.org) or Andrea Callow (acallow@familiesusa.org).

Respectfully submitted,

Dee Mahan
Director, Medicaid Initiatives

Andrea Callow
Associate Director, Medicaid Initiatives

[17]Centers for Medicare and Medicaid Services, "Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries" SMD 18-002, January 11, 2018, p. 7.