FAMILIESUSA
THE VOICE FOR HEALTH CARE CONSUMERS

June 14, 2018

The Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201

Dear Secretary Azar:

Families USA appreciates the opportunity to provide comments on Ohio's 1115 waiver request to add a work and community service engagement requirement as a condition of Medicaid eligibility for the Group VIII population.

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 Ohio'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 over 700,000 Ohio residents gaining health coverage. However, we do not support this waiver request.

As we have commented on numerous prior 1115 waiver requests to add a work and community service requirement to Medicaid, approving a work or community service requirement is outside of the Secretary's approval authority under section 1115 of the Social Security Act and must be denied.

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

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.

Granting a work requirement is contrary to Medicaid law.

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 section …..1902" of the Social Security Act for any experimental, pilot, or

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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 referred to in section 1115. 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] 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 physical independence.

While HHS has recently updated its Medicaid.gov website to redefine the objectives of the Medicaid program, that has no legal import. Statutory language has precedence over any website language, no matter how official the 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 or community service 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 by withdrawing medical and rehabilitative services from otherwise eligible low-income people if they do not meet the work mandate. 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 community service. The Secretary does not have the authority to add this new and unrelated requirement.

- 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 request, Ohio notes that "poverty, food insecurity, housing, and employment status can impact an individual's overall health."[3] While that may be true, the mere connection between an activity and health status is not a basis to make Medicaid eligibility conditional upon an individual's participation in that activity. The objectives of the Medicaid program are clear: 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 that have been shown in one or more studies to have some connection to an individual's health: diet; exercise; marital status; social engagement; work and

[1] Social Security Act, section 1115 [42 U.S.C. 1315].
[2] Social Security Act Sec. 1901. **[**42 U.S.C. 1396**].**
[3] Ohio waiver application, page 3.

type of work (eg, some professions present safety or health hazards), to list only a few. For this, or any subsequent administration, to go down the path of adding any extra-statutory condition on Medicaid eligibility that it deems appropriate because it might arguably be related to individual health is gross regulatory overreach and a misuse of federal funds.

A Community Service requirement violates other federal laws

Ohio proposes to condition Medicaid eligibility for the Group VIII population on hours worked or community service, or a combination of the two. Requiring individuals to engage in unpaid labor in exchange for health insurance coverage through Medicaid is not only inconsistent with the Medicaid program, but may violate other federal laws.

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, not the enrollee. In other words, Medicaid coverage is no substitute for wages.

Federal and Ohio law require employers to pay a minimum wage for work performed. Nothing in the law counts health insurance through as compensation in lieu of wages. Unpaid employment where Medicaid coverage substitutes for wages 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 help improve health outcomes in Ohio and enhance individuals' economic stability.[4] However, taking coverage away from Ohio residents is likely to 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, Ohio notes its own data showing that Group VIII enrollees reported that having Medicaid coverage helped them maintain their employment or look for employment. Ohio is not disputing the link between Medicaid coverage the enhanced employment opportunities reported by Group VIII enrollees. The state is adding a work requirement because employment increases among Group VIII enrollees have been less than the state hoped for, even though state unemployment is at its lowest rate in 17 years.[5]

[4] Ohio waiver application, page 3.

[5] Ohio waiver application, page 3; data on unemployment from Oliver Perkins, The Plain Dealer, "Ohio unemployment rate 4.5% in February; state gained 13,400 jobs," March 23, 2018 at https://www.cleveland.com/business/index.ssf/2018/03/ohio_unemployment_rate_45_in_f_1.html.

Without any supporting data (and copious data to the contrary), Ohio is asserting that taking health coverage away from low-income, Medicaid eligible state residents will somehow increase their health outcomes and economic stability (those being the purported objectives of the state's waiver program).

However, data indicate that taking health coverage away from the Medicaid population will not improve their health, economic stability, or lead to long-term employment gains, i.e.; data indicate that the waiver, if approved, would have the opposite effect of Ohio's purported objectives.

- Data Ohio has collected on its Medicaid expansion show that individuals gaining Medicaid coverage due to the expansion have seen a decrease in unmet medical needs (with data showing that prior to expansion, the level of unmet medical needs for this group was high), improved management of chronic health conditions, and self-rated improvements in health.[6]
- Numerous studies show that, by protecting enrollees against medical costs, Medicaid coverage is associated with improved financial health—fewer bills sent to collection, reduced medical debt, improved credit scores.[7] All of those indicia of financial health can help individuals gain greater financial security, reduce financial and physical stress (thereby improving health), and help individuals move out of poverty.
- 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.[8] In fact, individuals with the most significant barriers to employment often do not find work.[9] Under the Ohio scheme, those individuals would lose health insurance, access to medical care, and be at financial risk for any medical costs incurred. For those individuals, that is not a path to prosperity.

There is no data supporting the state's theory that terminating individuals from Medicaid will promote work opportunities or improve their health outcomes (the waiver's objectives). However, even if there were such data, work is not an objective of the Medicaid program and the waiver request would still be outside of the Secretary's authority to approve.

The proposed program would result in thousands losing Medicaid insurance, an outcome inconsistent with the purpose of Section 1115.

In its waiver application, Ohio estimates 18,000 individuals will lose Medicaid coverage because of the work requirement. However, this is likely too low an estimate because the state fails to account for

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[6] Ohio Department of Medicaid, "Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly," January 2017, http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf.

[7] See: Kenneth Brevoot, 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.

[8] 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

[9] *Ibid.*

individuals who lose coverage simply because they do not or cannot complete the process required to demonstrate that they meet the work requirement or fall into an exemption. This estimate also fails to account for the dampening effect that the presence of a work requirement will have on enrollment. A certain number of individuals will simply not apply because of associated red-tape or an assumption that they do not meet the requirement, even if that assumption may be untrue.

There is no doubt that, regardless of the processes in place, many individuals will fall through the cracks. Data from other state Medicaid expansion programs underscores that states do a generally poor job of informing enrollees of program requirements in a manner or format that enrollees understand, or act upon.[10] There is no reason to believe that the outcome will be different in Ohio, where the Medicaid program is administered by counties and manpower differences across counties all but ensure that there will be significant variations in program administration.

Red tape and paperwork requirements have been shown to reduce Medicaid enrollment.[11] The program paperwork requirements will be particularly challenging for individuals with physical disabilities, serious chronic illnesses, mental illness, or who are struggling with addiction. This is not a hypothetical concern. Studies of state SNAP and Temporary Assistance for Needy Families (TANF) programs have found that people with disabilities, serious illnesses, and substance use disorders are disproportionately likely to lose benefits due to work requirements, even when they should be exempt.[12]

These predictable outcomes are far from the objectives of the Medicaid program or the legislative intent of section 1115.[13] The program does not support Medicaid's objectives and must be denied.

[10] Judith Solomon, "Complex Medicaid Changes Likely to Cost Many People Coverage," Center on Budget and Policy Priorities, May 30, 2018, https://www.cbpp.org/blog/complex-medicaid-changes-likely-to-cost-many-people-coverage.

[11] Margot Sanger-Katz, "Hate Paperwork? Medicaid Recipients Will Be Drowning In It," *The New York Times*, January 18, 2018, https://www.nytimes.com/2018/01/18/upshot/medicaid-enrollment-obstacles-kentucky-work-requirement.html.

[12] Hannah Katch, Jennifer Wagner, and Aviva Aron-Dine, "Medicaid Work Requirements Will Reduce Low-Income Families' Access to Care and Worsen Health Outcomes," Center on Budget and Policy Priorities, February 8, 2018, https://www.cbpp.org/research/health/medicaid-work-requirements-will-reduce-low-income-families-access-to-care-and-worsen.

[13] United States District Court for the District of Columbia, Stewart –v- Azar, Brief for Deans, Chairs and Scholars as Amici Curiae in Support of Plaintiffs, Civil Action No 1:18 – cv – 152 (JEB), at https://publichealth.gwu.edu/sites/default/files/downloads/HPM/Kentucky%20Medicaid%20Proposed%20Amici%20Curiae%20Brief.pdf. The brief notes that section 1115 was intended as a way to help states improve their safety-net programs through administrative changes.

For the reasons outlined above, the Secretary must deny Ohio's request.

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

Respectfully submitted,

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