

September 16, 2016

The Honorable Sylvia Mathews Burwell
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Burwell,

We appreciate the opportunity to comment on New Hampshire's proposal to amend its section 1115 demonstration project, the "New Hampshire Health Protection Program (NHHPP) Premium Assistance."

As part of the Medicaid expansion legislation it passed in 2014, the New Hampshire legislature instructed the state to pursue a waiver to enroll newly eligible adults in Marketplace plans beginning in 2016. The stated purpose of this "premium assistance" waiver, which has been approved and implemented, is to provide continuity of coverage for individuals moving between Medicaid and the Marketplace.

New Hampshire's Medicaid expansion has been a success, covering nearly 50,000 residents through the NHHPP. The state has been operating NHHPP for less than a year, yet it is already asking to make a series of changes to the demonstration. As we have argued previously, a state should not be allowed to make changes to its Medicaid expansion if such changes would make it harder for beneficiaries to enroll in and maintain coverage. The work requirement and citizenship documentation requirements New Hampshire is now proposing would lead some people to remain uninsured and cause others to lose their coverage or experience delays in or gaps in coverage. These provisions would represent a step back for New Hampshire residents and CMS should reject these aspects of the state's proposal.

Our specific comments on significant components of the waiver amendment follow:

Citizenship documentation requirement. The New Hampshire proposal would require newly eligible adults to verify that they are United States citizens by providing two forms of identification, and verify that they are residents of New Hampshire by providing a New Hampshire driver's license or a non-driver's picture identification card. By implication, qualified immigrants who are eligible for Medicaid could not enroll, because they couldn't prove they are citizens. It isn't clear that the state actually intends to bar otherwise eligible legal immigrants from the program but that would be the consequence of requiring documentation of *citizenship* from all applicants.

The state hasn't provided any justification for this proposal, which is not surprising given there isn't any evidence that current procedures aren't sufficient to guarantee that only eligible citizens and qualified immigrants are participating in New Hampshire's Medicaid program. The requirements New Hampshire is proposing would be unnecessarily burdensome for consumers and for the state. Many eligible people would likely be unable to easily provide the documents because they aren't readily available and obtaining them would take time and money, which in turn would result in delays or outright denials of coverage.

Adding the requirements New Hampshire proposes is unnecessary. Existing Medicaid regulations require verification of citizenship and noncitizen status for parents and other adults. Applicants must provide their names, dates of birth, and Social Security or alien numbers, which are then matched against information held by the Social Security Administration or the Department of Homeland Security. The majority of people have their status verified quickly, accurately, and securely using these processes. Some people can't instantly be verified and they must provide additional information or documents to prove their status.

The new documentation requirements included in New Hampshire's proposal would cause massive delays in coverage for many Medicaid beneficiaries. The current process that verifies citizenship or immigration status through data matches allows most people to have their circumstances verified quickly and accurately. The quick decision helps ensure that the state sends people who aren't eligible for Medicaid to the Marketplace without significant delay. This is important because consumers' ability to enroll in Marketplace coverage is time-limited. They must either enroll during open enrollment or during a special enrollment period if for example they lost employer coverage.

The requirements that New Hampshire is attempting to impose are not only unnecessary and potentially harmful in keeping people uninsured — they would also violate the Medicaid statute. The key provisions governing proof of immigration status and citizenship are in parts of the Social Security Act that cannot be waived. Section 1137 governs verification of immigration status and section 1903(x) is the core provision governing verification of citizenship. Neither of these provisions can be waived under section 1115 which only allows waivers of provisions in section 1902.

Increased cost-sharing. New Hampshire proposes to require newly eligible adults who visit the emergency room for non-emergency reasons to pay an \$8 co-pay in the first instance, and \$25 for each subsequent visit. Indiana is already testing this proposal under Section 1916(f) authority, and there is no reason to grant another state a similar waiver until more is known about the extent to which higher co-pays deter inappropriate emergency room use. Moreover, it is our understanding that non-emergency use of the emergency room is not covered in NHHPP, which means the authority New Hampshire seeks couldn't even be implemented.

New Hampshire also seeks to waive comparability requirements so that medically frail adults with incomes above the poverty line who are enrolled in managed care plans are not subject to the cost-sharing charged to people enrolled in marketplace plans. While the proposal itself is not clear that those that would be affected are people with incomes above the poverty line, the Milliman analysis of budget neutrality states that people with incomes below the poverty line enroll in plans with 100 percent actuarial value and those above the poverty line in plans with 94 percent actuarial value. With this understanding we support the waiver of comparability to avoid cost-sharing for medically frail people enrolled in managed care plans.

Work requirement. New Hampshire proposes to condition childless adults' eligibility for coverage on working 30 hours a week, or participating in a list of other activities that include

job search programs, vocational training, and providing childcare services. CMS has been clear in dealing with Indiana, Arkansas, Kentucky, and other states that proposals to condition eligibility on work will not be approved, and it should take the same position with New Hampshire.

Medicaid is not an employment program; its purpose is to provide health coverage to people who cannot afford it. Work requirements are an ineffective way to promote employment, as shown by research on similar requirements in other public assistance programs.¹ Medicaid coverage supports work and taking health coverage away from people who face major obstacles to maintaining employment would be counterproductive.

New Hampshire says the purpose of its work requirement is to “encourage unemployed and underemployed adults to proceed to full employment by requiring them to become connected with job training or other work-related activities” (page 8-9). The 2014 legislation authorizing New Hampshire to expand Medicaid included a provision that newly eligible beneficiaries would be referred to a state-run job training program. Importantly, participation in that program is not a *condition* of eligibility and as such the state did not need CMS’ approval to implement it. There is no need to go further and require that beneficiaries participate in work-related activities as a condition of eligibility.

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Thank you for your willingness to consider our comments. If you would like any additional information, please contact Joan Alker (jca25@georgetown.edu) or Judy Solomon (solomon@cbpp.org).

¹ Hannah Katch, “Medicaid Work Requirement Would Limit Health Care Access Without Significantly Boosting Employment,” Center on Budget and Policy Priorities, July 13, 2016, <http://www.cbpp.org/research/health/medicaid-work-requirement-would-limit-health-care-access-without-significantly>.