

September 29, 2017

The Honorable Thomas Price, Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W. Washington, DC 20201

Dear Secretary Price:

The undersigned organizations appreciate the opportunity to comment on Utah's request to amend the proposal it submitted in August 2016 to extend its section 1115 Primary Care Network (PCN) demonstration project. The August proposal included two eligibility changes that originated in legislation passed by the Utah legislature. Utah proposed an increase in Medicaid eligibility for parents with incomes up to 55 percent of the poverty line and adding eligibility for a targeted group of adults without children.

As we noted in our comments on the state's initial extension request, we remain concerned with the state's approach that provides limited coverage to parents in order to balance the costs of the expansion of coverage to a targeted group of adults without children. We have attached those comments as they remain relevant to the new proposal.

The state is now proposing to make additional changes to its proposal that would cap enrollment, put a time limit on coverage, impose work requirements, and increase copayments for low-income Utahans. We urge you to reject the changes proposed in the state's amendment request as they fail to meet the statutory requirements for a section 1115 demonstration, and do not promote the objectives of the Medicaid program.

### **The Proposal's Goals Fail to Promote the Objectives of the Medicaid Program**

Under section 1115 of the Social Security Act, a state can implement an "experimental, pilot or demonstration project which, in the judgment of the Secretary [of HHS], is likely to assist in promoting the objectives of [Medicaid]" in a state. Criteria developed by the Centers for Medicare & Medicaid Services guide the HHS Secretary in determining whether proposals for section 1115 demonstration projects promote the objectives of the Medicaid program as required by statute. Under these criteria, a demonstration project must:

- Increase and strengthen overall coverage of low-income individuals in the state;
- Increase access to, stabilize, and strengthen providers and provider networks available to serve Medicaid beneficiaries and low-income populations in the state;
- Improve health outcomes for Medicaid beneficiaries and other low-income populations in the state; *or*
- Increase the efficiency and quality of care for Medicaid beneficiaries and other low-income populations through initiatives to transform service delivery networks.<sup>1</sup>

The goals and hypotheses in Utah's amendment request along with the state's proposed policies fail to meet these criteria. Moreover, the state only includes hypotheses for two of the changes it

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<sup>1</sup> Centers for Medicare & Medicaid Services, accessed on September 26, 2017, <https://www.medicare.gov/medicaid/section-1115-demo/about-1115/index.html>.

proposes— the work requirement and higher copayment for non-emergent use of the emergency department (ED) failing to include hypotheses for six other changes Utah is proposing, including capping enrollment and imposing a 60-month lifetime limit on Medicaid coverage. The lack of a demonstration purpose for these changes is itself grounds for rejecting them.

### **Limiting Medicaid Enrollment Does Not Further the Objectives of Medicaid**

Utah proposes to limit enrollment in Medicaid in two ways: imposing a 60-month lifetime limit on how long low-income parents and adults without children, including those covered under the state’s new eligibility group, can receive Medicaid and limiting the number of adults without children in its new waiver eligibility group to 25,000 people to “stay within its appropriated budget.”

Medicaid is a key component of health reform’s continuum of coverage, which assures non-elderly adults access to coverage even if their income fluctuates or their job status changes over time. Imposing a lifetime limit would cause many to lose the coverage they depend on to lead independent lives. Moreover, a time limit on coverage in Medicaid has never been allowed. In September 2016, CMS denied Arizona’s request to impose a similar time limit in coverage and found that such a policy does “not support the objectives of the program.”<sup>2</sup>

Limiting enrollment to 25,000 adults without children in the new waiver eligibility group also doesn’t further the objectives of the Medicaid program as amended by the Affordable Care Act. Before the enactment of the ACA states, including Utah, were permitted to cap enrollment for adults not otherwise eligible for Medicaid so they could meet budget neutrality requirements. As we explained in our earlier comments, this is no longer the case since the ACA changed Medicaid law and expanded Medicaid to all non-elderly adults with incomes up to 138 percent of the poverty line. Expansions of coverage to adults who could be covered under Medicaid expansion should not be capped or limited by state appropriation as Utah proposes.

### **Job Search and Training Requirements Should Not Be Required as a Condition of Medicaid Eligibility**

Utah is proposing to require PCN beneficiaries to participate in training or job search activities as a condition of Medicaid eligibility. The proposal would require these beneficiaries to participate in online job search or training within the first three months of enrollment (or within the first three months after the policy is implemented) or lose eligibility for coverage. The proposal does not describe the specific activities or minimum participation requirements beneficiaries would be required to meet. Once beneficiaries have met the requirement, they would be eligible for Medicaid for 12 months.

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<sup>2</sup> CMS letter to the state of Arizona, September 30, 2016, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/az/Health-Care-Cost-Containment-System/az-hccc-demo-ext-09302016.pdf>.

As the Congressional Budget Office recently stated, "Under current law, states may not condition the receipt of Medicaid on any criteria related to a person's employment status."<sup>3</sup> The law defines the factors states can consider in defining who is eligible for Medicaid, and it does not require an individual to be working or seeking work as a permissible factor in determining Medicaid eligibility.<sup>4</sup> Several states have requested authority to impose work requirements in Medicaid; none has been approved.<sup>5</sup> The Secretary should reject Utah's request to impose work requirements first and foremost because they are contrary to the goal of Medicaid and would harm Utah's Medicaid beneficiaries. In addition, they would be administratively complex, costly, and likely result in inaccurate determinations of eligibility.

Work requirements are contrary to the core mission of Medicaid to provide health coverage to low-income people so they can get the health care services they need. Imposing a work search and training requirement to "encourage skills development" and "promote gainful employment," as stated in one of Utah's proposed hypotheses for this policy, does not improve health outcomes or expand access to care. Moreover, Utah has not expanded Medicaid, so the people subject to the work search and training requirement would be low-income parents and adults without children.

Research shows that most people with Medicaid coverage who can work do so, and for people who face major obstacles to employment, harsh requirements such as limiting their eligibility for coverage will not help overcome them. Nearly 8 in 10 non-disabled adults with Medicaid coverage live in working families, and nearly 60 percent are working themselves. Of those not working, more than one-third reported that illness or a disability was the primary reason, 28 percent reported that they were taking care of home or family, and 18 percent were in school.<sup>6</sup>

Physical and behavioral health conditions that limit an individual's ability to work are much more common among beneficiaries of public benefits than among the general population, research shows.<sup>7</sup> Many of those most in need of Medicaid coverage – those with substance use disorders, mental health conditions, and other disabilities – will be least able to meet the proposed requirement and are most likely to be harmed by it. The harmful effect of this proposal would be magnified if

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<sup>3</sup> 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>.

<sup>4</sup> Jane Perkins, "Medicaid Work Requirements: Legally Suspect," National Health Law Program, March 2017.

<sup>5</sup> MaryBeth Musumeci, "Medicaid and Work Requirements," Kaiser Family Foundation, March 23, 2017, <http://www.kff.org/medicaid/issue-brief/medicaid-and-work-requirements/>; *see also*: Department of Health and Human Services, Letter to Mr. Tom Betlach, September 30, 2016, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/az/Health-Care-Cost-Containment-System/az-hccc-demo-ext-09302016.pdf>.

<sup>6</sup> Rachel Garfield, Robin Rudowitz, and Anthony Damico, "Understanding the Intersection of Medicaid and Work," Kaiser Family Foundation, February 2017, <http://kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicicaid-and-work/>.

<sup>7</sup> Julia Paradise and Rachel Garfield, "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 2013, <http://www.kff.org/report-section/what-is-medicoids-impact-on-access-to-care-health-outcomes-and-quality-of-care-setting-the-record-straight-on-the-evidence-issue-brief/>.

Utah proposes to also impose this requirement on adults without dependent children who are chronically homeless, involved in the justice system, and/or in need of behavioral health treatment, as the proposal contemplates. Moreover, the state’s list of exemptions from the requirement that “may be considered in the future” is an implicit acknowledgement of how harmful this proposal will be for those who are unable to meet it.

The state also fails to describe how it will ensure that individuals are aware of the new requirement. State Medicaid agencies’ beneficiary contact information is frequently out of date. Vulnerable individuals and families could lose coverage if they are unaware that the requirement is going into effect.

In addition to potential beneficiary harm, Utah’s proposed work search and training requirement would be administratively burdensome and costly to implement. In order to track individuals who are not receiving SNAP, the state would be required to implement new procedures, system changes, and hire new eligibility workers. The state would also need to establish systems for verifying exemptions, screening, tracking, and sanctions.

The administrative challenges associated with implementing this work requirement would be more pronounced than in Utah’s implementation of SNAP. SNAP requires substantial interactions with participants, including interviews and frequent reporting. Medicaid currently has a streamlined eligibility determination process which relies heavily on online applications and electronic data verification. State experience implementing work requirements in TANF also suggests that adding similar requirements to Medicaid could cost states thousands of dollars per beneficiary.<sup>8</sup>

### **Emergency Department Copayments Would Deter Needed Care**

The proposal also requests authority to charge a \$25 copayment for non-emergent use of the ED in areas where there is “sufficient access to clinics and urgent care facilities.” Utah doesn’t define these areas in its request but rather to proposes to establish sufficient access standards through state rule-making, making it difficult to assess how the \$25 copayment would affect beneficiaries. Utah’s hypothesis for this policy is to deter “inappropriate utilization”; however, this hypothesis is inconsistent with a significant body of prior research showing that imposing copayments creates a barrier to accessing appropriate care. Moreover, under section 1916(f) of the Social Security Act, a state requesting a waiver of Medicaid limits on cost-sharing must meet the following five criteria:

1. The state’s proposal will test a previously untested use of copayments;
2. The waiver period cannot exceed two years;
3. The benefits to the enrollees are reasonably equivalent to the risks;
4. The proposal is based on a reasonable hypothesis to be tested in a methodologically sound manner; and
5. Beneficiary participation in the proposal is voluntary.

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<sup>8</sup> Gayle Hamilton et al., “National Evaluation of Welfare-to-Work Strategies: How Effective Are Different Welfare-to-Work Approaches? Five-Year Adult and Child Impacts for Eleven Programs,” Manpower Demonstration Research Corporation, December 2001, Table 13.1.

Utah's proposal does not meet the criteria for a waiver under section 1916(f); in fact, the state does not even acknowledge the criteria for a cost-sharing waiver in its proposal. Utah's proposal not only fails to meet the statutory criteria for a cost-sharing waiver, it would harm beneficiaries. The review of the literature on premiums and cost-sharing discussed above found that even small levels of cost sharing, in the range of \$1 to \$5, are associated with reduced use of care, including necessary services. The review cites numerous studies that have found that cost sharing has negative effects on individuals' abilities to access needed care and health outcomes, and increases financial burdens for families.<sup>9</sup>

### **Eligibility Changes Require Federal Approval**

Utah is requesting authority to make PCN eligibility changes through state rulemaking rather than submitting an amendment request for CMS approval. We are concerned that significant programmatic changes would be made without federal approval and oversight and without public comment at both the state and federal level. In addition to ensuring that any changes to Utah's waiver furthers the objectives of the Medicaid, CMS should review and approve all demonstration changes in its oversight capacity to ensure that tax dollars are being spent appropriately and the public input is obtained.

Finally, we are disappointed to see Utah reverse its earlier decision to end the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) waiver for 19 and 20 year olds. EPSDT delivers a robust pediatric benefit designed to meet the unique needs of children and adolescents. Waiving the benefit doesn't promote the objectives of the Medicaid program. We urge you not to approve this benefit reduction.

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

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Center for Reproductive Rights  
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First Focus  
Georgetown University Center for Children and Families  
HIV Medicine Association  
Justice in Aging  
National Association of Community Health Centers  
National Center for Law and Economic Justice  
National Health Care for the Homeless Council  
National Multiple Sclerosis Society  
United Way Worldwide

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<sup>9</sup> Op cit., Artiga, Ubri, and Zur 2017.

