

August 10, 2017

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

Dear Secretary Price:

The undersigned organizations write to provide their comments on the amendments Arkansas is proposing to its section 1115 demonstration project, known as Arkansas Works. Arkansas submitted its proposal on June 30, 2017, in the form of amendments to the current terms and conditions for Arkansas Works. Thank you for the opportunity to comment.

Arkansas Works has had very positive impacts on the health of the state's low-income population. Prior to Medicaid expansion in 2014, Arkansas had a nonelderly uninsurance rate of 19 percent. By 2015, the nonelderly uninsurance rate fell to 11 percent.¹

Recent analyses show that increased coverage has led to more regular care and better health for the newly insured. Researchers examining the impact of the Affordable Care Act (ACA) in Arkansas, Kentucky and Texas found improved health outcomes in Arkansas and Kentucky, which expanded Medicaid compared to Texas, which did not.²

The amendment proposes four "substantive changes" to the Arkansas Works Demonstration. We have significant concerns with three of the amendments as well as a change in how the state would determine eligibility in the case of a phase-out of the demonstration. We support the state's decision to eliminate the state's employer based premium assistance program. Research shows that these programs tend to have very low enrollment and are difficult to administer.³ We also note that Arkansas is asking for a five-year extension of Arkansas Works, but extensions of section 1115 waivers are generally for three years.

Lowering income eligibility for expansion adults to 100% of the federal poverty line would likely lead to a loss of coverage and is not allowable at enhanced match.

The state proposes to lower eligibility for Arkansas Works to 100 percent from 138 percent of the poverty line, beginning January 1, 2018. We urge you to reject this request as it would likely to lead to loss of coverage. Moreover, the state has not explained how the rollback of eligibility promotes the objectives of the Medicaid program.

Arkansas notes that individuals who lose Medicaid may enroll in qualified health plans (QHPs) supported by federal tax credits, but coverage in QHPs would be less affordable than Medicaid for current Arkansas Works beneficiaries. Research is clear that copayments and other forms of

¹ Hayes, Susan L. et al., "A Long Way in a Short Time: States' Progress on Health Care Coverage and Access, 2013–2015," The Commonwealth Fund, <http://www.commonwealthfund.org/publications/issue-briefs/2016/dec/state-progress-coverage-and-access>.

² Sommers, Benjamin D. et al. "Three-Year Impacts Of The Affordable Care Act: Improved Medical Care And Health Among Low-Income Adults," *Health Affairs*, (May 17, 2017), <http://content.healthaffairs.org/content/early/2017/05/15/hlthaff.2017.0293.full.pdf>

³ Alker, J et al. "Medicaid Premium Assistance Programs: What Information is Available About Wraparound Benefit and Cost-Sharing Coverage?" Kaiser Family Foundation, (December 2016).

cost-sharing can be barriers to care for low-income populations.⁴ Moreover, some beneficiaries may not even be eligible for premium tax credits, because they or a spouse have an offer of employer coverage they can't afford. Under the ACA, an offer of employer coverage bars people from premium tax credits as long as coverage for the employee costs less than 9.56 percent of household income. This is a huge share of income for someone with income just above the poverty line, and many low-wage workers rely on Medicaid when they can't afford employer coverage. Moreover, an offer considered affordable for the employee bars spouses from coverage even if coverage for the employee and the spouse costs more than 9.56 percent of household income as long as coverage is offered to the spouse.

We are hopeful that efforts to strengthen the individual market succeed. Even so, many beneficiaries who lose Medicaid coverage would likely not make the transition to private coverage even if they are eligible. Experience from other states such as Wisconsin, Connecticut and Rhode Island shows that even when efforts are made to assure a smooth transition, people get lost in the shuffle. In Rhode Island despite considerable efforts, 1,271 parents of the 6,574 (or 19 percent) who lost Medicaid when the state rolled back eligibility (on the theory that they could get premium tax credits) never applied for a premium tax credit.⁵ During the first round of a similar parent eligibility rollback in Connecticut only one in four parents losing Medicaid coverage enrolled in a QHP.⁶ In Wisconsin only one-third of those losing Medicaid coverage purchased QHPs although the state had predicted that 90 percent would.⁷

Finally, if Arkansas wants to pursue this approach it could only do so at its regular matching rate rather than the enhanced matching rates for expansions. CMS guidance issued in December 2012 states that enhanced matching funds are not available for a partial expansion.⁸

Imposing a work requirement is harmful and the Arkansas proposal should be rejected.

We urge you to deny Arkansas' request to add a work requirement as a condition of eligibility, because it fails to promote the objectives of the Medicaid program and would cause harm to beneficiaries. The state claims (p. 7) that this request is proposed to further the objectives of Title XIX by "promoting independence through employment" (p. 7). While a laudable goal, this is not an objective of Medicaid, which is intended to provide health care to low-income individuals. Moreover, last year, CMS denied Arizona's request to amend its demonstration to include similar work requirements on low-income adult Arizonans citing that work requirements "could

⁴Artiga, S. et al, "The Effects of Premiums and Cost Sharing on Low-Income Populations: Updated Review of Research Findings," Kaiser Family Foundation, June 2017, <http://www.kff.org/medicaid/issuebrief/the-effects-of-premiums-and-cost-sharing-on-low-income-populations-updated-review-of-research-findings/>.

⁵Kate Lewandowski, "Parent Eligibility Roll-Back in Rhode Island: Causes, Effects and Lessons Learned," <https://www.communitycatalyst.org/resources/publications/document/RI-parent-rollback-081215-KL.pdf?1439834245>

⁶Langer, S. et al. *Husky Program Coverage for Parents: Most Families Will Feel the Full Impact of Income Eligibility Cut Later In 2016* <http://www.ctvoices.org/sites/default/files/h16HUSKYIncomeEligibilityCut.pdf>

⁷"One-third who lost BadgerCare coverage bought plans on federal marketplace," *Journal Sentinel*, July 16, 2014. <http://archive.jsonline.com/business/almost-19000-badgercare-plus-recipients-enrolled-in-obamacare-b99312352z1-267339331.html>

⁸Centers for Medicare & Medicaid Services, "Frequently Asked Questions on Exchanges, Market Reforms and Medicaid," (December 10, 2012), <https://www.medicare.gov/federal-policy-guidance/downloads/FAQ-12-10-2012-Exchanges.pdf>

undermine access to care and do not support the objectives of the program.”⁹ Since Arkansas’ work requirement proposal is similar to Arizona’s, it is unlikely that Arkansas would be able to demonstrate how its proposal would support the objectives of Medicaid.

First and foremost, federal law does not permit work requirements in Medicaid. The Medicaid statute defines the factors states can consider in determining eligibility for Medicaid, such as income, citizenship and immigration status, and state residence. It does not include whether an individual is working, seeking work, or engaged in work-related activities as a permissible factor in determining Medicaid eligibility.¹⁰

Arkansas’ work requirement would apply to beneficiaries age 19 to 49 with some defined exemptions. According to the proposal, which lacks details on how the requirement would be implemented, beneficiaries must demonstrate that they are meeting the work requirement electronically and would be locked out of coverage until the following plan year if they do not meet the work requirement for any three months in the current plan year. This is a very punitive and arbitrary approach that would harm people and make their health worse.

As noted, work requirements are contrary to the goal of Medicaid which is to offer health coverage to those without access to care. Most people on Medicaid who can work, do so. For people who face major obstacles to employment, harsh stipulations such as limiting their eligibility for coverage or locking them out for a period of time 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.¹¹

Second, the proposal creates burdensome barriers for beneficiaries. While the proposal does exempt some individuals from the work requirement and the related lock out provision, it can be difficult and burdensome for people with disabilities, family care responsibilities, or other significant problems or limitations to prove to a state bureaucracy that they are unable to work. State Temporary Assistance for Needy Families (TANF) programs have failed to implement systems that successfully determine which individuals should be exempt from work requirements. Studies show that TANF recipients who are sanctioned for not meeting a work requirement have significantly higher rates of disability than those who are not sanctioned.¹²

Third, imposing a work requirement would not likely increase employment even if allowable. TANF work requirements failed to increase long-term employment or reduce poverty among

⁹ Centers for Medicare & Medicaid Services, Letter to Arizona, September 30, 2016, <https://www.medicare.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/az/Health-Care-Cost-Containment-System/az-hccc-demo-ext-09302016.pdf>.

¹⁰ Jane Perkins, “Medicaid Work Requirements: Legally Suspect,” National Health Law Program, (March 2017).

¹¹ 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-medicare-and-work/>.

¹² LaDonna Pavetti, Michelle Derr, and Emily Sama Martin, “Assisting TANF Recipients Living with Disabilities to Obtain and Maintain Employment: Conducting In-Depth Assessments,” Mathematica Policy Research, Inc., February 2008.

those subject to the requirement; the same result would be likely in Medicaid.¹³ The amendment would also harm those who are working. The complex rules and required monthly tracking would likely lead to errors and coverage terminations for those who are working or participating in a job training program. If a beneficiary does not understand that they have to report participation or an eligibility worker fails to properly record whether each month counts against a beneficiary's time limit, working individuals may erroneously lose coverage for as many as nine months and face additional burdens in proving their eligibility.

Fourth, Arkansas' proposal would compromise access to EPSDT for 19- and 20-year old beneficiaries. Since 19 and 20-year-old enrollees are not exempt from the work requirements, they could lose access to the full EPSDT benefit to which they are entitled if they lose coverage due to the work requirement. In the current model, 19 and 20-year olds can access EPSDT wraparound services through the Medicaid fee-for-service program. The lock-out period increases the likelihood that these enrollees would lose access to EPSDT if they become ineligible.

Fifth, lockouts are bad health policy. Being locked out of coverage as a result of the work requirement could lead to a deterioration in health for some people, especially those with chronic conditions such as hypertension, diabetes, and mental health conditions which could go untreated. Limiting access to needed care and medication for individuals with treatable conditions would likely cause these conditions to worsen and result in greater use of the emergency room.

As a result, Arkansas's proposed lockout could make it harder for some of the affected low income adults to become or remain employed. For some of these individuals, access to health services could be the primary pathway to employment; if blocked from Medicaid coverage, they could find it much more difficult to find and hold a job. Ohio's Department of Medicaid found that Medicaid can reduce health barriers to finding or holding a job for beneficiaries who are not working: three-quarters of beneficiaries who received care under the state's Medicaid expansion and who were looking for work reported that Medicaid made it easier to do so. For those who were currently working, more than half said that Medicaid made it easier to keep their jobs.¹⁴

Eliminating retroactive eligibility is harmful and under no circumstances should be allowed "retroactively" to July 1, 2017.

We urge you to deny the request for a waiver of retroactive eligibility. Arkansas' request to waive this requirement puts newly eligible beneficiaries at risk of medical debt and providers at risk for bad debt. Retroactive eligibility is an important protection for beneficiaries who are in a financially vulnerable position.

The state makes the request with no valid explanation as to why retroactive eligibility should be waived or how such a waiver would further the purposes of the Medicaid program. In response to numerous public comments received at the state level that opposed the change, the state responds "Arkansas believes that the need for retroactive coverage is limited and that waiving

¹³ LaDonna Pavetti, "Work Requirements Don't Cut Poverty, Evidence Shows," Center on Budget and Policy Priorities, June 2016.

¹⁴ Ohio Department of Medicaid, "Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly," <http://medicaid.ohio.gov/portals/0/resources/reports/annual/group-viii-assessment.pdf>

this provision will not have a large impact on uncompensated care costs” (See Appendix C, p. 5) but provides no data to support this assertion.

The existing waiver agreement established a carefully constructed phasing in of this request after the state had met certain conditions such as clearing a backlog of applications and expanded presumptive eligibility. It is our understanding that presumptive eligibility is not in place in Arkansas and thus there is no compelling reason to change the current policy that CMS established in the current terms and conditions.

In the event of a Phase-Out of the Demonstration the state would not conduct ex parte eligibility reviews for those losing coverage.

This request should not be approved as it would harm low-income people and serves no demonstration purpose. At p. 10 of the application, the state strikes the process by which it would be required to check Medicaid beneficiaries who would lose coverage in the event of a phase out of the demonstration for their eligibility for other categories of Medicaid eligibility. Again no explanation is given for the elimination of this important protection nor is a demonstration purpose established.

There is a very strong likelihood that some Arkansas Works beneficiaries would be eligible for Medicaid for other reasons (i.e. pregnancy or disability). Without review of their eligibility, they would face the prospect of being uninsured or underinsured if their eligibility is not redetermined. When Rhode Island terminated Medicaid coverage for parents over 138% of FPL in 2014, out of 6,574 affected parents, 1,546 (approximately 24 percent) remained eligible for Medicaid when their eligibility was reviewed.¹⁵

Thank you for your willingness to consider our comments. If you need any further information, please contact Joan Alker (jca25@georgetown.edu) or Judith Solomon (Solomon@cbpp.org).

Center on Budget and Policy Priorities
Center for Public Policy Priorities, Texas
Community Catalyst
Children’s Defense Fund
Disability Rights Arkansas, Inc.
First Focus
Georgetown University Center for Children and Families
NAMI Arkansas
National Alliance on Mental Illness
National Center for Law and Economic Justice
National Health Care for the Homeless Council
National Health Law Program
National Multiple Sclerosis Society

¹⁵Kate Lewandowski, “Parent Eligibility Roll-Back in Rhode Island: Causes, Effects and Lessons Learned,” <https://www.communitycatalyst.org/resources/publications/document/RI-parent-rollback-081215-KL.pdf?1439834245>