January 27, 2018
The Honorable Alex Azar, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Azar,

The undersigned organizations appreciate the opportunity to comment on the KanCare Section 1115 demonstration waiver extension application. Our comments highlight several provisions of the state's unprecedented request that would cause harm for vulnerable low-income children and families and young adults. These provisions do not further the objectives of the Medicaid program and should not be approved.

In particular, we are strongly opposed to the state's request to impose a 36-month lifetime limit on Medicaid coverage and a work requirement on parents and caretaker relatives and youth aging out of foster care who are eligible for Medicaid until age 26. The state proposes to impose this 36-month lifetime limit on these vulnerable populations even if they have complied with the work requirement. If they are deemed to be out of compliance with the work requirement, their Medicaid eligibility would be limited to just *three months*.

The income eligibility limit for parents subject to these draconian provisions is a mere 38 percent of the federal poverty line–which is less than $8,000 a year for a family of three. These are among the poorest and most vulnerable families in Kansas – families struggling with homelessness, residential instability, and higher rates of disability and illness, as well as youth aging out of foster care -- another very vulnerable population. Many parents would lose access to needed health insurance and the vast majority would likely become uninsured. Children are also at risk as we outline below.

The state's proposal includes a vague reference to an exceptions process for "members who have certain behavioral health conditions" (P. 11) but this doesn't provide any guarantee that parents suffering from mental illness—such as depression—or addiction would be able to maintain their benefits based on an exemption. Parents with mental illness and substance use disorders could lose access to Medicaid as well as any prospects of receiving treatment for their addiction or mental illness. Moreover, the proposal only exempts persons on Medicaid who are also receiving Supplemental Security Income. This approach will not result in exemptions for all people with disabilities, some of whom, for example, could be in the process of obtaining a disability determination.

Our specific comments are as follows:

The work requirement is misguided, will not achieve the state's goals and does not further the objectives of the Medicaid program. Time limits have never been permitted in the Medicaid program and are not compatible with the goals of Medicaid.

Kansas's proposal would limit eligibility to 3 months in a 36-month period for those found not to comply with the work requirement and 36 months for those who do comply. The state would have flexibility to authorize an additional month of eligibility beyond the three months in

"exceptional circumstances" which appear to be limited to natural disasters. These arbitrary limits would result in parents and young adults being unable to access the health care they need and expose them to physical and economic hardship.

Federal law does not permit work requirements or time limits in Medicaid. 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.[1] We are aware that you do not share this interpretation of the law as made clear in recent guidance,[2] but respectfully disagree. The guidance attempts to justify a work requirement by misinterpreting research showing that people with jobs have better health and higher incomes than people without jobs, and claiming that requiring people to work will make them healthy. However, the causal relationship is more likely in the other direction — namely, that healthy people are likelier to have jobs than those in poor health.[3]

Work requirements are contrary to the core mission of Medicaid, which is to provide health coverage to low-income people so they can get the health care services they need. Research shows that most people with Medicaid coverage who can work do so. For people who face major obstacles to employment, harsh requirements such as limiting their eligibility for health coverage will not help overcome them. In Kansas, there are 107,000 adults with Medicaid coverage who are under 65, who are not receiving disability benefits from the Social Security Administration. Eighty-six percent of those adults live in a family with at least one worker, and nearly 70 percent are working themselves. Of those who are not working, 42 percent say they can't work due to an illness or a disability. Based on national studies, it's likely that a large majority of the remaining adults who aren't working have other barriers to work, such as caretaker responsibilities and enrollment in school.[4] These barriers are even likelier for the vulnerable populations in Kansas that the state seeks to include in this request given their low incomes and the fact they are by definition caring for children.

The state asserts that the Temporary Assistance to Needy Families (TANF) program in Kansas "has been successful in increasing the number of Kansans with new jobs" (P. 9) This assertion is not supported by evidence.

To the contrary, an analysis of state data on the employment and earnings of Kansas parents leaving TANF cash assistance between October 2011 and March 2015 shows that the vast majority of the parents in these families worked before and after exiting TANF, but most found it difficult to find steady work and secure family-sustaining earnings.[5] For those exiting due to work-related sanctions, TANF policies left these families without access to cash assistance to draw on when they hit hard times.

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[1]Jane Perkins, "Medicaid Work Requirements: Legally Suspect," National Health Law Program, March 2017
[2]Centers for Medicare and Medicaid Services, "Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries" SMD 18-002, January 11, 2018.
[3] For example, one of the studies cited in the 1/11/18 SMD explicitly states that "these findings do not necessarily imply that income has a *causal* effect on life expectancy" Chetty, Raj et al. *The Association Between Income and Life Expectancy in The United States, 2001-2014* Journal of the American Medical Association, April 26, 2016.
[4] Garfield, R et al. *Understanding the Intersection of Medicaid and Work*, Kaiser Family Foundation, updated January 5, 2018.
[5] Mitchell, Tazra and LaDonna Pavetti, "Study Praising Kansas' Harsh TANF Work Penalties Is Fundamentally Flawed," Center on Budget and Policy Priorities, January 23, 2018, https://www.cbpp.org/research/family-income-support/study-praising-kansas-harsh-tanf-work-penalties-is-fundamentally

Although some parents' earnings rose after leaving TANF, the majority remained far below the federal poverty line. For the parents exiting due to work sanctions for whom we have four years of post-exit data, their median earnings were just $1,601 (8 percent of the poverty line) in the year after exit and $2,175 (11 percent of poverty) in the fourth year after exit. By the fourth year after exit, nearly 7 in 10 of these parents had either no earnings or very low earnings; only 17 percent had incomes above the poverty line that year.

Moreover, the rate of employment did not significantly change before and after the TANF work requirement went into effect, indicating that those who could work were likely already working. The vast majority of parents who exited TANF due to a work sanction worked at some point in the four quarters before, during, and after they lost their benefits. Employment level remained the same before and after exit: sixty-seven percent of these parents worked in the year before they exited TANF, while 68 percent worked in the year after exit. [6]

The proposal also does nothing to increase the availability of appropriate jobs across the state, or to provide Medicaid beneficiaries with transportation, childcare, or education. In addition, the state also does not appear to propose an expansion of job search services or training for people (other than as an incentive for those in the MediKan program to stop pursuing SSI/SSDI benefits) who may need assistance to find and hold a job. Parents and young adults living in rural areas without job opportunities or transportation, or American Indians living on a reservation with few available jobs, could lose their Medicaid benefits under this proposal.

The proposal would also harm those who *are* working. Tracking hours worked is an administratively complex task that would likely lead to errors and coverage terminations for those who are working or participating in a job training program, and could cause working individuals to erroneously lose coverage and face additional burdens in proving their eligibility. Workers whose hours vary, such as many hourly and seasonal workers, would be particularly likely to lose health coverage even if they are meeting the policy's requirements.

Kansas' proposal could end up keeping people from gaining employment, because without health services, it could be more difficult for them to find and hold a job. Ohio's Department of Medicaid found that three-quarters of Medicaid expansion enrollees who were looking for work reported that Medicaid made it easier to do so, and more than half of those who were working said that Medicaid made it easier to keep their jobs. [7]

Cutting parents off will also hurt their children.

Research is clear that when parents have health insurance their children are more likely to be insured as well.[8] Children whose parents are insured are almost always insured themselves, whereas

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[6] Ibid.
[7] 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.
[8] See Hudson, Julie and Asako Moriya, "Medicaid Expansion for Adults Had Measurable "Welcome Mat" Effects on Their Children," *Health Affairs* September, 20117.

21.6 percent of children whose parents are uninsured are also uninsured.[9] As this proposal will likely result in more parents becoming uninsured, their children are also at greater risk of becoming uninsured.

Moreover, the provision of Medicaid coverage to low-income parents helps parents afford the health care they need and improves their mental health status[10] — the loss of Medicaid coverage will reverse these gains and inhibit vulnerable parents from improving the family's economic fortunes, putting them at risk for medical debt and even bankruptcy.

Moreover, because eligibility for parents is so low in Kansas it is hard to contemplate a situation where a parent complies with the work requirement and remains eligible for Medicaid.

The likelihood that these parents will receive an affordable offer of employer-sponsored coverage is very low, thus they will most likely fall into the coverage gap and become uninsured if their income does not rise above the poverty level.[11]

Kansas' proposal doesn't adequately address implementation of a work requirement.

Even if a work requirement was allowable in Medicaid, Kansas' proposal should be rejected because the state has not provided assurances that the proposed requirement will be administered fairly and effectively. Effective implementation would be burdensome and costly, requiring new procedures, system changes, and considerable time from eligibility workers. The state must also establish systems for verifying exemptions, screening, tracking, and sanctions.

The administrative challenges associated with implementing work requirements and time limits would be more pronounced in Medicaid than SNAP and TANF, which have struggled with implementation. SNAP and TANF require substantial interactions with participants, including interviews and frequent reporting. Even with this more intensive case management model, states have encountered obstacles to accurately applying these policies. 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.

States' administration of the SNAP time limit was error prone, applied inaccurately, and led to eligible individuals being denied benefits. When first implemented, FNS did a study and found that policies were "difficult to administer and too burdensome for the States." One of the biggest shifts was tracking benefit receipt over time, rather than circumstances in a single month, which was a fundamental change to program administration. Kansas would likely face similar, if not even more significant challenges implementing a work requirement in Medicaid, which would jeopardize needed care for beneficiaries.

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[9] Karpman, M. and G. Kenney. "Health Insurance Coverage for Children and Parents: Changes Between 2013 and 2017" Urban Institute, September 7, 2017.

[10] McMorrow, Stacey et al, "Medicaid Expansion Increased Coverage, Improved Affordability, and Reduced Distress for Low-Income Parents," *Health Affairs May 2017.*

[11] Garfield et al op cit.

The state ignored a preponderance of public comments received at the state level urging them to drop the work requirement.

In the summary of the public comments received and summarized by the state's contractor (Wichita State University) it is noted that: "The largest number of comments were related to the work requirement …Many comments were in opposition and requested the State withdraw the request." (P. 71) The state made no attempt to respond to these comments.

The proposed Independence Accounts are ill-defined and could pose risks for beneficiaries.

The State proposes an optional Independence Account (PPS 14-15) for persons receiving transitional Medical assistance, which would act as a health savings account. The state will fund the Independence Account for a year, contingent on continued employment for all 12 months. At the end of the eligibility period, members would receive a debit card to access the funds for specific items approved by CMS. *Beneficiaries who opted into this account, however, would give up their ability to reenroll for a period of time as determined by the state.* The time period is not specified in the waiver application.

CMS should not approve this request. The state has not provided sufficient detail to provide assurances that such an account serves any demonstration purpose. Indeed, experience from other states that have implemented health savings accounts has shown that health savings accounts are often costly and not well understood by beneficiaries.[12] Moreover, asking beneficiaries to waive their future right to enroll in Medicaid is in conflict with the Medicaid statutory guarantee to coverage for eligible beneficiaries.

The proposal itself is poorly drafted, internally inconsistent, does not provide necessary information and should not have been certified as complete.

The proposal provides inadequate information about the costs of implementing these new onerous provisions and lacks any estimate of how many parents, children or young adults might lose coverage or be affected. Other deficiencies include:

- The proposal does not include a request to waive provisions of Medicaid law to impose time limits although they are clearly described as a feature of the proposal in Figure 9 (P. 11).
- Similarly, the proposal describes new Independence Accounts that would be established (P. 14) in a limited geographic area but there is no request to waive "statewideness" nor an Expenditure Authority request to authorize funding for these accounts.

For all of these reasons, we urge you to reject these aspects of Kansas' request. Thank you for your consideration of our comments. If you need any additional information, please contact Joan Alker (jca25@georgetown.edu) or Judith Solomon (Solomon@cbpp.org).

[12] Musumeci, M. et al. *An Early Look at Medicaid Expansion Waiver Implementation in Michigan and* Indiana January 31, 2017. Available at https://www.kff.org/medicaid/issue-brief/an-early-look-at-medicaid-expansion-waiver-implementation-in-michigan-and-indiana/

American Psychological Association
Center for Autism and Related Disorders
Center on Budget and Policy Priorities
Children's Defense Fund
Epilepsy Foundation
Family Voices
First Focus
Georgetown University Center for Children and Families
HIV Medicine Association
Justice in Aging
Kansas Chapter, American Academy of Pediatrics
National Academy of Elder Law Attorneys
National Association for Children's Behavioral Health
National Center for Law and Economic Justice
National Council for Behavioral Health
National Employment Law Project
National Health Care for the Homeless Council
National Multiple Sclerosis Society
National Partnership for Women & Families