

September 26, 2018

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

RE: South Dakota Career Connector 1115 Demonstration Waiver Application

Dear Secretary Azar,

The undersigned organizations appreciate the opportunity to comment on South Dakota's Section 1115 Medicaid demonstration, or "waiver" application known as the "South Dakota Career Connector." South Dakota proposes to take Medicaid coverage away from parents between the ages of 19 and 59 with incomes at or below 50 percent of the federal poverty line (about \$866 per month for a family of three) who don't meet a work requirement. The state also proposes to lock these parents out of coverage for at least 90 days if they don't comply with the new rules.

South Dakota's work requirement proposal is especially harsh. The state would not only take coverage away from parents in deep poverty who do not meet the work requirement and lock them out of coverage for at least 90 days. It would impose this harsh new policy on all parents except for those with an infant under the age of one (or who are pregnant or unable to work due to cancer or other serious or terminal illness).

In the recent *Stewart v. Azar* decision vacating approval of Kentucky's waiver proposal to take coverage away from parents and other adults who don't meet a work requirement, the court found that a "central objective" of Medicaid is to provide coverage to poor and low-income people.¹ South Dakota's proposal would take coverage away from very poor parents even though the State is required to cover these parents under federal Medicaid law, and like Kentucky's proposal, fails to promote Medicaid's objectives.²

We urge you to reject South Dakota's proposal as it will lead to loss of coverage for parents in deep poverty. The state's proposals to provide Transitional Medical Assistance (TMA) and premium assistance will only postpone the onset of uninsurance for some parents. By taking coverage away from parents in deep poverty, the state's proposal is incompatible with a central objective of the Medicaid program—to make coverage available to very low-income parents whom the state must cover under federal Medicaid law. Medicaid coverage protects those parents and their families from being uninsured and experiencing even greater financial hardship. Taking their coverage away will eliminate that protection, making it even more difficult for them to find and keep employment.

¹ Memorandum Opinion, *Stewart v. Azar*, Civil Action No. 1:18-cv-152 (JEB), District Court for the District of Columbia, June 29, 2018.

² §1902(a)(10)(A)(i)(I) of the Social Security Act

South Dakota’s Proposal Would Cause Mandatory Medicaid Parents to Lose Coverage

South Dakota has not taken up the Affordable Care Act’s (ACA) expansion of Medicaid that covers newly eligible parents and other adults with incomes up to 138 percent of poverty. Instead, it covers only the parents who must be covered under federal law—those with dependent children with incomes at or below 50 percent of poverty. The state projects that about 1,300 of these parents will be subject to work requirements, and that of those, about 15 percent—about 200—will lose their coverage each year. The proposal does not provide a basis for this projection.

The state proposes to initially impose the work requirements on residents of two counties (Minnehaha and Pennington) but it leaves the door open to expand the requirements to other areas at a later date, which would increase the number of parents losing coverage.

South Dakota claims that most parents who lose Medicaid coverage under this proposal will do so because of increased income that puts them over the state’s eligibility threshold, offering no support for this estimate. The State expects that those parents will, upon losing their Medicaid coverage, continue to be covered for 12 months through TMA and for another 12 months through premium assistance. Even assuming seamless coverage for an additional two years—an unrealistic assumption—at the end of this period working poor parents who have lost their Medicaid coverage will likely become uninsured.

Since South Dakota has not taken up the ACA Medicaid expansion for parents and other adults, parents with incomes between 50 and 100 percent of poverty (\$1,732 per month) would be in a coverage gap. Parents who are directly or indirectly pushed into this coverage gap are very likely to become uninsured. Low-wage employers are less likely to offer health insurance to their employees, and low-wage employees at firms that do offer coverage would likely be unable to afford the monthly premiums. Only 14 percent of persons living below the poverty line in South Dakota have employer-sponsored insurance.³

The State “anticipates” that only a “small” number of parents will lose Medicaid coverage because they didn’t comply with the work requirement and associated reporting requirements. The proposal does not explain what “small” means and provides no data to support its claim. As discussed below, there is considerable evidence that reporting requirements, red tape, and other administrative burdens effectively drive coverage losses. These parents would immediately become uninsured, regardless of whether they remain in deep poverty, and regardless of their need for medical care.

Many South Dakota Parents Who Are Working or Qualify for an Exemption Will Lose Coverage

Ostensibly, the target population for South Dakota’s work requirement is people who aren’t working and who don’t qualify for an exemption. But large numbers of parents who should remain

³ Kaiser Family Foundation, “Health Insurance Coverage of the Nonelderly (0-64) with Incomes below 100% Federal Poverty Level (FPL),” 2016, <https://www.kff.org/other/state-indicator/nonelderly-up-to-139-fpl/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22south-dakota%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

eligible, because they are already working or should be exempt, will likely lose coverage. Most of these parents will become uninsured.

- **Increased red tape will cause many working parents to lose coverage.** South Dakota would require parents who are not exempt to demonstrate they are working or engaged in work-related activities for 80 hours a month. The proposal is silent on how parents are to demonstrate compliance, but at a minimum they will have to report monthly. The proposal ignores substantial evidence that reporting requirements, in and of themselves, can result in the loss of Medicaid eligibility by individuals who otherwise meet eligibility requirements.

Kaiser Family Foundation researchers recently estimated that nationwide work requirements would cause disenrollment ranging from 1.4 million to 4 million people among the 23.5 million adults who are under 65 and not receiving SSI based on disability. Most of those losing coverage would be people who are already working or should be exempt.⁴ To reach their estimates on the impact of work requirements on people who should remain eligible, Kaiser researchers looked at evidence on how administrative requirements affect Medicaid enrollment, which shows that increased red tape causes eligible people to lose coverage. Kaiser researchers applied a low disenrollment rate of 5 percent and a high of 15 percent to the groups of people who are already working or should be exempt based on this evidence.

- **Many parents who should qualify for an exemption may not get one.** Under South Dakota's proposal, parents are exempt from work requirements if they are pregnant; primary caretakers of a dependent child under the age of 1 or an elderly or disabled family member; unable to work due to cancer or other serious or terminal illness; or full-time students. In addition, parents are exempt if they meet the SNAP or TANF work requirements. As noted, limiting the exemption for parents with dependent children to those with infants under age 1 is especially harsh. But even that narrow exemption may fail to protect those parents from losing coverage, because of reporting and administrative errors in identifying and exempting parents who qualify.

Evidence from SNAP and TANF shows the difficulty of screening for exemptions from work requirements. A 2016 investigation by the USDA Office of the Inspector General found that some states were failing to administer the SNAP work requirements effectively and accurately. The report highlighted examples of states improperly terminating SNAP benefits for individuals who qualified for exemptions. Similarly, families sanctioned due to noncompliance with TANF requirements were more likely than other families receiving TANF to have barriers that kept them from working, including having a child with a chronic illness or disability.⁵ The state's proposal does not explain how the state will minimize and, when appropriate, correct such administrative errors to ensure that parents do not lose coverage.

⁴ Rachel Garfield, Robin Rudowitz, and MaryBeth Musumeci, "Implications of a Medicaid Work Requirement: National Estimates of Potential Coverage Losses," Kaiser Family Foundation, June 27, 2018, <https://www.kff.org/medicaid/issue-brief/implications-of-a-medicaid-work-requirement-national-estimates-of-potential-coverage-losses/>.

⁵ 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>

Early Evidence from Arkansas Suggests Coverage Loss from South Dakota’s Work Requirement Could Be Even Greater Than the State Predicts

Arkansas is the first state to implement Medicaid work requirements, and the experience of Medicaid beneficiaries there demonstrates how these policies will lead to coverage loss. Of the first cohort of almost 26,000 beneficiaries subject to the work requirements in June, the state determined that more than 15,000 were exempt from reporting based on information in their case files, and over 2,000 beneficiaries reported exemptions after being informed about the work requirement by the state. Over 4,300 beneficiaries lost coverage on September 1st, likely becoming uninsured because they didn’t report their work or work-related activities. These individuals represent about 17 percent of this first cohort of Medicaid beneficiaries subject to the work requirement.

Taking Coverage Away from Parents Who Don’t Meet South Dakota’s Proposed Work Requirement Won’t Promote Employment

Connecting low-income parents to work and job training opportunities is a worthwhile goal, but South Dakota’s proposal isn’t likely to achieve it. First, the proposal provides no new resources to address the real barriers to employment faced by low-income parents, such as a lack of access to childcare, job training and transportation. Instead, it offers only to “facilitate referrals to community and support services” and referral to another state agency for assistance with child care costs. The proposal emphasizes that these support services “are not funded by Medicaid expenditures” but it does not explain how these services would be financed.

Second, many working parents won’t be able to meet the 80 hours per month requirement every month because they work in industries such as retail, food services, home health and construction, where the hours can be volatile, exceeding the minimum in one month and failing to meet it in the next. In addition, the jobs in these industries typically offer little flexibility to accommodate illness, interruptions in child care, breakdowns in transportation, or family emergencies.

The state claims that its proposal is “designed ... to allow anyone making a good faith effort to comply with the program to not lose coverage due to non-compliance” because it does not impose “one-size fits all compliance requirements.” (Page 10) Yet it also states that “Participants must meet minimum training and/or work requirement. To meet the requirements of the program participants must either work at least 80 hours per month or achieve monthly milestones in their individualized plan.” (Page 4) Whatever the state’s intended policy, there is no evidence that conditioning Medicaid eligibility for parents in deep poverty on compliance is likely to increase employment, much less employment that offers affordable health insurance coverage.

South Dakota’s Proposal Will Harm Children and Families

While South Dakota’s proposal is targeted at parents in deep poverty with children older than 1, children will also be affected. That’s because losing Medicaid coverage hurts not just parents, but their children too. The proposal does not recognize the risk for children of affected parents, much less explain how the state plans to ensure that these children continue to be enrolled in Medicaid and obtain the care that they need even if the parent loses Medicaid and becomes uninsured.

As discussed above, the state’s proposal does not guarantee necessary support services such as child care, transportation, and job training to parents who would be required to work or engage in work-related activities. The absence of these supports poses a serious barrier to low-income parents—and especially those in deep poverty—in securing meaningful employment with an offer of affordable health insurance. Without these supports, parents are likely to lose Medicaid, and when parents lose coverage, children are less likely to get the care they need.

Research confirms that when parents have health insurance, children’s access to care improves. For example, increases in adult Medicaid eligibility are associated with a greater likelihood of children in low-income families receiving preventive care, according to a recent study, which finds that children are 29 percentage points more likely to have an annual well-child visit if their parents are enrolled in Medicaid.⁶

Losing coverage also makes children and their families less financially secure, as they would be at risk of going without needed medical care and incurring significant medical debt for any care they do receive. This undermines their financial stability and economic prospects. Medicaid reduces financial barriers to obtaining needed care and enhances economic security.⁷ Indeed, Medicaid is the third-largest anti-poverty program in the United States and kept at least 2.6 million Americans from falling into poverty nationwide in 2010.⁸ Financial insecurity doesn’t just affect adults — children’s development can be negatively affected by issues resulting from poverty, such as toxic stress.⁹

Finally, South Dakota’s proposal also puts children’s short- and long-term health and development at risk. Children’s health and development relies in part on their parents’ health and well-being as children’s relationships with their parents can influence their brain structure and function, and in turn, help mitigate the negative effects of trauma or adverse childhood experiences, including poverty.¹⁰ For example, maternal depression can negatively affect children’s cognitive and social-emotional development as well as their educational and employment opportunities.¹¹ Medicaid coverage also has a significant positive impact on children’s long-term outcomes. Children covered by Medicaid during their childhood have better health as adults, with fewer hospitalizations

⁶ Maya Venkataramani, Craig Evan Pollack, Eric T. Roberts, “Spillover Effects of Adult Medicaid Expansions on Children’s Use of Preventive Services,” *Pediatrics*, December 2017, <http://pediatrics.aappublications.org/content/140/6/e20170953>

⁷ For an overview of the research findings, see “Medicaid: How Does It Provide Economic Security for Families?” (Washington: Georgetown University Center for Children and Families, March 2017), available at <https://ccf.georgetown.edu/wp-content/uploads/2017/03/Medicaid-and-Economic-Security.pdf>.

⁸ B.D. Sommers and D. Oellrich. “The Poverty Reducing Effect of Medicaid” *Journal of Health Economics* 32, no. 5, (September 2013).

⁹ American Academy of Pediatrics Council on Community Pediatrics, “Poverty and Child Health in the United States,” *Pediatrics*, April 2016, <http://pediatrics.aappublications.org/content/pediatrics/early/2016/03/07/peds.2016-0339.full.pdf>

¹⁰ Georgetown University’s Center for Children and Families, “Healthy Parents and Caregivers are Essential to Children’s Healthy Development,” December 2016, <https://ccf.georgetown.edu/wp-content/uploads/2016/12/Parents-and-Caregivers-12-12.pdf>

¹¹ Joan Alker and Alisa Chester, “Medicaid Expansion Promotes Children’s Development and Family Success by Treating Maternal Depression,” July 21, 2016, <https://ccf.georgetown.edu/2016/07/21/medicaid-expansion-promotes-childrens-development-and-family-success-by-treating-maternal-depression/>

and emergency room visits.¹² Moreover, children covered by Medicaid are more likely to graduate from high school and college, have higher wages, and pay more in taxes.¹³

In short, work requirements that result in the loss of Medicaid coverage for low-income parents put the children of those parents at risk. The South Dakota proposal does not acknowledge this risk, even though it targets parents with children as young as one year old. These children are already at considerable risk due to the deep poverty in which their families find themselves. This proposal will only increase their jeopardy.

South Dakota's Budget Neutrality Submission is Incomplete and Obscures Inevitable Coverage Losses That Will Result from the Proposal

As mentioned above, the state projects that 15 percent of parents affected by the work requirements will lose Medicaid each year. (The state projects no coverage losses for children which, as explained above, is likely a flawed assumption.). The state estimates in its cover letter and on page 10 of the proposal that “approximately 15 percent will become ineligible annually due to increased income or individuals choosing not to participate.” The state expects that most beneficiaries who lose coverage will do so due to increased income, and that only a “small number of individuals will lose coverage... as a result of choosing not to participate in the program.” It provides no evidence to support this contention.

Even if the state is correct that parents would lose coverage based on increased income rather than red tape or an inability to comply due to a lack of child care or other reason, such parents would be unable to afford any private insurance options they might have and would become uninsured. The state references a study from 2015 that indicates that most employers in South Dakota offer coverage without any citation. Data from the Kaiser Family Foundation suggest otherwise; only 14 percent of nonelderly adults below poverty in South Dakota are covered by employer-sponsored insurance (ESI) (lower than the national average of 16 percent)¹⁴.

While it is not clear where the 15 percent estimate comes from, and while the state's underlying assumptions are likely flawed, the state has nonetheless projected coverage losses resulting from the imposition of work requirements. The budget neutrality projections, however, show no change in projected enrollment for the parent and caretaker relative group between the “Without Waiver Projection” (Table 2) and the “With Waiver” Projection (Table 3) scenarios. Projected enrollment in each case is identical for each year over the 5-year demonstration period. It cannot be true that

¹² Laura Wherry *et al.*, “Childhood Medicaid Coverage and Later Life Health Care Utilization,” National Bureau of Economic Research, February 2015, <http://www.nber.org/papers/w20929.pdf>

¹³ Sarah Cohodes *et al.*, “The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions,” National Bureau of Economic Research, October 2014, <http://www.nber.org/papers/w20178.pdf>; David Brown, Amanda Kowalski, and Ithai Lurie, “Medicaid as an Investment in Children: What is the Long-Term Impact on Tax Receipts?” National Bureau of Economic Research, January 2015, <http://www.nber.org/papers/w20835.pdf>.

¹⁴ Kaiser Family Foundation, “Health Insurance Coverage of Adults 19-64 Living in Poverty (under 100% FPL)”, available at <https://www.kff.org/other/state-indicator/poor-adults/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22south-dakota%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

(1) 15 percent of targeted parents will lose coverage each year and (2) enrollment of parents will not change each year.

Another discrepancy between the text of the proposal and the budget neutrality projections is with respect to the state's projections of the number of parents who will be subject to work requirements each year. In multiple places, the state projects that 1,300 parents will be affected. Yet the "With Waiver" assumptions for the Premium Assistance component of the demonstration, on an annualized basis, translates to 2,350 persons with whole year coverage in the first year, phasing down to 1,970 in the fifth year (Table 3). By the state's own design, the new premium assistance component will only be available to a small subset of those subject to the new rules (beneficiaries must have incomes that fall between 51 percent and 99 percent of the poverty line, have access to ESI, and receive a well adult and a preventative dental visit in that year to be eligible). Since the premium assistance benefit will only apply to a subset of affected parents, even with enormous churn in eligibility, the 1,300 estimate and the premium assistance enrollment data cannot both be correct.

It is worth noting that, during the state comment period, the state received public comments regarding the inadequacy of its budget neutrality estimate. Commenters raised concerns that the budget neutrality calculations were "difficult to understand, insufficient" Yet the state did not recalculate the budget neutrality estimate nor explain its assumptions. The state's response to the comments—"budget neutrality is tied to improving the health of the population"—is not responsive to the public comments and does not resolve the multiple inconsistencies between the text and the enrollment projections.

CMS issued a letter to State Medicaid Directors (SMD#18-009, August 22, 2018) emphasizing the importance of accurate budget neutrality calculations in strengthening fiscal accountability. CMS should require that South Dakota revise its budget neutrality projections to provide accurate enrollment projections that are consistent with the proposal.

We also note that our comments include numerous citations to supporting research, including direct links to the research for HHS' benefit in reviewing our comments. We have also attached several studies that aren't fully available through hyperlinks. We direct HHS to each of the studies cited and made available to the agency through active hyperlinks, and we request that the full text of each of the studies cited, along with the full text of our comments, be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

For all of these reasons we believe that you must reject South Dakota's request. Thank you for your consideration of our views. Please contact Joan Alker (jca25@georgetown.edu) or Judy Solomon (Solomon@cbpp.org) for any additional information.

American Society of Addiction Medicine
Autistic Self Advocacy Network
Center on Budget and Policy Priorities
Children's Defense Fund
Community Catalyst
Family Voices
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 Employment Law Project
National Health Care for the Homeless Council
National Multiple Sclerosis Society
National Partnership for Women & Families
SD Parent Connection