January 18, 2019

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

RE: SoonerCare 1115(a) Research and Demonstration Waiver Amendment Request

Dear Secretary Azar,

The undersigned organizations appreciate the opportunity to comment on Oklahoma's Section 1115 Medicaid demonstration, or "waiver" application known as the "SoonerCare 1115(a) Research and Demonstration Waiver Amendment Request." Oklahoma proposes to take Medicaid coverage away from parents between the ages of 19 and 50 with incomes at or below 45 percent of the federal poverty line (about $779 per month for a family of three) who don't meet a work reporting requirement.

Oklahoma's proposal is harsh. The state would only take coverage away from parents in deep poverty who do not meet the work reporting requirement. It would impose this harsh new policy on all parents between age 19 and 50 except for those with a child under the age of six, or those who are pregnant, have a disability, or are certified as "physically or mentally unfit for employment."

It's clear from the first six months of Arkansas' implementation of a demonstration that takes coverage away from people who don't meet a work requirement that these policies jeopardize coverage for Medicaid beneficiaries who are working or eligible for an exemption. Since September 1, 2018, Arkansas has terminated coverage for over 18,000 Medicaid beneficiaries. Far more Arkansans are losing Medicaid coverage than are in the presumed target group of people not working and ineligible for exemptions, which means people who should remain eligible are losing coverage. And while many Arkansas Medicaid beneficiaries are working, only a tiny percentage of those subject to the requirements — 0.5 percent in the latest monthly report — have *newly* reported work hours in response to the work requirement. And even many of those beneficiaries might have found jobs without the new policy or might have already been working.[1]

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.[2] Oklahoma'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.[3]

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[1] Judith Solomon, "Medicaid Work Requirements Can't Be Fixed," Center on Budget and Policy Priorities, January 10, 2019, https://www.cbpp.org/research/health/medicaid-work-requirements-cant-be-fixed.

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

[3] §1902(a)(10)(A)(i)(I) of the Social Security Act

We urge you to reject Oklahoma's proposal as it will lead to loss of coverage for between 4,000 and 13,000 parents in deep poverty, a number that will likely grow over time.[4] *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.*

Oklahoma's Proposal Would Cause Very Low-Income Parents to Lose Medicaid Coverage

Oklahoma 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 45 percent of poverty. The state's application does not provide an estimate of the number of parents who will lose coverage as the result of the proposed work reporting requirements nor any estimate of the impact of the proposal on enrollment. We believe the application is incomplete without this information given that coverage is a central objective of the Medicaid program

Since Oklahoma has not taken up the ACA Medicaid expansion for parents and other adults, parents with incomes between 45 and 100 percent of poverty ($779 per month and $1,732 per month for a family of 3 in 2018) would be in a coverage gap. Parents who are directly or indirectly pushed into this coverage gap are very likely to become uninsured, because low wage jobs rarely offer affordable health insurance. 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 19 percent of adults living below the poverty line in Oklahoma have employer-sponsored insurance.[5]

The proposal is not forthcoming regarding the impact of work requirements on coverage of Medicaid beneficiaries. It says only that the state is "continuing its analyses to determine how many of the [adult, parent-caretaker population] would be exempt or are already furnishing documentation of meeting the proposed [Community Engagement] requirements." The proposal does not even state how many parents are currently enrolled in SoonerCare, much less how many of those beneficiaries would be exempt from the requirements and, of those not exempt, how many would be likely to lose coverage. As discussed below, there is mounting evidence—evidence that the proposal simply ignores—that reporting requirements, red tape, and other administrative burdens effectively drive coverage losses. The vast majority of these parents would immediately become uninsured, regardless of whether they remain in deep poverty, and regardless of their need for medical care.

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[4] Georgetown Center for Children and Families and Oklahoma Policy Institute, "Medicaid Waiver Proposal for Oklahoma Medicaid Beneficiaries Would Harm Low-Income Families with Children" (January 2019), https://ccf.georgetown.edu/2019/01/11/medicaid-waiver-proposal-for-oklahoma-medicaid-beneficiaries-would-harm-low-income-families-with-children/

[5] Kaiser Family Foundation, "Health Insurance Coverage of Adults 19-64 Living in Poverty (Under 100% FPL)," 2017, https://www.kff.org/other/state-indicator/poor-adults/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

A recent report from the Georgetown University Center for Children and Families and the Oklahoma Policy Institute estimates that 4,440 to 12,580 Oklahoma parents in deep poverty could lose coverage as a result of the state's proposal. The CCF/OPI report notes that this estimate, based on Kaiser Family Foundation research, "may be conservative, as in Arkansas, the first state to implement a Medicaid work requirement, approximately 22 percent of those impacted have lost coverage."[6] A copy of the report is attached.

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

Ostensibly, the target population for Oklahoma's work requirement is parents who aren't working and who don't qualify for an exemption. But large numbers of parents will likely lose coverage — even though they should remain eligible under Oklahoma's proposal because they are already working or should be exempt. Most of these parents will likely become uninsured.

- **Increased red tape will cause many working parents to lose coverage.** Oklahoma would require parents who are not exempt to demonstrate that they are working or performing "community engagement" activities for an average of 80 hours a month. The proposal is silent on how parents are to demonstrate compliance if the state is not able to verify their activities through "data resources," 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. As discussed below, Arkansas, the first state to implement Medicaid work requirements, is experiencing dramatic declines in Medicaid enrollment as a result of red tape barriers.

  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.[7] 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.

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[6] Georgetown Center for Children and Families and Oklahoma Policy Institute, "Medicaid Waiver Proposal for Oklahoma Medicaid Beneficiaries Would Harm Low-Income Families with Children" (January 2019), https://ccf.georgetown.edu/2019/01/11/medicaid-waiver-proposal-for-oklahoma-medicaid-beneficiaries-would-harm-low-income-families-with-children/

[7] 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/.

- **Many parents who should qualify for an exemption may not get one.** Under Oklahoma's proposal, parents are exempt from work requirements if they are under age 19 or over 50; pregnant; medically certified as "physically or mentally unfit for employment;" primary caretakers of a dependent child under the age of 6 or an incapacitated person; or participating in a drug addiction or alcohol treatment and rehabilitation program. 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 children under age 6 is harsh. But more generally, these exemptions may fail to protect parents from losing coverage, because of reporting and administrative errors in identifying and exempting parents who should 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.[8] The state's proposal indicates that beneficiaries have the right to a fair hearing when their Medicaid coverage is terminated, but it does not explain how the state will minimize and, when appropriate, correct such administrative errors to ensure that parents do not lose coverage.

Evidence from Arkansas Suggests That Over One Fifth of Oklahoma's Beneficiaries Could Lose Coverage As a Result of the Work Requirement

Arkansas is the first state to implement Medicaid work requirements, and the experience of Medicaid beneficiaries there demonstrates that these policies will lead to substantial coverage losses, without any demonstrated increase in employment. The state has determined that more than 80 percent of beneficiaries qualify for an exemption and don't have to take action in order to maintain their coverage. Of the beneficiaries who must take action, the vast majority did not claim an exemption or satisfy the reporting requirement.[9] As a result, nearly 18,000 Arkansans have lost Medicaid coverage to date, with further coverage losses likely.

A recent study from the Kaiser Family Foundation based on interviews with beneficiaries and providers in Arkansas sheds light on why coverage losses are so high. The report finds that many beneficiaries are unaware of the new requirement and don't understand the steps they must take to demonstrate compliance.[10] The Kaiser study also finds that the Arkansas waiver is failing on its own

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[8] 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

[9] Jennifer Wagner, "Commentary; As Predicted, Arkansas' Medicaid Waiver Is Taking Coverage Away From Eligible People," Center on Budget and Policy Priorities, December 18, 2018, https://www.cbpp.org/health/commentary-aspredicted-arkansas-medicaid-waiver-is-taking-coverage-away-from-eligible-people

[10] MaryBeth Musumeci, Robin Rudowitz, and Barbara Lyons, "Medicaid Work Requirements in Arkansas: Experience

terms. Beneficiaries report that the new requirements are not incentivizing them to work; instead, the requirements are just adding to the stress and anxiety they already feel. They report that Medicaid coverage has made it easier for them to control physical and mental health conditions. Yet these individuals report they don't have a medically frail diagnosis that would exempt them from the requirements and these conditions make it hard for them to work and maintain their employment. Arkansas' own data confirm that the policy is failing to achieve its purported objective as less than 1% of those affected by the new rules are reporting new work hours.

Given the clear evidence that substantial coverage losses are occurring in Arkansas, and there is considerable evidence that the policy is not working as intended, we believe that you should not approve any further Section 1115 requests that seek to impose work reporting rules.

Taking Coverage Away from Parents Who Don't Meet Oklahoma's Proposed Work Requirement Won't Promote Employment

Connecting low-income parents to work and job training opportunities is a worthwhile goal, but Oklahoma'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 and transportation. Instead, it offers only to "work with" parents who lose their Medicaid coverage "to get them enrolled in job search or training programs." Even if these very poor parents found jobs, they would have to pay for childcare and transportation—costs that could not be covered under Medicaid. And if they made too much to qualify for Medicaid, they would likely be hard-pressed to afford private insurance. Low wage jobs rarely offer affordable health insurance. As noted above, only 19 percent of Oklahoma adults living in poverty currently receive employer-sponsored coverage.

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.

Oklahoma's Proposal Will Harm Children and Families

While Oklahoma's proposal is targeted at parents in deep poverty with children older than 6, 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.

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and Perspectives of Enrollees," Kaiser Family Foundation, December 18, 2018, https://www.kff.org/medicaid/issuebrief/medicaid-work-requirements-in-arkansas-experience-and-perspectives-of-enrollees/

As discussed above, the state's proposal does not guarantee necessary support services such as child care and transportation to parents who would be required to work or engage in "community engagement" 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. As parents lose Medicaid for the reasons described above, children are less likely to get the coverage and 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.[11]

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.[12] 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.[13] Financial insecurity doesn't just affect adults — children's development can be negatively affected by issues resulting from poverty, such as toxic stress.[14]

Oklahoma'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.[15] For example, maternal depression can negatively affect children's cognitive and social-emotional development as well as their educational and employment opportunities.[16] 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 and emergency room

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[11] 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

[12] 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.

[13] B.D. Sommers and D. Oellrich. "The Poverty Reducing Effect of Medicaid*" Journal of Health Economics* 32, no. 5, (September 2013).

[14] 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

[15] 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

[16] 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/

visits.[17] Moreover, children covered by Medicaid are more likely to graduate from high school and college, have higher wages, and pay more in taxes.[18]

Finally, a child with an uninsured parent is more likely to be uninsured themselves.[19] Oklahoma already has one of the highest rates of uninsured children in the nation (8.1%). A recent analysis of American Community Survey data found that Oklahoma was one of nine states that saw a statistically significant increase in its child uninsured rate in 2017.[20] If approved, this proposal will likely worsen this extremely troubling trend.

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 Oklahoma proposal does not acknowledge this risk, even though it targets parents with children as young as six years 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.

Oklahoma's Submission is Incomplete and Obscures Inevitable Coverage Losses That Will Result from the Proposal

As noted above, the proposal is silent as to the potential for coverage losses among parents in deep poverty (and their children). The proposal does not present any data on the number of parents currently enrolled in the program, much less the number of those who would not be exempt from the work requirements. The logical source of these data would be the state's budget neutrality estimates which, for each year of the proposed demonstration, should include projections of enrollment without the waiver and enrollment with the waiver. The state's Budget Neutrality Summary at Attachment A provides neither. It does not even provide the number of covered member months for either scenario from which enrollment estimates could be derived. Rather the application asserts that "The current budget neutrality will not be affected by the proposed amendment." (p. 16).

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 Oklahoma revise its budget neutrality projections to provide accurate enrollment projections that are consistent with the proposal.

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[17] 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

[18] 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.

[19] M. Karpman and G. Kenney. "Quicktake: Health Insurance Coverage for Children and Parents: Changes Between 2013 and 2017" (Washington: The Urban Institute, September 7, 2017), available at http://hrms.urban.org/quicktakes/health-insurance-coverage-children-parents-march-2017.html.

[20] J. Alker and O. Pham, "Nation's Progress on Children's Health Coverage Reverses Course" (Washington: Georgetown University Center for Children and Families, November 2018), available at https://ccf.georgetown.edu/2018/11/21/nations-progress-on-childrens-health-coverage-reverses-course/.

The state includes one reference to Transitional Medical Assistance that implies it will be restricted to those whose income is over the poverty line but requests no waivers to do so nor explains its intent (p. 11). More generally, the application does not contain an explicit list of waivers or expenditure authorities requested.

Conclusion

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 a recent report on the Oklahoma proposal by the Georgetown University Center on Children and Families and the Oklahoma Policy Institute. 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 and the attached report 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 Oklahoma'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.

ATTACHMENT: CCF/OPI Report

Autistic Self Advocacy Network
Center on Budget and Policy Priorities
Children's Defense Fund
Children's Dental Health Project
Community Catalyst
Family Voices
First Focus
Georgetown University Center for Children and Families
HIV Medicine Association
Justice in Aging
NAMI National Alliance on Mental Illness
National Association of Community Health Centers
National Disability Rights Network
National Employment Law Project
National Health Care for the Homeless Council
National Partnership for Women & Families
Raising Women's Voices for the Health Care We Need
United Way Worldwide