

January 4, 2019

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 Virginia’s proposed extension of its Section 1115 Demonstration project (often called the “GAP” waiver), which would be renamed the Virginia COMPASS (Creating Opportunities for Medicaid Participants to Achieve Self-Sufficiency) waiver. Under the terms of Medicaid expansion legislation passed by the Virginia General Assembly last year, expansion coverage began in the Commonwealth on January 1. The COMPASS waiver, if approved, would take Medicaid coverage away from adult enrollees under age 65 who don’t work or engage in work-related activities for a minimum of 80 hours per month unless they qualify for an exemption from the requirement. The proposal would also subject enrollees with incomes above the poverty line to premiums of \$5 or \$10 a month, depending on income.

Virginia says the goal of its proposal is to “improve Medicaid enrolled adults’ health, well-being, and financial stability” and “incentivize healthy behavior and appropriate utilization of healthcare services.” But evidence shows that states that have adopted the Affordable Care Act’s (ACA) Medicaid expansion have made tremendous progress toward these objectives *without a work requirement*. Surveys of Medicaid expansion beneficiaries in Ohio and Michigan, for example, show that coverage has made it easier for people who are unemployed to find work, and for people who have a job to maintain their employment. A recent study examining the impact of Michigan’s Medicaid expansion found that 69% of enrollees said having health insurance through Medicaid helped them do a better job at work and the majority of those who were out of work reported that having Medicaid made them better able to look for a job.<sup>1</sup>

Virginia’s proposal will lead to fewer people enrolling in and maintaining their coverage than the number who would enroll without a waiver: the state expects 18 percent of the people subject to the work requirement (or more than 21,000 people) will be unable to meet the requirements and will lose their coverage. The experience thus far in Arkansas — in which over 17,000 people have lost their Medicaid coverage — suggests coverage loss in Virginia would likely be much higher than the Commonwealth projects.

In the recent *Stewart v. Azar* decision vacating HHS’ approval of Kentucky’s waiver proposal that would take coverage away from adults who didn’t meet a work requirement, pay premiums, or renew their coverage or report changes on time, the court found that Medicaid’s central objective is to provide affordable coverage to people who otherwise wouldn’t have it. Virginia’s proposal, like Kentucky’s, fails to promote Medicaid’s objectives, a requirement for approval of a Medicaid demonstration project.

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<sup>1</sup> Tipirneni, R. et al. “Changes in Health and Ability to Work Among Medicaid Expansion Enrollees: A Mixed Methods Study” *Journal of General Internal Medicine*, December 5th, 2018.

We urge you to reject Virginia’s proposed extension because it poses a significant danger to the health and well-being of low-income people in Virginia.

## **Taking Coverage Away from People Who Don’t Meet the Proposed Work Requirement Will Cause Tens of Thousands of Virginians to Lose Health Coverage**

Under Virginia’s proposal, adult beneficiaries under age 65 would have to work or engage in qualifying activities such as job training or education related to employment for an average of 20 hours per month for the first three months of enrollment. This requirement increases by 20 hours every three months to a maximum requirement of 80 hours per month after 12 months. Beneficiaries who are not compliant, or who are unable to document their compliance for more than three months in a year, would have their coverage terminated. Virginia proposes exemptions for people who are a caretaker for a family member younger than 19 years of age, a caretaker for an adult dependent, pregnant, medically frail, or who are a former foster care child under the age of 26, among others.<sup>2</sup>

Nationally, 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, 35 percent 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>3</sup>

Kaiser Family Foundation researchers 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.<sup>4</sup> Most of those losing coverage would be people who are already working or should be exempt. To reach these estimates, Kaiser researchers looked at past evidence on how administrative requirements affect Medicaid enrollment, which shows that increased red tape causes eligible people to lose coverage. The researchers applied a low disenrollment rate of 5 percent and a high rate of 15 percent to the groups of people who are already working or should be exempt. And, based on experience with work requirements in SNAP and TANF and other factors, they made a conservative estimate that between 25 and 50 percent of enrollees not working or eligible for exemptions would also lose coverage.

Coverage loss estimates in Virginia are in line with the Kaiser projections. In its proposal, the Commonwealth projects that 120,000 people will not be exempt and will thus be subject to the work

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<sup>2</sup> For a full list of proposed exemptions, see Virginia’s proposal: “1115 Demonstration Extension Application: Virginia COMPASS (Creating Opportunities for Medicaid Participants to Achieve Self-Sufficiency),” Virginia Department of Medical Assistance Services, November 20, 2018, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/va/va-gov-access-plan-gap-pa4.pdf>.

<sup>3</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-medicaid-and-work/>.

<sup>4</sup> 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/>.

requirement and that 18 percent, or more than 21,000 people, will lose their coverage due to the work requirement.

Data from Arkansas, which has implemented a work requirement similar, but in some ways less restrictive than Virginia's proposal,<sup>5</sup> suggest that these estimates are likely too low. In Arkansas, 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.<sup>6</sup> As a result, nearly 17,000 Arkansans (more than 4,000 people a month) 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.<sup>7</sup> The Kaiser study also finds that the Arkansas waiver is failing on its own 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.

### **Most Virginians Losing Coverage Will Become Uninsured**

There's little evidence that work requirements will meaningfully increase employment. Moreover, even if some enrollees do find jobs, they will probably be low-wage jobs. Such jobs are unlikely to boost enrollees' incomes enough for them to shift from Medicaid into subsidized individual market coverage, and the large majority will not have an offer of affordable health insurance — meaning most would still need Medicaid coverage or become uninsured.

According to Labor Department data, among workers with earnings in the bottom quartile of the wage distribution, only 37 percent are offered health coverage, and less than a quarter actually obtain coverage, presumably in large part because required employee premium contributions are often higher than low-wage workers can afford.<sup>8</sup> Similarly, only 37 percent of full-time workers with family

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<sup>5</sup> For example, Arkansas' requirement only applies to adults under the age of 50, and adults aged 19-29 were not subject to the requirements until this month.

<sup>6</sup> 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-as-predicted-arkansas-medicaid-waiver-is-taking-coverage-away-from-eligible-people>.

<sup>7</sup> MaryBeth Musumeci, Robin Rudowitz, and Barbara Lyons, "Medicaid Work Requirements in Arkansas: Experience and Perspectives of Enrollees," Kaiser Family Foundation, December 18, 2018, <https://www.kff.org/medicaid/issue-brief/medicaid-work-requirements-in-arkansas-experience-and-perspectives-of-enrollees/>.

<sup>8</sup> Bureau of Labor Statistics, Healthcare benefits: Access, participation, and take-up rates, <https://www.bls.gov/ncs/ebs/benefits/2017/ownership/civilian/table09a.htm>.

incomes below the poverty line (and only 13 percent of such part-time workers) are even offered coverage.<sup>9</sup>

Finally, studies have found no evidence that the ACA Medicaid expansion meaningfully decreased employment, and no evidence of decreased employer coverage among those employed.<sup>10</sup>

### **Virginia's Proposal Is Unlikely to Promote Employment and May Be Counterproductive**

Research on work requirements in other programs finds that they generally have only modest and temporary effects on employment and fail to increase long-term employment or reduce poverty. Results in Medicaid are likely to be worse, for several reasons. First, as noted, most of those affected by the requirements are either already working or face major barriers to work. Many enrollees work in industries such as retail, home health, and construction, and they have volatile hours and little flexibility, so they may not be able to work 80 hours every month. Illness, family emergencies, or child care or transportation barriers can also lead to job loss.

Second, Medicaid enrollees targeted by work requirement proposals already have a strong incentive to work because they are usually eligible for little other assistance and are very poor. Enrollees who are seemingly able to work but aren't employed typically lack not motivation, but work supports such as job search assistance, job training, child care, and transportation assistance; they may also face challenges such as an undiagnosed substance use disorder, domestic violence, the need to care for an ill family member, or a housing crisis.

Third, state Medicaid programs generally are not well equipped to provide or connect families with work support services, which are already oversubscribed in most states. Virginia says its existing workforce centers will offer employment supports to the Medicaid-eligible population. And it says it will apply separately for a state plan amendment (SPA) to define habilitation benefits to include employment supports. While such supports could be helpful to some beneficiaries, it's not clear that the types of supports Virginia wants to provide, including help with transportation and education, would be eligible for federal match given CMS' previous guidance saying federal funds are not available for work supports.

### **Premiums Will Further Decrease Coverage and Access to Care**

The second component of Virginia's proposal would charge sliding-scale premiums to people with incomes above the poverty line who are not exempt from the work requirement.<sup>11</sup> The Commonwealth estimates that 42,000 people, or about a third of those subject to the work

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<sup>9</sup> Michelle Long *et al.*, "Trends in Employer-Sponsored Insurance Offer and Coverage Rates, 1999-2014," Kaiser Family Foundation, March 21, 2016, <https://www.kff.org/private-insurance/issue-brief/trends-in-employer-sponsored-insurance-offer-and-coverage-rates-1999-2014/>.

<sup>10</sup> Aviva Aron-Dine, "Eligibility Restrictions in Recent Medicaid Waivers Would Cause Many Thousands of People to Become Uninsured," Center on Budget and Policy Priorities, August 9, 2018, <https://www.cbpp.org/research/health/eligibility-restrictions-in-recent-medicaid-waivers-would-cause-many-thousands-of>.

<sup>11</sup> The Commonwealth proposes to charge people with incomes between 100 and 125 percent of the poverty line a \$5 monthly premium, and people with incomes between 126 and 138 percent of the poverty line a \$10 monthly premium.

requirement, will also be required to pay premiums. People who don't pay their premiums after a three-month grace period will have their coverage terminated.

Extensive research (including research from Medicaid demonstration projects conducted prior to the passage of the Affordable Care Act) shows that premiums significantly reduce low-income people's participation in health coverage programs.<sup>12</sup> These studies show that the lower a person's income, the less likely they are to enroll and the more likely they are to drop coverage due to premium obligations. People who lose coverage most often end up uninsured and unable to obtain needed health care services.

In proposing these premiums, Virginia isn't claiming to test anything that hasn't been tried before — either before the ACA, or in states like Indiana and Montana that have been granted permission to charge premiums to people with incomes above the poverty line. Evidence from these experiments clearly shows that charging premiums makes it more likely that Medicaid beneficiaries lose their health coverage and become uninsured, or that they are less likely to sign up for coverage in the first place.

### **Proposal to Provide Housing and Employment Supports Will Benefit High-Need Enrollees**

There are some aspects of Virginia's proposal that we believe should be approved. For example, the Commonwealth proposes to use waiver authority to pay for housing-related and employment support services which would expand access to supportive housing, pre-employment, and employment sustaining services for people who, without this assistance, are often expensive users of the health care system and have poor health outcomes.

Virginia is proposing to use its 1115 waiver to provide housing and employment services to people who meet needs-based criteria and have one or more risk factors such as past homelessness, frequent emergency room visits or hospitalizations, or involvement with the criminal justice system. Housing services would include housing search, move-in assistance, development of an individualized housing plan, and tenant rights and responsibilities training and supports help people successfully transition into and sustain stable housing. Employment support services would include person-centered employment planning, job coaching, benefits education and planning, and career advancement services.

While we support providing these services, we remain concerned that CMS is allowing states to cap the number of beneficiaries who receive such services. These are services that could be provided through a state plan amendment under section 1915(i). Using 1115 authority to cap the number of beneficiaries receiving such services undermines Congressional intent in specifying that such services be available to all beneficiaries meeting the needs-based criteria the state develops.

### **State Public Comment Period Established Overwhelming Record of Opposition to Virginia's Proposal**

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<sup>12</sup> Samantha Artiga, Petry Ubri, and Julia Zur, "The Effects of Premiums and Cost-Sharing on Low-Income Populations: Updated Review of Research Findings," The Kaiser Family Foundation, June 2017, <http://files.kff.org/attachment/Issue-Brief-The-Effects-of-Premiums-and-Cost-Sharing-on-Low-Income-Populations>.

Virginia notes that *of 1,832 comments submitted during the state comment period only four commenters expressed support for parts or all the work requirements provisions*. More than 99% of commenters opposed the proposed work requirement and premiums and raised concerns about how vulnerable populations like those with chronic health conditions would be able to comply with the new requirements. They worried that people who lose their coverage will experience gaps in care and loss of access to needed medications. And they explained how premiums will pose a financial hardship to people with low-incomes who are already struggling to make ends meet. Despite the overwhelming opposition to the waiver and the specific issues raised in the comments, the state submitted a proposal to HHS with few substantive changes.

## **Conclusion**

Now that Medicaid expansion coverage has taken effect, the Commonwealth will likely quickly experience the positive benefits of expansion, such as large gains in health coverage, state budget savings, and a drop in uncompensated care. Virginians who gain coverage will experience improvements in their physical health, better access to care, and improved financial security.

If Virginia's proposal takes effect, some of these gains would be reversed and progress would be diminished. The proposal is unlikely to boost employment in the state and would likely increase economic hardship for thousands of low-income Virginians. Evidence from Arkansas shows that many working people are likely to lose their coverage because they won't understand the new requirements. People with a disability and those with a chronic health condition will be particularly at-risk.

For these reasons, we urge you to reject Virginia's proposal to take coverage away from people who don't meet a work requirement or pay premiums. 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 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.

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

Autistic Self Advocacy Network  
Center on Budget and Policy Priorities  
Children's Dental Health Project  
Children's Defense Fund  
Community Catalyst  
First Focus  
Georgetown University Center for Children and Families  
HIV Medicine Association  
March of Dimes  
NAMI National Alliance on Mental Illness  
National Employment Law Project  
National Health Care for the Homeless Council  
National MS Society

National Partnership for Women & Families  
Raising Women's Voices for the Health Care We Need  
United Way Worldwide