

February 7, 2019

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

RE: TennCare II Demonstration Amendment 38

Dear Secretary Azar,

The undersigned organizations appreciate the opportunity to comment on Tennessee’s Section 1115 Medicaid demonstration amendment, or “waiver” application known as the “TennCare II Demonstration Amendment 38.” Tennessee proposes to take Medicaid coverage away from parents age 19 to 64 with incomes at or below 98 percent of the federal poverty line (about \$1742 per month for a family of three in 2019) who don’t meet a work reporting requirement.

Tennessee’s proposal is harsh. The state would take coverage away from parents in poverty who do not meet the work reporting requirement with limited exceptions, such as 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 reporting requirement that these policies don’t lead to employment for those who can work and that they jeopardize coverage for beneficiaries who are working or should be exempt because they can’t work. Since September 1, 2018, Arkansas has terminated coverage for over 18,000 Medicaid beneficiaries — or 23 percent of those subject to the work reporting requirement.¹ If Tennessee has a similar outcome, approximately 68,000 parents will lose their Medicaid coverage in Tennessee, according to a report by the Georgetown Center on Children and Families.²

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 —

¹ Jennifer Wagner, “Medicaid Coverage Losses Mounting in Arkansas From Work reporting requirement,” Center on Budget and Policy Priorities, January 17, 2019, <https://www.cbpp.org/blog/medicaid-coverage-losses-mounting-in-arkansas-from-work-requirement>.

² Joan Alker and Olivia Pham, “Work Reporting Requirement for Tennessee Parents Would Harm Low-Income Families With Children,” Georgetown Center for Children and Families, January 30, 2019, <https://ccf.georgetown.edu/2019/01/30/work-reporting-requirement-for-tennessee-parents-would-harm-low-income-families-with-children/>. To estimate this number, Georgetown researchers used analogous assumptions as were used to find Arkansas’s coverage loss ratio of 23 percent. They used the number of parents (300,000) estimated to be in the affected parent category from the state’s fiscal note and subtracted 2 percent (6,000) who are over 65 and not included. They then applied the 23 percent coverage loss ratio from Arkansas and got 67,620. It is important to note that Arkansas also has many exemptions and that the 23 percent result includes those who are exempt in the denominator. Fiscal Note HB 1551 – SB 1728, Tennessee General Assembly Fiscal Review Committee, February 12, 2018, available at <http://www.capitol.tn.gov/Bills/110/Fiscal/HB1551.pdf>.

have *newly* reported work hours in response to the work reporting requirement. And even many of those beneficiaries might have found jobs without the new policy or might have already been working.³

In the recent *Stewart v. Azar* decision, which vacated approval of Kentucky’s waiver proposal to take coverage away from parents and other adults who don’t meet a work reporting requirement, the court found that a “central objective” of Medicaid is to provide coverage to poor and low-income people.⁴ Tennessee’s proposal would take coverage away from 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 central objective of providing affordable coverage to those who would otherwise be uninsured.⁵

We urge you to reject Tennessee’s proposal as it will lead to loss of coverage for thousands of parents in poverty. By taking coverage away from parents in 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.

Tennessee’s Proposal Would Cause Very Low-Income Parents to Lose Medicaid Coverage

Tennessee 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 with incomes at or below 98 percent of the poverty line. The state’s application does not provide an estimate of the impact of the proposal on enrollment or the number of parents who will lose coverage as the result of the proposed work reporting requirement. We believe the application is incomplete without this information given that coverage is a central objective of the Medicaid program.

The proposal says only that “some number of individuals may transition off of TennCare and into other coverage options as their earnings increase; however, it is not possible to reliably project the magnitude of this decrease in enrollment at this time.” It does not even state how many parents are currently enrolled in TennCare, much less how many 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 that reporting requirements, red tape, and other administrative burdens cause significant coverage losses. The vast majority of parents who lose coverage would immediately become uninsured, regardless of whether they remain in poverty, and regardless of their need for medical care.

When Parents Lose Coverage, Children are Also Harmed

³ Judith Solomon, “Medicaid Work reporting 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>.

⁴ Memorandum Opinion, *Stewart v. Azar*, Civil Action No. 1:18-cv-152 (JEB), District Court for the District of Columbia, June 29, 2018.

⁵ §1902(a)(10)(A)(i)(I) of the Social Security Act

While Tennessee’s proposal is targeted at parents, children will also be affected. That’s because taking Medicaid coverage away from parents harms their children. 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

Taking coverage away from parents 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 Financial insecurity doesn’t just affect adults — children’s development can be negatively affected by toxic stress resulting from poverty.⁸

Taking coverage away from parents 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.⁹ For example, maternal depression can negatively affect children’s cognitive and social-emotional development as well as their educational and employment opportunities.¹⁰ 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 visits.¹¹ Moreover, children covered by Medicaid are more likely to graduate from high school and college, have higher wages, and pay more in taxes.¹²

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 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>

⁹ 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>

¹⁰ 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/>

¹¹ 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>

¹² 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>.

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

Ostensibly, the target population for Tennessee work reporting 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 Tennessee'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.** Tennessee 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 but at a minimum they will have to “document their compliance to TennCare on a monthly basis.” 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.¹³ As discussed below, Arkansas, the first state to implement Medicaid work reporting requirements, is experiencing dramatic declines in Medicaid enrollment as a result of red tape barriers.

Kaiser Family Foundation researchers recently estimated that nationwide work reporting 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.¹⁴

- **Many people with disabilities, caregivers, and parents who should qualify for an exemption may not get one.** Under Tennessee's proposal, parents are exempt from work reporting requirements if they are under age 19 or over 64; 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 substance use disorder treatment program. Applying the work reporting requirement to parents of children as young as six ignores their need for ongoing care and supervision. But more generally, these exemptions may fail to protect people with disabilities (other than those eligible for SSI), caregivers, and others eligible for exemptions 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 reporting requirements. A 2016 investigation by the USDA Office of the Inspector General found that some states were failing to administer the SNAP work reporting 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

¹³ Rachel Garfield, Robin Rudowitz, and MaryBeth Musumeci, “Implications of a Medicaid Work reporting 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/>.

¹⁴ *Ibid.*

TANF to have barriers that kept them from working, including having a child with a chronic illness or disability.¹⁵

Tennessee is particularly ill-equipped to handle this new requirement because it currently lacks a functioning Medicaid eligibility system. Since 2013, Tennessee has relied on the federal Marketplace to enroll individuals in TennCare because of the state's lack of capacity to reliably administer eligibility itself. For the sixth year in a row, TennCare continues to operate under a federal mitigation plan because the state is not in compliance with federal Medicaid law.¹⁶

Evidence from Arkansas Suggests That Many Beneficiaries Could Lose Coverage As a Result of Tennessee's Proposed Work Reporting Requirement

Arkansas is the first state to implement Medicaid work reporting requirements, and the experience of Medicaid beneficiaries there demonstrates that Tennessee's policies will lead to substantial coverage losses, without any demonstrated increase in employment. The state determined that more than 80 percent of beneficiaries qualify for an exemption and don't have to report work or work-related activities to stay covered. Of the beneficiaries who had to report, the vast majority did not claim an exemption or satisfy the reporting requirement.¹⁷ As a result, nearly 18,000 Arkansans have lost Medicaid coverage to date, with further coverage losses likely in coming months.

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.¹⁸ 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. Arkansas' own data confirm that the policy is failing to achieve its purported objective as less than 1 percent of those affected by the new rules are reporting new work hours.

¹⁵ Hannah Katch, Jennifer Wagner, and Aviva Aron-Dine, "Medicaid Work reporting 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>

¹⁶ Joan Alker and Olivia Pham, "Work Reporting Requirement for Tennessee Parents Would Harm Low-Income Families With Children," Georgetown Center for Children and Families, January 30, 2019, <https://ccf.georgetown.edu/2019/01/30/work-reporting-requirement-for-tennessee-parents-would-harm-low-income-families-with-children/>.

¹⁷ 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>

¹⁸ MaryBeth Musumeci, Robin Rudowitz, and Barbara Lyons, "Medicaid Work reporting requirements in Arkansas: Experience 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/>

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.

Medicaid is a Work Support; Taking Coverage Away from Parents Who Don't Meet Tennessee's Proposed Work Reporting Requirement Won't Promote Employment

Connecting low-income parents to work and job training opportunities is a worthwhile goal, but Tennessee's proposal isn't likely to achieve it. 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.¹⁹

Contrary to Tennessee's hypotheses, Medicaid is a work support. As Kaiser Family Foundation researchers concluded from a comprehensive review of the available evidence, "access to affordable health insurance has a positive effect on people's ability to obtain and maintain employment," while lack of access to needed care, especially mental health care and substance use treatment, impedes employment.²⁰

Indeed, there are strong reasons to believe that work reporting requirements will reduce access to health care and thereby make it harder for some people to work. Beneficiaries themselves confirm the connection between coverage and work. Majorities of non-working adults gaining coverage through the Medicaid expansion in Ohio and Michigan said having health care made it easier to look for work, while majorities of working adults said coverage made it easier to work or made them better at their jobs.²¹

Tennessee's Proposed Hypotheses Defy Logic

The state lists five hypotheses that it intends to test with the demonstration. The first two hypotheses are, "implementation of work and community engagement requirements will decrease hospital stays for the impacted adult population," and "implementation of work and community

¹⁹ Aviva Aron-Dine, Raheem Chaudhry, and Matt Broaddus, "Many Working People Could Lose Health Coverage Due to Medicaid Work reporting requirements," Center on Budget and Policy Priorities, April 11, 2018, <https://www.cbpp.org/research/health/many-working-people-could-lose-health-coverage-due-to-medicaid-work-requirements>.

²⁰ Larisa Antonisse and Rachel Garfield, "The Relationship Between Work and Health: Findings from a Literature Review," Kaiser Family Foundation, August 2018, <https://www.kff.org/medicaid/issue-brief/the-relationship-between-work-and-health-findings-from-a-literature-review/>.

²¹ Ohio Department of Medicaid, "Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly," January 2017, <http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf>. See also Kara Gavin, "Medicaid Expansion Helped Enrollees Do Better at Work or in Job Searches," University of Michigan Health Lab, June 27, 2017, <http://labblog.uofmhealth.org/industry-dx/medicaid-expansion-helped-enrollees-do-better-at-work-or-job-searches>.

engagement requirements will decrease emergency room visits for the impacted adult population.” The state notes that its methodology will be to use encounter data to track members’ inpatient hospitalizations and emergency room use.

The state cites research to support this statement that shows that people with jobs have better health and higher incomes than people without jobs. But this research doesn’t show whether employment *causes* improved health or rather, as is likely for many people, the causal relationship is in the other direction — namely, that healthy people are likelier to have jobs than those in poor health.

While evidence does not support the hypothesis that taking coverage away from people who don’t meet a work reporting requirement is likely to improve health, there is clear evidence that a work reporting requirement will result in substantial losses in health coverage, as described above. And the evidence is also clear that losses in health coverage are associated with poorer health.²² These hypotheses for the proposed demonstration therefore defy common sense.

Moreover, the state proposes to use encounter data to track members’ inpatient stays and use of the emergency department to prove their hypotheses. Encounter data would not capture the experience of those whose Medicaid coverage is terminated. An evaluation of a proposal that could result in coverage losses should track the outcomes of individuals who lose coverage as well as those who maintain it.

Conclusion

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 and the attached report be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

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.

Autistic Self Advocacy Network
Center for Public Representation
Center on Budget and Policy Priorities
Children's Defense Fund
Children's Dental Health Project
Community Catalyst
Corporation for Supportive Housing (CSH)
Epilepsy Foundation
Family Voices
First Focus

²² Hannah Katch, Jennifer Wagner, and Aviva Aron-Dine, “Taking Medicaid Coverage Away From People Not Meeting Work reporting requirements Will Reduce Low-Income Families’ Access to Care and Worsen Health Outcomes,” Center on Budget and Policy Priorities, August 13, 2018, <https://www.cbpp.org/research/health/taking-medicaid-coverage-away-from-people-not-meeting-work-requirements-will-reduce>.

Georgetown University Center for Children and Families
In Our Own Voice: National Black Women's Reproductive Justice Agenda
Legal Action Center
March of Dimes
Mental Health America
NAMI National Alliance on Mental Illness
National Employment Law Project
National Health Care for the Homeless Council
National Multiple Sclerosis Society
National Partnership for Women & Families
Raising Women's Voices for the Health Care We Need
Service Employees International Union
Tennessee Head Start Association