

July 10, 2019

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

RE: South Carolina's Community Engagement Section 1115 Demonstration Waiver Application

Dear Secretary Azar,

The undersigned organizations appreciate the opportunity to comment on South Carolina's Section 1115 Medicaid demonstration, or "waiver" proposal known as the "Community Engagement Section 1115 Demonstration Waiver Application." South Carolina proposes to increase its eligibility limits for parents and caretaker relatives from the current eligibility limit set at 67 percent of the federal poverty line (\$1,160 per month for a family of three) to 100 percent of the poverty line. At the same time, it would expand coverage for parents and caretaker relatives, South Carolina would take their coverage away if they don't meet a punitive work requirement, which would also apply to those receiving Transitional Medical Assistance (TMA). South Carolina proposes a number of other policy initiatives to address the health of women, children, and some adults some of which we support, as discussed below.

Many of our organizations have written to you numerous times to underscore our opposition to work requirements, which are not only harmful to affected families and individuals, but incompatible with the objectives of the Medicaid program. Because section 1115 waivers must promote the objectives of Medicaid, a federal court vacated your approval of similar proposals from Arkansas and Kentucky.¹

Substantial coverage losses have occurred in Arkansas, the only state implementing a work requirement to date, and there is considerable evidence from Arkansas that the policy is not working as intended. Given this evidence, we believe you should refrain from approving any further work requirement proposals. This is especially critical in states like South Carolina that haven't yet expanded Medicaid where the work requirements would solely affect families with children.

South Carolina's Proposal Would Cause Some Low-Income Parents to Gain Medicaid Coverage and Others to Lose it Because of the Work Requirement

South Carolina has not taken up the Affordable Care Act's (ACA) expansion of Medicaid that covers parents and other adults with incomes up to 138 percent of the poverty line. The waiver proposes to extend coverage to parents and caretaker relatives with incomes up to 100 percent of the poverty line, an increase from the current eligibility limit of 67 percent (both levels assume an

¹ Memorandum Opinion, *Gresham v. Azar*, Civil Action No. 18-1900 (JEB), District Court for the District of Columbia, March 27, 2019, <https://casetext.com/case/gresham-v-azar>; Memorandum Opinion, *Stewart v. Azar*, Civil Action No. 1:18-cv-152 (JEB), District Court for the District of Columbia, June 29, 2018 https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv0152-74.

income disregard equal to 5 percent of the poverty line). The state estimates that this increase in the eligibility limits will cover an additional 32,300 parents.² The state also proposes to take coverage away from parents and caretaker relatives who don't meet a work requirement unless they are exempt.

South Carolina says that it wants to avoid creating a “subsidy cliff” where those meeting the work requirement could end up uninsured, because they earn too much to qualify for Medicaid but too little for marketplace subsidies. This and other problems raised by the state in Section 4 of the waiver proposal on “Removing Employment Disincentives” would be better and more easily addressed by expanding Medicaid, which would ensure seamless coverage for low-income women of childbearing years and other adults, *and* provide federal matching funds at a higher rate.

With or without eligibility expansions, however, work requirements are counterproductive and fail to meet the objectives of the Medicaid program as they inevitably result in coverage losses, including among people who are already working and those who should be exempt. A recent study by Harvard researchers in the *New England Journal of Medicine* examining outcomes in Arkansas, the first state to implement a work requirement, found that *the uninsured rate rose for the age group affected by the work requirement and that the unemployment rate for this group actually went up*.³

The Harvard study builds on other research showing that Arkansas' approach did not work and resulted in substantial coverage losses. A recent study from the Kaiser Family Foundation based on interviews with Arkansas beneficiaries and providers found that many beneficiaries were unaware of the new requirement and didn't understand the steps they needed to take to demonstrate compliance.⁴ Beneficiaries reported that the new requirements did not provide an incentive to work; instead, the requirements just added to the stress and anxiety they already felt. They also reported that Medicaid coverage made it easier for them to keep their physical and mental health conditions under control, which in turn helped them to work. 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 reported new work hours.⁵

² South Carolina “*Community Engagement Section 1115 Demonstration Waiver Application*,” May 8, 2019, pg. 7.

³ Sommers, B. et al. “*Medicaid Work Requirements: Results from the First Year in Arkansas*,” *New England Journal of Medicine*, June 19, 2019, <https://www.nejm.org/doi/full/10.1056/NEJMsr1901772>.

⁴ Musumeci, M. Rudowitz, R. and Lyons, B. “*Medicaid Work 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/>.

⁵ Jennifer Wagner, “*Commentary: As Predicted, Arkansas' Medicaid Waiver Is Taking Coverage Away From Eligible People*,” Center on Budget and Policy Priorities, June 28, 2019, <https://www.cbpp.org/health/commentary-as-predicted-arkansas-medicaid-waiver-is-taking-coverage-away-from-eligible-people>

South Carolina's Coverage Losses will Disproportionately Harm Women and African Americans

South Carolina acknowledges that its proposed work requirement will result in suspending Medicaid benefits for an estimated 7,100 parents/caretaker relatives in the first year.⁶ An analysis of the characteristics of the target population of parents and caretaker relatives with incomes below the poverty line finds that they are overwhelmingly mothers (83 percent) and disproportionately African American (48 percent as compared to 26 percent of nonelderly adults statewide who are African American).⁷ The disparate racial impact of women targeted to lose coverage is a major concern in light of high rates of maternal mortality and morbidity that affect African American women.⁸ States that have not expanded Medicaid already face higher rates of infant mortality and maternal mortality.⁹

Coverage reductions among parents will inevitably impact their children as well.

We support the expansions of coverage to children and pregnant women proposed in the waiver request and urge you to approve these requests – using state plan amendment authority wherever possible. However, we remain very concerned that the work requirement will have harmful effects on the most vulnerable children in the state as well as their parents and caretaker relatives— again with likely disproportionate effects on African American children.

A letter sent to you on March 6th, 2019 from the Academy of Pediatrics (AAP) and more than 50 other national organizations focused on child health urged you not to approve similar requests because of the harm to these families. The AAP letter describes in detail the many risks that children and families face if such a request were to be approved and implemented. A copy of the AAP letter is attached.

We note that the children's coverage expansion from 213 percent of the poverty line to 246 percent of the poverty line is a positive change for moderate income children in the state. But the expansion does not address public comments concerned about the impact of the work requirement on children, and the state's attempt to justify the work requirement on this basis falls short of an appropriate response to the comments.

During the first public comment period 97 percent of the 290 comments received opposed the work requirement (See waiver application p 22). One of the themes mentioned by a substantial

⁶ South Carolina Department of Health and Human Services, *Community Engagement Waiver: Coverage Impact*. We note for the record that the state should have provided enrollment projections over the term of the demonstration, and not just for the first year, 42 CFR 431.412(a)(1)(iv).

⁷ Georgetown University Center for Children and Families analysis of American Community Survey data.

⁸ Cox, S, *CDC Efforts to Address Maternal Morbidity and Mortality*, Centers for Disease Control and Prevention, presentation to the Alliance for Health Reform June 27, 2019, <http://www.allhealthpolicy.org/addressing-the-drivers-of-maternal-mortality/>.

⁹ Searing, A and Cohen Ross, D. "Medicaid Expansion Fills Gaps in Maternal Health Coverage Leading to Healthier Mothers and Babies," Georgetown University Center for Children and Families, May, 2019, <https://ccf.georgetown.edu/2019/05/09/medicaid-expansion-fills-gaps-in-maternal-health-coverage-leading-to-healthier-mothers-and-babies/>.

number of commenters (48) was the likely increase in uninsured children (p. 24). The state in its response cites its CHIP eligibility expansion as a response (p. 27). However, the children we expect to be negatively affected by the work requirement are those with incomes below the poverty line, not those who would become newly eligible as a result of the eligibility expansion. The child eligibility expansion does not mitigate the impact of approving a work requirement on the lowest income parents.

South Carolina’s waiver request to expand coverage to some groups of adults falls well short of addressing the impact of the opioid epidemic in South Carolina, and it doesn’t promote the objectives of Medicaid.

South Carolina’s proposal provides compelling background on how the opioid epidemic is causing harm for South Carolinians. The proposal describes how the opioid epidemic has led to increased maternal and infant morbidity and mortality, increased child abuse and neglect, increased justice involvement and recidivism, and resurgence of infectious diseases, including HIV/AIDS and Hepatitis C. The proposal also recognizes that time-limited grants are no substitute for ongoing funding for health care coverage.

Yet South Carolina’s proposal falls well short of addressing the harms affecting the state. Rather than expand Medicaid, which would provide timely, comprehensive treatment for all who qualify, South Carolina is proposing an extremely narrow coverage expansion for a small group of South Carolinians who are already experiencing serious harm, with limits both on the number who qualify and how long they qualify.

South Carolina wants to cover individuals in three narrow groups:

- Those with income below 5 percent of the poverty line, who meet a strict definition of being “chronically homeless;”
- Those who are justice involved and need mental health or substance use treatment;
- Those with income below the poverty line “who are meeting or attempting to meet community engagement requirements who [have] been diagnosed with SUD.”

But even within these narrow standards, it would limit those who could qualify, because the state is asking for authority to limit the number of people who could qualify in each category, *including authority to set the number at zero*. It also wants authority to limit the number of “unique individuals” over the course of an enrollment period, and to limit the duration of coverage. Specifically, on the third category the proposal says that they “may only receive medical assistance for a limited duration set by SCDHHS not more frequently than annually.” And individuals in all three groups would also have to meet a work requirement or qualify for an exemption.

Health coverage is a life-long need, especially for people with chronic physical or behavioral health conditions. A recent study from the Kaiser Family Foundation found that nonelderly adults with opioid use disorders (OUD) covered by Medicaid were more likely than those with other coverage to have received treatment in 2017.¹⁰ Expanding Medicaid would provide ongoing

¹⁰ Orgera, K. and Tolbert, J. “*The Opioid Epidemic and Medicaid’s Role in Facilitating Access to Treatment*,” Kaiser Family Foundation, May 24, 2019, <https://www.kff.org/medicaid/issue-brief/the-opioid-epidemic-and-medicaids-role-in-facilitating-access-to-treatment/>.

treatment for South Carolinians with OUD and other substance use disorders in addition to those with other chronic conditions.

Moreover, expansions with numerical and durational caps on enrollment do not further the objectives of the Medicaid program, and should not be allowed in lieu of full expansion. Prior to health reform, low-income adults under 65 who were not disabled, pregnant or caring for a child did not qualify for Medicaid except in a small number of states that covered them through waivers. States with these waivers were allowed to cap enrollment so they could meet budget neutrality requirements that limit federal funds to the amount the state would have received without the waiver. States could also significantly limit benefits and impose premiums and cost-sharing on these beneficiaries, because they were regarded as being outside the protections of the Medicaid statute. This is no longer the case. Health reform's Medicaid expansion established a pathway to coverage for all non-elderly adults with incomes up to 138 percent of the poverty line, including for the first time, low-income adults without children. While the 2012 Supreme Court decision upholding the health reform law made the Medicaid expansion a state-by-state decision, health reform's explicit pathway to coverage for low-income childless adults means that they are entitled to the same protections as other mandatory groups of Medicaid beneficiaries when a state covers them.

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

We urge you to reject South Carolina's request for a work requirement and enrollment caps. As discussed above, we urge you to work with the state on its requests to extend eligibility for children and pregnant women expeditiously and where possible as a state plan amendment. 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.

Attachments:

Letter to Secretary Azar, March 2019

New England Journal of Medicine, June 2019

Autistic Self Advocacy Network
Center on Budget and Policy Priorities
Children's Defense Fund
Community Catalyst
Families USA
Family Voices
First Focus on Children
Georgetown University Center for Children and Families
HIV Medicine Association
Justice in Aging
March of Dimes
National Alliance on Mental Illness
National Association of Pediatric Nurse Practitioners
National Employment Law Project
National Health Care for the Homeless Council
National Multiple Sclerosis Society
Primary Care Development Corporation
Raising Women's Voices for the Health Care We Need
The Children's Dental Health Project
United Way Worldwide