



February 8, 2018

Submitted via the Federal Medicaid.gov Portal

Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244-8016

Re: Comments for Arizona Section 1115 Waiver Amendment Request: AHCCCS Works Waiver

To Whom It May Concern:

We are writing on behalf of the Chronic Illness and Disability Partnership (CIDP). CIDP consists of national organizations representing people living with a wide range of chronic illnesses and disabilities, including cancer, cystic fibrosis, diabetes, HIV, Hepatitis B and C, multiple sclerosis, and mental health and substance use disorders. We represent the 117 million Americans estimated to be living with a chronic illness and/or disability, many of whom rely upon Medicaid to obtain needed care.¹ While our organizations are national in scope, we also affiliate with strong regional, state, and community based advocacy networks.

We appreciate the opportunity to provide comments on Arizona Section 1115 Waiver Amendment Request: AHCCCS Works Waiver (the "Arizona Application") under Section 1115 of the Social Security Act. While CIDP understands and supports the value of work, we are very concerned that the work requirement policies put forth in the Arizona Application would substantially decrease meaningful access to care for low-income people living with chronic illnesses and disabilities. This punitive proposal is misguided and does nothing to achieve the laudable objectives of supporting greater independence and promoting economic opportunities for low-income vulnerable populations, nor does it promote the objectives of the Medicaid program. For the reasons discussed in detail below, we strongly oppose the Arizona Application and urge the Centers for

¹ U.S. Centers for Disease Control and Prevention, Chronic Disease Overview (February 23, 2016), available at <https://www.cdc.gov/chronicdisease/overview/>.

Medicare and Medicaid Services (CMS) within the Department of Health and Human Services (HHS) to reject it.

I. **Arizona’s proposed work requirement would violate the core objectives of the Medicaid program and would thus be unlawful**

If approved, the Arizona Application would violate the basic conditions required for approval of a section 1115 waiver. Section 1115(a) of the Social Security Act, codified at 42 U.S.C. § 1315(a), allows a federal waiver to facilitate a State’s “experimental, pilot, or demonstration project” that, “in the judgment of the Secretary, is likely to assist in promoting the objectives” of the Medicaid program. One of the primary objectives of Medicaid, as explained by § 1901 of the Social Security Act, is to enable each State to furnish “medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and costs are insufficient to meet the costs of medically necessary services.”² The work requirement contemplated by the Arizona Application is motivated by a goal that is fundamentally at odds with the objective of the Medicaid program. If implemented, a work requirement as a condition of eligibility would achieve the exact opposite result intended by Medicaid’s objective, resulting in more individuals losing access to health coverage and medically necessary services.

These restrictive work requirements and time limits would not achieve the improper objective Arizona sets out in its application, let alone the objectives of the Medicaid program. Arizona states that “[t]he demonstration will test whether authorizing AHCCCS Works requirements and life time coverage limits for “able bodied adults” enrolled in AHCCCS will increase the employment rate for those beneficiaries. **The goal is to increase employment opportunities and reduce individual reliance on public assistance.**”³ As stated above, this goal is explicitly in conflict with the express purpose of the Medicaid program as articulated by Congress. While finding ways to reduce reliance on program assistance may be a noble pursuit, any demonstration project must advance the objective of Medicaid, i.e., to provide health care to individuals whose income is insufficient to purchase health care services. Forcing enrollees to find and maintain employment to receive health coverage will in no way achieve this objective. Instead, these policies will leave vulnerable individuals without health care, pushing them further into poverty.

A robust body of research shows that tying Medicaid eligibility to work or work-related activities would fail to increase long-term employment or reduce poverty.⁴ The proposal does not contemplate any action to increase the availability of jobs across the state, or to assist beneficiaries with finding and keeping employment such as by providing transportation, education, job search

² 42 U.S.C. § 1396-1.

³ Arizona Health Care Cost Containment System, *Arizona Section 1115 Waiver Amendment Request – AHCCCS Works Waiver*, p. 10 (emphasis supplied).

⁴ LaDonna Pavetti, “Work Requirements Don’t Cut Poverty, Evidence Shows,” Center on Budget and Policy Priorities, June 2016, <https://www.cbpp.org/research/poverty-and-inequality/work-requirements-dont-cut-poverty-evidence-shows>.

services, or training. Beneficiaries living in rural areas without opportunities or transportation are likely to struggle to meet these new requirements.

The Arizona Application could even end up keeping people from gaining employment, because without health services, it will be more difficult for them to find and hold a job. Ohio's Department of Medicaid found that three-quarters of Medicaid expansion enrollees who were looking for work reported that Medicaid made it easier to do so, and more than half of those who were working said that Medicaid made it easier to keep their jobs.⁵ It is precisely *because* Medicaid meets enrollees' health needs that they are able to focus on finding and keeping employment. An analysis of Arizona's Medicaid enrollees reveals the majority of the program already works: 63% of non-SSI, nonelderly enrollees live in working families, 41% work full-time, and 21% maintain part-time employment.⁶ Further, among non-SSI, nonelderly enrollees that do not work, most face some significant barrier to work, with 37% citing an illness or disability as reasons for not working.⁷ These individuals depend on consistent access to care and treatment in order to stay healthy and lead productive lives. The policies contemplated by the Arizona Application will place access to these services in jeopardy, worsening health outcomes for those affected and removing any chances of economic mobility.

If implemented, the Arizona Application would take away health coverage for many who would otherwise be eligible. Far from addressing the health needs of vulnerable low-income populations, work requirements and time limits would decrease access to health coverage for these populations by creating new barriers to health care. As a result, individual and public health in the state will suffer, undermining the progress that Arizona has made on these issues and placing residents at unnecessary risk.

While making broad overtures to the social determinants of health, Arizona does not contemplate testing any hypothesis that could potentially produce better health outcomes for enrollees. Instead, the evaluation metrics are solely tied to the number of enrollees employed or otherwise seeking employment.⁸ Strikingly devoid from the evaluation proposal are any metrics to track improvements in enrollee's health. These evaluation metrics alone demonstrate the fundamental incompatibility between the Arizona Application and the objectives of the Medicaid program.

⁵ Ohio Department of Medicaid, "Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly," <http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf>.

⁶ Rachel Garfield, Robin Rudowitz, Anthony Damico, Kaiser Family Foundation, *Understanding the Intersection of Medicaid and Work*, <http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work> (Updated Jan. 2018)

⁷ Id.

⁸ Arizona Health Care Cost Containment System, *Arizona Section 1115 Waiver Amendment Request – AHCCCS Works Waiver*, pp. 10-11. Instead of evaluating improvements in enrollee health or other metrics that would demonstrate how the proposal advanced the objectives of the Medicaid program, Arizona proposes to track: "The number and percentage of "able bodied adults" enrolled in AHCCCS who become employed during the demonstration period.; The number and percentage of "able bodied adults" enrolled in AHCCCS that are actively seeking employment during the demonstration period.; The number and percentage of "able bodied adults" enrolled in AHCCCS that are attending school or an Employment Support and Development program, or both, at least twenty hours per week during the demonstration period.; The average household income of "able bodied adults" enrolled in AHCCCS over the demonstration period."

A work requirement, would harm Arizona’s Medicaid beneficiaries and restrict access to care, in direct conflict with the objectives of the Medicaid program. Accordingly, given the multitude of ways in which these proposals will take health care away from individuals and worsen health outcomes, HHS should reject Arizona’s Application for failing to promote the objectives of the Medicaid program, thereby violating the requirements of section 1115.⁹

II. Work Requirements Will Disproportionately Harm Individuals Living with Chronic Health Conditions

Individuals living with chronic illnesses and disabilities stand to be disproportionately harmed by the combined effect of these proposals. Many individuals who live with a chronic illness that is not classified severe enough by the Medicaid program to be considered a disability but that make maintaining employment impossible would be subject to the work requirement. Chronic illnesses can produce symptoms or disabilities that are not visible, yet serve as impediments to steady employment. Additionally, some chronic conditions like multiple sclerosis produce periods of inability to work due to medication side effects or symptom flare-ups; employees with these conditions require flexible work arrangements that can be hard to find or keep. Episodic disabilities can produce an uneven work history, which in turn can make it more difficult for a person to find consistent employment. These burdens particularly affect people living with chronic illnesses or disabilities, as consistent access to medical care is key to the management of symptoms and overall long-term wellness.

Further, while Arizona’s Application ostensibly notes 14 categories of enrollees that will be exempt from the work requirement, the complexity involved in tracking and applying exemptions is likely to prove unduly burdensome on both Arizona and enrollees. The history of administering exemptions to work requirements in other public benefits program shows that states often make mistakes and end up sanctioning beneficiaries that are not formally subject to the requirement.

The administrative challenges associated with implementing work requirements and time limits would be more pronounced in Medicaid than in the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) programs, which have struggled with implementation. SNAP and TANF require substantial interactions with participants, including interviews and frequent reporting. States have encountered numerous obstacles to accurately applying these policies. States’ administration of these policies in the SNAP program was error

⁹ See, e.g., *Beno v. Shalala*, 30 F.3d 1057 (9th Cir. 1994) (striking down a section 1115 waiver due, in part, to an inadequate determination by HHS that the plan was likely to promote the Act’s objectives). Furthermore, the law requires that the Secretary’s decision is based solely on a substantive “judgment” as to whether the waiver “is likely to assist in promoting the objectives” of Medicaid. As the Supreme Court has made clear in *Massachusetts v. EPA*, “the use of the word ‘judgment’ is not a roving license to ignore the statutory text. It is but a direction to exercise discretion within defined statutory limits.” 549 U.S. 497, 533 (2007).

prone, applied inaccurately, and led to eligible individuals being denied benefits.¹⁰ When first implemented, the U.S. Food and Nutrition Service did a study and found that policies were “difficult to administer and too burdensome for the States.” One of the biggest shifts was tracking benefit receipt over time, rather than circumstances in a single month, which was a fundamental change to program administration.¹¹ Historical analysis of state experience implementing work requirements in TANF suggests that adding similar requirements to Medicaid could cost states thousands of dollars per beneficiary.¹²

Further, while the Arizona Application notes that the “AHCCCS will also want to offer an opportunity for members to demonstrate whether they are medically frail,” sufficient details on this process, including the documentation and reporting burdens that will fall on enrollees to prove they qualify for an exemption, are absent in the Arizona Application. While the work requirement would not apply to beneficiaries living with a disability that receive Supplemental Security Income (SSI), it would be imposed on those living with a disability that does not qualify for SSI. In Arizona, approximately 65% of nonelderly adults living with a disability and on Medicaid do not receive SSI.¹³ These individuals will have to navigate a poorly defined exemption system that, as stated above, is likely to be extremely error-prone and will punish otherwise exempt individuals as well as those that cannot maintain employment due to their health needs.

Arizona has not adequately considered the disproportionate effect these harmful policies will have on individuals living with chronic illnesses and disabilities, despite numerous state comments speaking directly to this issue. Accordingly, Arizona has not satisfied the requirement that issues raised during the public notice procedure are considered during development of the final application.¹⁴ It is clear from this Application that Arizona is not adequately protecting the health needs of its most vulnerable citizens.

We appreciate the opportunity to provide comments on the Arizona Application. For the reasons described above, we urge HHS to reject the Arizona Application in order to ensure that the 1115 waiver program promotes, rather than undermines, the objectives of the Medicaid program, and that vulnerable populations retain access to crucial medications and health care services.

¹⁰ USDA Office of Inspector General, FNS Controls over SNAP Benefits for Able-Bodied Adults Without Dependents, September 2016, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

¹¹ Mathematica Policy Research, Inc., Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Participation (2001).

¹² Gayle Hamilton et al., “National Evaluation of Welfare-to-Work Strategies: How Effective Are Different Welfare-to-Work Approaches? Five-Year Adult and Child Impacts for Eleven Programs,” Manpower Demonstration Research Corporation, December 2001, Table 13.1.

¹³ Marybeth Musumeci, Julia Foutz, Rachel Garfield, Kaiser Family Foundation, *How Might Medicaid Adults with Disabilities Be Affected By Work Requirements in Section 1115 Waiver Programs?*, <https://www.kff.org/medicaid/issue-brief/how-might-medicaid-adults-with-disabilities-be-affected-by-work-requirements-in-section-1115-waiver-programs/> (Jan. 2018).

¹⁴ 42 C.F.R. § 431.412(a)(1)(viii).

With any further questions, please contact Robert Greenwald with the Treatment Access Expansion Project (rgreenwa@law.harvard.edu), Amy Killelea with the National Alliance of State & Territorial AIDS Directors (akillelea@nastad.org), or Jean McGuire at Northeastern University (j.mcguire@neu.edu) if we can be of assistance.

Respectfully submitted by the co-chairs of the Chronic Illness and Disability Partnership

Robert Greenwald
Treatment Access Expansion Project

Amy Killelea
National Alliance of State & Territorial AIDS Directors

Jean McGuire
Northeastern University