



February 22, 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 Mississippi State Waiver Application

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 Mississippi's Section 1115 Demonstration Application (the "Mississippi Application") under Section 1115 of the Social Security Act. While CIDP understands and supports the value of work, we are concerned that the work requirement policy put forth in the Mississippi Application would decrease meaningful access to care for low-income people living with chronic illnesses and disabilities. This misguided proposal will not 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 Mississippi Application and urge the Centers for Medicare and Medicaid Services (CMS) within the Department of Health and Human Services (HHS) to reject it.

I. Mississippi's proposed work requirement would violate the core objectives of the Medicaid program and would thus be unlawful

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

If approved, the Mississippi 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." The work requirement would achieve the exact opposite result intended by this objective, resulting in more individuals losing access to health coverage and medically necessary services.

In order to determine the experimental value of the project, HHS must make a judgment "that the project has a research or a demonstration value" – a simple benefits cut is not sufficient.² Mississippi's proposal to implement a work requirement has no research or demonstration value – requiring people to satisfy work requirements in order to receive public benefits is a mandate that has been well-researched, with studies finding that work requirements do not lead to significantly higher labor force participation or lift people out of poverty.³

Further, the State has an especially poor track record when it comes to exercising discretion when approving or denying applications for federal benefits programs. For example, in 2016 Mississippi turned down more than 98% of applicants for the Temporary Assistance for Needy Families (TANF) program, turning away otherwise eligible individuals by using procedural roadblocks.⁴ In 2017, the State outsourced eligibility verification to a private contractor, which gave beneficiaries of the Supplemental Nutrition Assistance Program (SNAP), TANF, and Medicaid just 10 days to prove eligibility.⁵ Mississippi's track record of using any lever it has to deny otherwise eligible beneficiaries access to federal benefits programs, coupled with the well-documented failure of work requirements to achieve their stated goals historically, strongly indicate that this waiver proposal is nothing more than an elaborately designed "simple benefits cut" violating the objectives of Section 1115.

In order to find that the project is likely to promote the objective of the Medicaid act, HHS must consider the impact of the project on the populations that Medicaid was designed to protect.⁶ Medicaid was designed to provide "medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient

² *Newton-Nations v. Betlach*, 655 F.3d 1066, 1074 (9th Cir. 2011)

³ 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>.

⁴ Bryce Covert and Josh Israel, "Mississippi Is Rejecting Nearly All of the Poor People Who Apply for Welfare," Think Progress, April 2017, <https://thinkprogress.org/mississippi-reject-welfare-applicants-57701ca3fb13/>.

⁵ MISSISSIPPI DEPARTMENT OF HUMAN SERVICES, ANNUAL REPORT, STATE FISCAL YEAR 2016 1, 41 (2017), available at https://web.archive.org/web/20170522144136/http://www.mdhs.state.ms.us/media/400058/2016-Annual-Report_web.pdf.

⁶ *Newton-Nations*, 655 F.3d at 1074.

to meet the costs of necessary medical services.”⁷ As described below, the waiver proposal will have its largest negative impact on families with dependent children and people living with disabilities, thus undermining the exact populations that the Medicaid program is designed to protect.

In its proposal, Mississippi indicates that the two eligibility groups who would be subject to work requirements include “Low Income Families, Parents/Caretaker Relatives” and those on Transitional Medical Assistance (TMA).⁸ There is no exception for parents of young children, meaning that mothers of children as young as two months old, and fathers of newborns, would be forced to either comply with work requirements or face losing coverage. In response to comments concerning loss of and access to health care, the Department of Medicaid focused on the temporary nature of TMA eligibility, completely ignoring parents/caretakers of minor children, the other category of Medicaid beneficiary subject to the work requirement.⁹ To comply with the work requirements, parents will either have to work in paid employment or approved non-paying activities for 20 hours a week, neither of which would ultimately help their situation with respect to health coverage.

For example, under the waiver proposal, a single parent of four children would have to work 20 hours a week (or participate in approved non-paying activities, including workforce training) in order to maintain their Medicaid eligibility. If this parent finds paying employment at minimum wage for 20 hours a week (which is the type of work that rarely provides employer-based health insurance), they will make approximately \$580 over the course of a month, pushing them past the monthly income limit for a family of five, which is \$541.¹⁰ That parent would then be placed in transitional medical assistance, and ultimately lose Medicaid, while still not qualifying for advanced premium tax credits to help make private coverage affordable, as these subsidies are only available for those making 100% of the federal poverty level: \$28,780 for a family of five.¹¹ During those 20 hours a week they are working, this individual would have to find childcare, which could leave that parent worse off financially than if they had not worked at all. If that parent later loses their job or cannot maintain employment while caring for their children, they will qualify for Medicaid again, be subject to the work requirement, and start the cycle over again. Mississippi states the work requirement will help to “reduce the number of individuals who churn in and out of Medicaid on a routine basis,”¹² but its design will only serve

⁷ 42 U.S.C.S. § 1396-1

⁸ Mississippi Division of Medicaid, MEDICAID WORKFORCE TRAINING INITIATIVE 1115 DEMONSTRATION WAIVER APPLICATION 1, 8 (2017), available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ms/ms-workforce-training-initiative-pa.pdf> (last visited Feb. 19, 2018) (hereinafter “Application”).

⁹ Application, *supra* note 8, at Appendix B.

¹⁰ *Income Limits for Medicaid and CHIP Programs*, MISSISSIPPI DIVISION OF MEDICAID, <https://medicaid.ms.gov/medicaid-coverage/who-qualifies-for-coverage/income-limits-for-medicaid-and-chip-programs/> (last visited Feb. 19, 2018).

¹¹ Federal Poverty Level (FPL) - HealthCare.gov Glossary, HealthCare.gov, <https://www.healthcare.gov/glossary/federal-poverty-level-FPL/> (last visited Feb 19, 2018).

¹² Application, *supra* note 8, at 7.

to *increase* churn, raising administrative costs and leading to worse health outcomes for individuals cycling in and out of Medicaid.

Reflecting this, the State projects to maintain budget neutrality – another requirement of Section 1115 waivers¹³ – because fewer people will maintain Medicaid eligibility. The State projects to save \$30 million in the first year of the program solely from covering fewer people.¹⁴ Over the course of the demonstration, more than 20,000 otherwise eligible people will be excluded from Medicaid coverage, even using the most conservative of estimates.¹⁵ Using work requirements as a pretext for reducing enrollment would not serve the purpose of Medicaid and is thus not a valid use of Section 1115 waiver authority.

In sum, a work requirement would harm low-income parents, a core group served by Medicaid's express purpose, would disincentivize beneficiaries from working, increase churn, and ultimately take away health care from otherwise eligible individuals and worsen health outcomes. For those reasons, HHS should reject Mississippi's application for failing to promote the objectives of the Medicaid program, thereby violating the requirements of Section 1115.

II. The waiver's design and complexity mean the work requirements will have unforeseen administrative costs, which would disproportionately affect people with living with chronic health conditions

Work requirements in other contexts have been the subject of rich research. This research demonstrates that work requirements carry high administrative costs and the complexity required to administer them yields high error rates that deny otherwise eligible individuals benefits, including individuals living with disabilities and chronic illnesses.¹⁶ There is no reason to think that Mississippi's proposed work requirements is designed in a way that avoids those pitfalls. Indeed, the State's proposal does not answer the question of how the work requirement will be tracked, merely pointing to already existing work requirements other benefits programs have, including TANF and SNAP, and stating that the proposed Medicaid work requirements would "leverage those resources to develop a process to provide a level of health security to Medicaid members while they gain the tools necessary for them to become independent of Medicaid."¹⁷

¹³ *About Section 1115 Demonstrations*, MEDICAID.GOV, <https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html> (last visited Feb. 19, 2018).

¹⁴ Application, *supra* note 8, at Appendix A.

¹⁵ Application, *supra* note 8, at Appendix A. The exact estimate is 20,134 individuals: Mississippi estimates a reduction of 241,613 member months over five years. Dividing this number by 12 months yields the estimate above, but this necessarily assumes that each individual remains in the program for a full year. This is unlikely to reflect Mississippi's actual experience and is thus an extremely conservative estimate.

¹⁶ 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>. ("[I]mplementation of ABAWD requirements can be error prone, and when ABAWD policy is applied inaccurately, eligible ABAWDs are denied SNAP benefits, while otherwise ineligible ABAWDs are provided benefits.")

¹⁷ Application, *supra* note 8, at 2.

To the extent the State does indicate how the requirement will be tracked, its proposals – including entering into a data sharing agreement with other branches of state government to identify and track those subject to the work requirement and monitoring activity of those participating in alcohol or other drug abuse treatment programs – its proposals are labor and cost-intensive and will likely lead to high administrative costs. Compounding this, the State includes no indication of how much the administrative costs of implementing the waiver will be, and does not include administrative costs in its budget neutrality calculation. This suggests that Mississippi will be unprepared to implement the work requirement if it is approved, potentially leading to the arbitrary denial of benefits.

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.

Individuals with chronic illnesses and disabilities have historically been the most likely to suffer adverse effects from work requirements.¹⁸ Mississippi's proposal would be no different. Mississippi proposes to exempt, among other categories, people diagnosed with mental illness, and members receiving SSI or SSDI. However, half of Medicaid beneficiaries with disabilities do not receive SSI or SSDI,¹⁹ which means they would be subject to a discretionary exemption for people "physically or mentally unable to work." Further, an analysis of the State's current enrollees reveals that among non-SSI adult enrollees, 47% are already working, and those that are not working face some significant barrier to work, with 48% citing an illness or disability as reasons for not working.²⁰ The State gives no indication of how exemption requests would be evaluated, or how the application or evaluation process would work. In short, like the administrative hurdles to tracking compliance with the work requirement generally, the State has not indicated how it would tackle logistical hurdles that lie at the heart of the proposed

¹⁸ MaryBeth Musumeci and Julia Zur, "Medicaid Enrollees and Work Requirements: Lessons from the TANF Experience," Kaiser Family Foundation, August 2017, https://www.kff.org/report-section/medicaid-enrollees-and-work-requirements-issue-brief/#endnote_link_232243-15.

¹⁹ 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).

²⁰ 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).

waiver, which would subject thousands of individuals living with a disability to uncertainty as to whether they will have their care and treatment taken away. Mississippi has not adequately considered the disproportionate effect these harmful policies will have on individuals living with chronic illnesses and disabilities, populations at the core of Medicaid's express purpose.

We appreciate the opportunity to provide comments on the Mississippi application. For the reasons described above, we urge HHS to reject the Mississippi 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. 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:

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