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January 19, 2018 3:30PM EST

Administration Advances Restrictive Medicaid Policies on Shaky Legal Grounds

Key Points:

- For the first time in the fifty-two year history of Medicaid, the Trump Administration approved a state policy that will require beneficiaries to work in order to receive health coverage. The approval for [Kentucky](#) came last week shortly after the Administration issued [guidance](#) laying out general support for work requirements.
- The Trump Administration's legal justification for this new policy is suspect. Work requirements, similar to other restrictive policies, run counter to the [express purpose](#) of Medicaid, as articulated by Congress. Further, evidence shows that the documentation and other administrative hurdles required by these policies will cause many eligible individuals to [lose coverage](#), even if they are indeed employed.
- Advocates can express their opposition to work requirements and other restrictive policies by engaging in the [public comment process](#). Proposals to implement work requirements in [Kansas](#) and [Arizona](#) are currently open for comment.

Medicaid Work Requirements – a Historic Step Backwards

Last week, the Trump Administration took the unprecedented step of approving a work requirement for [Kentucky's](#) Medicaid program – the first ever in the fifty-two year history of the program. The approval came shortly after the Administration issued new [guidance](#) to state Medicaid Directors, laying out support for state Medicaid programs seeking to deny beneficiaries health care coverage if they do not show proof of employment or “community engagement.” Not only do work requirements have a negative effect on vulnerable populations as discussed [last week](#), the approval of such drastic new policies is legally suspect.

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Understanding Medicaid Waivers

Under normal circumstances, a state may not withhold Medicaid benefits from individuals who meet certain [eligibility guidelines](#) set forth in federal law. However, [Section 1115](#) of the Social Security Act gives the Secretary of the [Department of Health and Human Services](#) (HHS) discretion to waive specific federal requirements to allow states to conduct “experimental, pilot, or demonstration projects” in their Medicaid programs. The Trump Administration is relying on this waiver authority to justify approving these new work requirements. Importantly, however, Section 1115 requires the Secretary to find that a proposed waiver is likely to promote the [objectives](#) of the Medicaid program in order to approve it.

Legality of Move Already Under Scrutiny

On Thursday, January 18th, [Senator Wyden](#) (D-Or.), along with a number of his colleagues, sent a [letter](#) to Acting Secretary of HHS [Eric Hargan](#), questioning the agency’s legal authority to approve work requirements. Senator Wyden’s letter likewise challenges HHS’s support for other restrictive policies that a [growing number](#) of states are seeking to implement, such as lock-out periods, time limits on eligibility, mandatory drug screening, and burdensome premiums or cost-sharing. Senator Wyden notes that when Congress created the Medicaid program, it did so with a clear objective in mind: to provide “medical assistance to [eligible individuals] whose income and resources are insufficient to meet the costs of necessary medical services” and “rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care,” directly citing the [law](#).

As we discussed [last week](#), work requirements will likely bar otherwise eligible individuals from receiving care and treatment from Medicaid and leave them with no other options for health care coverage. This is true even where beneficiaries acting in good faith to fulfill the work requirement are nonetheless terminated from coverage [due to complex and burdensome documentation requirements](#). The non-partisan [Congressional Budget Office](#) even [found](#) that some states would likely use work requirements *specifically* to reduce enrollment in their Medicaid programs, rather than focusing on improving health outcomes.

Given the clear and unambiguous objective of the Medicaid program, it is difficult to imagine how policies designed to reduce enrollment in the program further this objective. When a federal agency exercises its discretion to interpret a law in such a way as to undermine its fundamental purpose, it stands on shaky legal ground.

How Can I Help?

When submitting a request under Section 1115, a state [must](#) give ample opportunity for the public to provide comments on the proposal. The state normally provides a 30-day [“notice and comment”](#) period, during which the proposal is offered for public reaction. The state must then respond to *all* comments received and, before submitting to HHS, explain how they have addressed these comments in their final waiver application. After HHS certifies the state’s application as complete, another 30-day *federal* comment period begins. Comments submitted during this period are posted publicly on the [Medicaid.gov](#) website.

Anyone wishing to voice their opposition to work requirements and other restrictive policies should [watch](#) for waiver proposals at both the state and federal levels. Each state has a different agency, typically a state department of health and human services, which must publish and make available all waiver applications and accept comments during the specified period. Given the Administration’s public support, advocates should educate state policymakers about the negative effects

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of these harmful policies prior to submitting an application to HHS. At the federal level, comments can be submitted using the [Medicaid.gov](https://www.Medicaid.gov) website. HHS currently has federal comment periods open for [Kansas](#) and [Arizona's](#) waiver proposals. Both states are seeking to implement a work requirement.

In addition to voicing your opposition to restrictive policies in Medicaid, it helps if you state the specific reasons as to why you believe these proposals do not advance the objectives of the Medicaid program, as discussed above. Descriptions of first-hand experience with the Medicaid program, and how, based on those experiences, you believe the policies might negatively affect beneficiaries, are most persuasive. As advocates challenge restrictive waivers, these comments will form part of what courts consider, placing litigators in a better position for success. Once challenged, courts will examine HHS's waiver approvals in light of the objective of Medicaid. Comments explaining how these harmful policies run directly counter to Medicaid's objective are persuasive evidence to show that HHS has not exercised its discretion consistent with the law.

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