FEDERAL AIDS POLICY PARTNERSHIP
HIV HEALTH CARE ACCESS WORK GROUP

July 10, 2019

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: Community Engagement 1115 Demonstration Waiver Application

To Whom It May Concern:

The HIV Health Care Access Working Group (HHCAWG) appreciates the opportunity to comment on South Carolina's Section 1115 Demonstration Waiver Application. HHCAWG is a coalition of over 100 national and community-based HIV service organizations representing HIV medical providers, public health professionals, advocates, and people living with HIV who are all committed to ensuring access to critical HIV- and Hepatitis C (HCV) related health care and support services.

The Medicaid program is a critical source of health coverage for life-saving care for people living with HIV. More than 40 percent of people living with HIV in care count on the Medicaid program for the healthcare and treatment that keeps them healthy and productive.[1] Ensuring uninterrupted access to effective HIV care and treatment is important to the health of people living with HIV and to public health.[2] When HIV is effectively managed and individuals stay in treatment and virally suppressed, there is no risk of transmission.[3] While HHCAWG understands and supports the value of work, South Carolina's proposals imposing work requirements on vulnerable populations threaten to reverse the progress in providing access to prevention, care, and treatment and reducing health care costs.

For reasons discussed more below, HHCAWG is concerned that the work requirement proposed in South Carolina's Section 1115 Demonstration Waiver Application will have a negative impact on coverage and health outcomes for low-income individuals living with HIV and other chronic illness and/or disabilities.

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[1] Kates, Jennifer and Lindsey Dawson. Insurance Coverage Changes for People with HIV Under the ACA. Kaiser Family Foundation. February 2017.
[2] Panel on Antiretroviral Guidelines for Adults and Adolescents. Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents. Department of Health and Human Services. Available at http://www.aidsinfo.nih.gov/ContentFiles/AdultandAdolescentGL.pdf.
[3] Eisinger RW, Dieffenbach CW, Fauci AS. HIV Viral Load and Transmissibility of HIV Infection: Undetectable Equals Untransmittable. JAMA. Published online January 10, 2019321(5):451–452. doi:10.1001/jama.2018.21167.

Approximately 3,500 South Carolinian Medicaid beneficiaries are living with HIV[4] with this number likely to increase every year. Further, of the 83,461 individuals that South Carolina estimates will be affected by the work requirement, many are individuals living with at least one chronic illness or disability.[5] A survey on Medicaid beneficiaries in South Carolina found that *52 percent* of unemployed adults report illness or disability as their primary reason for not working.[6] Although South Carolina proposes to exempt individuals who are disabled, many individuals with chronic illnesses or disabilities are unlikely to receive an exemption because they face significant barriers, such as administrative complexity or being unable to meet exemption standards.

South Carolina's Section 1115 Demonstration Waiver Application cannot be approved for at least two reasons. First, the Medicaid statute within the Social Security Act (SSA) does not authorize states to impose work requirements as a condition for receiving Medicaid benefits. Second, a Section 1115 Demonstration Waiver Application must propose a demonstration project that promotes the objectives of Medicaid,[7] which is to furnish medical assistance to individuals "whose income and resources are insufficient to meet the costs of necessary medical services."[8] Thus, a waiver cannot be permitted if it does not promote the provision of affordable health care but instead promotes a substantial loss of coverage. As states that have implemented similar work requirements have had thousands of Medicaid beneficiaries lose coverage,[9] it is highly likely that a significant coverage loss will occur in South Carolina if the proposal is approved.[10] By violating the core purpose of Medicaid, South Carolina's Section 1115 Demonstration Waiver Application cannot be approved by the Secretary of Health and Human Services.

South Carolina's proposal will result in a substantial loss of coverage and will negatively impact health outcomes, especially for low-income individuals living with HIV and other chronic illnesses and/or disabilities. For the following reasons, we strongly oppose South Carolina's revised Section 1115 Demonstration Waiver Application and urge the Centers for Medicare and Medicaid Services (CMS) within the Department of Health and Human Services (HHS) to reject it.

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[4] Kaiser State Health Facts, 2013, http://kff.org/hivaids/state-indicator/enrollment-spending-on-hiv/.
[5] Center for Disease Control, Disability & Health U.S. State Profile Data for South Carolina (Adults 18+ years of age) (2018) https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/pdfs/SouthCarolina_Disability.pdf (estimating that as of 2018, 25.3% of adults in South Carolina have some type of disability)
[6] Rachel Garfield, Robin Rudowitz, and Anthony Damico, "Understanding the Intersection of Medicaid and Work, Appendix, Table 2 (2017), http://kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work/. (excluding individuals on SSI disability from the analysis)
[7] 42 U.S.C. § 1315(a).
[8] 42 U.S.C. § 1396.
[9] Data as of December 1, 2018. 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-as-predicted-arkansas-medicaid-waiver-is-taking-coverage-away-from-eligible-people (stating at least 17,000 beneficiaries have lost coverage so far).
[10] Georgetown University's Center for Children and Families and South Carolina Appleseed Legal Justice Center "Low-Income Families with Children Will Be Harmed by South Carolina's Proposed Medicaid Work Reporting Requirement," January 2019, https://ccf.georgetown.edu/2019/01/03/low-income-families-with-children-will-be-harmed-by-south-carolinas-proposedmedicaid-work-reporting-requirement/ (estimating 5,000-14,000 families will likely lose coverage).

1. **South Carolina's proposal of work requirements is not authorized by the Medicaid statute and violates the core purpose of Medicaid**

South Carolina's 1115 Demonstration Waiver Application proposes a community engagement requirement for Medicaid beneficiaries between the ages of 19-64, unless they qualify for an exemption. South Carolina's application indicates that the community engagement requirement will apply to approximately 83,461 individuals enrolled in Medicaid. Those who are subject to the community engagement requirement will have to work or participate in qualifying activities for an average of 80 hours per month over the period of a quarter to stay enrolled in Medicaid.

The Medicaid statute within the Social Security Act (SSA) does *not* allow for states to impose work requirements as a condition for receiving Medicaid benefits. Unlike in the Medicaid statute, the SSA expressly authorizes in other programs, such Temporary Assistance for Needy Family (TANF), for states to terminate beneficiaries' eligibility if they fail to comply with work requirements.[11] This omission of statutory authorization for work requirements is significant because the Medicaid statute *requires* a state plan to provide medical assistance to individuals in enumerated, mandatory eligibility groups.[12] Work requirements are in direct conflict with these Medicaid requirements, as work requirements exclude certain individuals within these mandatory eligibility groups, including low-income parents, based on employment status. South Carolina acknowledges this and estimates that 7,100 parents/caretaker relatives will have their Medicaid eligibility suspended in the first year alone.[13]

South Carolina's 1115 Demonstration Waiver Application cannot be approved because work requirements violate the core purpose of Medicaid. Under Section 1115 Waiver Authority of the SSA, the Secretary of Health and Human Services may waive certain Medicaid requirements to the extent necessary to allow for an "experimental, pilot, or demonstration project which, in the judgement of the Secretary," is likely to assist in promoting the objectives of Medicaid.[14] The purpose of Medicaid is to enable states to furnish medical assistance to individuals "whose income and resources are insufficient to meet the costs of necessary medical services."[15] Various federal courts have held that the Secretary of Health and Human Service's decision to grant a Section 1115 Waiver is reviewable under the Administrative Procedure Act (APA),[16] using an "arbitrary and capricious" standard to determine the permissibility of the approval.[17]

In *Stewart v. Azar*, Judge Baosberg of the Federal District Court for the District of Columbia vacated the Secretary's approval of Kentucky HEALTH, a Section 1115 Demonstration Waiver Application.[18] Kentucky

[11] SSA § 1931(b)(3)(A); 42 U.S.C. § 1396u-1(b)(3)(A).
[12] SSA § 1902(a)(10)(A)(i); 42 U.S.C. § 1396a(a)(10)(A)(i); SSA § 1902(a)(10)(B); 42 U.S.C. § 1396a(a)(10)(B).
[13] South Carolina Department of Health and Human Services, *Community Engagement Waiver: Coverage Impact*.
[14] 42 U.S.C. § 1315(a).
[15] 42 U.S.C. § 1396.
[16] *See, e.g., Stewart v. Azar,* 2018 U.S. Dist. LEXIS 108862 (D. DC. 2018); *Wood v. Betlach*, No. CV-12-08098, 2013 U.S. Dist. LEXIS 105027 (D. Ariz. July 26, 2013); *Beno v. Shalala*, 30 F.3d 1057, 1066 (9th Cir. 1994).
[17] 5 U.S.C. § 706(2)(A).
[18] *Stewart v. Azar*, 2018 U.S. Dist. LEXIS 108862 (D. DC. 2018).

HEALTH proposed a work requirement for Medicaid beneficiaries, requiring individuals to work 20 hours a week in order to remain eligible for Medicaid.[19] By the states' own estimate, 95,000 individuals would likely lose Medicaid coverage.[20] Finding "the secretary [had] paid no attention to that deprivation" and had not adequately considered whether Kentucky HEALTH would "help the state furnish medical assistance to its citizens, a central objective of Medicaid," Judge Boasberg held that the Secretary had erred in approving the plan.[21] This holding affirms that a waiver that does not promote the provision of health care and instead causes substantial coverage loss violates the core purpose of Medicaid and is thus impermissible under Section 1115. A similar holding was reached in reviewing work requirements approved in Arkansas's Medicaid program.[22]

a. Work requirements will lead to substantial coverage losses

An abundance of studies show that South Carolina's proposed work requirement will result in significant coverage losses for low-income individuals, especially for those with chronic illnesses and disabilities. A Kaiser Family Foundation analysis shows that, if work requirements were imposed nationwide, disenrollment rates would range from 1.4 to 4.0 million people among the 23.5 million non-SSI, nonelderly Medicaid adults.[23] Recent state examples have proven this: Arkansas implemented work requirements for its Medicaid expansion population in June 2018 and, so far, over 17,000 Medicaid beneficiaries have lost coverage.[24] Similar to Arkansas, South Carolina will likely also result in thousands of individuals losing coverage if work requirements are implemented. According to Georgetown University's Center for Children and Families, South Carolina's proposal will result in an estimated 5,000 to 14,000 parents losing Medicaid coverage, with the greatest impact felt on African American families and rural communities.[25]

South Carolina's work requirement will lead to substantial loss of coverage for low-income individuals with HIV and other chronic illnesses. In South Carolina, approximately 3,500 Medicaid beneficiaries are individuals living with HIV/AIDS[26] with this number likely to increase every year – the 2015 CDC

[19] Kentucky HEALTH (2018) https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ky/ky-health-pa3.pdf
[20] Kentucky HEALTH (2018) https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ky/ky-health-pa3.pdf
[21] *Stewart v. Azar*, 2018 U.S. Dist. LEXIS 108862 (D. DC. 2018).
[22] *Gresham v. Azar,* 363 F. Supp. 3d 165 (D. DC 2019).
[23] Rachel Garfield, Robin Rudowitz, and MaryBeth Musumeci, "Implications of a Medicaid Work 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/.
[24] Data as of December 1, 2018. 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-as-predicted-arkansas-medicaid-waiver-is-taking-coverage-away-from-eligible-people.
[25] Georgetown University's Center for Children and Families and South Carolina Appleseed Legal Justice Center "Low-Income Families with Children Will Be Harmed by South Carolina's Proposed Medicaid Work Reporting Requirement," January 2019, https://ccf.georgetown.edu/2019/01/03/low-income-families-with-children-will-be-harmed-by-south-carolinas-proposed-medicaid-work-reporting-requirement/.
[26] Kaiser State Health Facts, 2013, http://kff.org/hivaids/state-indicator/enrollment-spending-on-hiv/.

Surveillance Report has ranked South Carolina the 8th highest state in AIDS case rate.[27] Six in ten Americans are estimated to be living with at least one chronic illness or disability,[28] many of whom rely on Medicaid to obtain necessary care. At the national level, for individuals with mental health and substance use disorders (SUDs), Medicaid covers 25 percent of mental health services and 21 percent of substance use disorder services.[29] As discussed more below, South Carolina Medicaid beneficiaries with chronic health conditions such as these will likely be disproportionately affected by the proposed work requirements.

Work requirements will lead to substantial loss of coverage for at least two major reasons: individuals will not be able to meet the 80 hours per month work requirement and individuals will face significant administrative barriers in compliance:

i. Individuals will not be able to meet the 80 hours per month work requirement

In South Carolina's proposal, those who are subject to the community engagement requirement will have to work or participate in qualifying activities for 80 hours per month to stay enrolled in Medicaid. While the goal to encourage economic self-sufficiency is commendable, this proposal does not reflect the realities of the economy. Most Medicaid beneficiaries in South Carolina are already employed: among nonelderly adults receiving Medicaid in South Carolina, 73 percent are in families with at least one worker and 51 percent are working themselves.[30] Among those who do work, 41 percent worked full time (35 hours per week) for the entire year.[31] The highest percentage of Medicaid beneficiaries in South Carolina work in the service and manufacturing industry.[32] These jobs are often unstable, seasonal, and highly volatile, making it extremely difficult for individuals to have predictable hours each month.[33]

South Carolina's most recent application acknowledges that work opportunities for low-income individuals are likely to be in industries that offer seasonal employment and less predictable work schedules. In response to this, the revised application indicates an intent to allow beneficiaries to demonstrate compliance by averaging 80 hours of monthly community engagement over the period of a quarter. However, this *still* does not fully address the realities of low-wage work. The jobs available often have unpredictable schedules that are set by employers: one study reported that 41 percent of

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[27] CDC Surveillance Report discussed at https://www.scdhec.gov/sites/default/files/docs/Health/docs/stdhiv/pp_CH1-EpiProfile.pdf

[28] CDC https://www.cdc.gov/chronicdisease/index.htm

[29] Julia Zur, MaryBeth Musumeci, and Rachel Garfield. Medicaid's Role in Financing Behavioral Health Services for Low-Income Individuals. June 2017. https://www.kff.org/medicaid/issue-brief/medicaids-role-in-financing-behavioral-health-services-for-low-income-individuals/.

[30] Rachel Garfield et al., Kaiser Family Found., Understanding the Intersection of Medicaid and Work, Appendix, Table 1 (2018), http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work

[31] https://www.kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work/

[32] Rachel Garfield, Robin Rudowitz, and Anthony Damico, "Understanding the Intersection of Medicaid and Work, Appendix, Table 3 (2017), http://kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work/.

[33] See, e.g., Kristin F. Butcher & Diane Whitmore Schanzenbach, Ctr. On Budget & Policy Priorities, Most Workers in Low-Wage Labor Market Work Substantial Hours, in Volatile Jobs figure 6 (2018), https://www.cbpp.org/research/poverty-and-inequality/most-workers-in-low-wage-labor-market-worksubstantial-hours-in.

hourly workers receive one week or less notice of their job schedules.[34] Another study found that 73 percent of part-time workers report having unstable work schedules.[35] Variable schedules will not allow for individuals to make up for a loss of hours. Additionally, many Medicaid beneficiaries who want to work full-time are only offered part-time hours – an estimated 6.4 million people are involuntary part-time workers nation-wide.[36]

Many South Carolina Medicaid beneficiaries have chronic illnesses and disabilities which make it difficult for job stability and pose a significant barrier in satisfying the proposed 80-hour work requirement. Among adult Medicaid enrollees who are not working in South Carolina, over half report illness or disability as the primary reason for not working.[37] These individuals, including people living with HIV, will likely not be able to receive an exemption for various reasons, such a failure to successfully claim an exception or not rising to the Social Security Insurance (SSI) disability standard. While South Carolina proposes a catchall "case-specific basis" exclusion, no specifics on how this will be determined, how it will be communicated to enrollees, or how enrollees may claim this exemption is presented. At a minimum, people living with HIV should not be forced to undergo useless re-certifications that they are HIV positive and therefore qualify for an exemption once secured.

However, even if an individual does not qualify for South Carolina's proposed exemption, they may still have physical and mental health illnesses or disabilities that interfere with their ability to work. For example, when surveying Medicaid adults *not* on SSI Disability, a Kaiser Family Foundation analysis found that, among those who reported illness or disability as the primary reason for not working, 88 percent reported a functional limitation and 67 percent of individuals had two or more chronic conditions, such as arthritis or asthma.[38] Additionally, individuals with chronic illness or disabilities are more likely to be employed part time than individuals without disabilities, which makes it more difficult to complete the 80 hour a month requirement.[39]

Work requirement examples in other benefit programs show that chronically ill and disabled individuals are often unable to comply or are improperly punished due to administrative complexity. Studies on Temporary Assistance for Needy Families (TANF) have consistently found that individuals who are sanctioned for not complying with work requirements are disproportionately individuals reporting

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[34] Susan J. Lambert, Peter J. Fugiel, and Julia R. Henly, "Schedule Unpredictability Among Early Career Workers in the US Labor Market: A National Snapshot," University of Chicago, July 2014, https://ssa.uchicago.edu/sites/default/files/uploads/lambert.fugiel.henly_.precarious_work_schedules.august2014_0.pdf.
[35] Lonnie Golden, "Irregular Scheduling And Its Consequences," Economic Policy Institute, April 2015, https://www.epi.org/publication/irregular-work-scheduling-and-its-consequences.
[36] Lonnie Golden, "Still Falling Short on Hours and Pay," Economic Policy Institute, December 2016, http://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal.
[37] Rachel Garfield, Robin Rudowitz, and Anthony Damico, "Understanding the Intersection of Medicaid and Work, Appendix, Table 2 (2017), http://kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work/.
[38] Kaiser Family Foundation analysis of 2016 National Health Interview Survey, discussed at https://www.kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work/view/footnotes/#footnote-245492-3
[39] U.S. Bureau of Labor Statistics, Persons with a Disability: Labor Force Characteristics – 2018, 2 (2019), https://www.bls.gov/news.release/pdf/disabl.pdf ("31 percent of workers with a disability usually worked part time, compared with 17 percent of those without a disability").

disabilities.[40] Those who were disconnected from TANF after being unable to meet the work requirements were also more likely to be individuals with poor physical or mental health.[41] Similarly, studies on the Supplemental Nutrition Assistance Program (SNAP) have show that the most frequent reason for individuals being unable to work is because of health or disability reasons.[42] Additionally, some studies have shown that SNAP recipients with disabilities are much less likely to be employed, finding only 12 percent of recipients with disabilities employed as compared to 47 percent of recipients without disabilities.[43]

ii. Increased administrative burdens will result in significant loss of coverage

Despite satisfying work requirement hours or qualifying for an exemption, many individuals will likely face significant administrative burdens at the risk of disenrollment. Studies on SNAP and Medicaid show that burdensome administrative procedures frequently cause otherwise eligible individuals to lose health care, such as by not completing paperwork on time or not receiving notices. When work requirements are implemented, enrollment in Medicaid declines in large part due to various challenges in satisfying required documentation.[44] For example, after Arkansas implemented work requirements, many individuals who *did* satisfy the work requirement hours failed to comply with documentation due to inability to access the reporting portal or establish an account or login, not comprehending what was needed, and difficulty using the portal due to a disability.[45] A Kaiser Family Foundation analysis predicts that once work requirements are implemented, most individuals losing Medicaid coverage will be disenrolled due to a lack of *reporting* rather than a lack of compliance.[46]

While some states have discussed updating system technology or providing caseworker assistance to improve reporting, the current systems in place have proven to be ineffective and disastrous for

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[40] Mathematica Policy Research, Assisting TANF Recipients Living with Disabilities to Obtain and Maintain Employment: Conducting In-Depth Assessments, 2 (2008), https://www.acf.hhs.gov/sites/default/files/opre/conducting_in_depth.pdf.

[41] Pamela Loprest, *Disconnected Welfare Leavers Face Serious Risks*, Washington, DC: Urban Institute, 1 (2002), http://www.urban.org/sites/default/files/publication/59036/310839-Disconnected-Welfare-Leavers-Face-Serious-Risks.PDF.

[42] Lauren Bauer, Diane Whitmore Schanzenbach, and Jay Shambaugh, Work Requirements and Safety Net Programs," The Hamilton Project, 12 (2018) https://www.brookings.edu/wp-content/uploads/2018/10/WorkRequirements_EA_web_1010_2.pdf
(finding 39.6% of individuals reported health or disability as the primary reason for not being in the labor force with calculations based on SIPP U.S. Census Bureau data)

[43] Michael Morris et al., Burton Blatt Inst. at Syracuse Univ., Impact of the Work Requirement in Supplemental Nutrition Assistance (SNAP) on Low-Income Working-Age People with Disabilities, 14 (2014), https://researchondisability.org/docs/publications/snap-paper-8-23-2014-withappendix.pdf?sfvrsn=2.

[44] Jennifer Wagner & Judith Solomon, Ctr. On Budget & Policy Priorities, States' Complex Medicaid Waivers Will Create Costly Bureaucracy and Harm Eligible Beneficiaries, 12 (2018), https://www.cbpp.org/sites/default/files/atoms/files/5-23-18health2.pdf.

[45] Jennifer Wagner "Commentary: As Predicted, Eligible Arkansas Medicaid Beneficiaries Struggling to Meet Rigid Work Requirements" Center on Budget and Policy Priorities, (2018), https://www.cbpp.org/sites/default/files/atoms/files/7-30-18health.pdf

[46] Rachel Garfield, Robin Rudowitz, and MaryBeth Musumeci, "Implications of a Medicaid Work 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/.

beneficiaries.[47] System errors are high in states with newly approved work requirements, largely due to difficulties in implementing complex policy and system changes.[48] Studies have found that design and implementation failures, inadequate staffing, inability to oversee technology vendors, and reduced in-person service for vulnerable persons have led to significant delays, denials and termination of eligible participants.[49] Caseworker assistance in reporting work requirements is often understaffed and overloaded – most Medicaid beneficiaries do not directly interact with caseworkers to help with required documentation, which leaves individuals on their own to navigate complex paperwork, increasing the chance of disenrollment.[50]

Increased administrative burdens will negatively impact individuals with chronic illnesses and disabilities. Individuals with chronic illness or disabilities may experience cognitive difficulties in navigating complex bureaucratic systems and reporting requirements.[51] Studies on individuals applying for SSI Disability show that many individuals with chronic illnesses and disabilities who start an application or are initially rejected do not appeal or follow up because their conditions prevent them from dealing with the administrative process.[52] Inaccessible websites and overloaded call centers to deal with eligibility issues or interviews have been shown to present additional barriers to people with disabilities.[53] Because of this administrative burden, individuals with chronic illnesses and disabilities are disproportionately likely to lose benefits.[54]

Although South Carolina's proposal states that some individuals with disabilities will be exempt, these qualifying individuals still need to go through an extensive process to show that they are eligible for an exemption. For similar reasons discussed above, many of these individuals will face substantial difficulty in seeking disability determinations and applying for exemptions.[55] Additionally, the complexity of chronic illness and disability can make it difficult to capture whether a person will qualify for

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[47]Gina Mannix, Marc Cohan, and Greg Bass, "How to Protect Clients Receiving Public Benefits When Modernized Systems Fail: Apply Traditional Due Process in New Contexts, January 6, 2016, https://nclej.org/wp-content/uploads/2016/01/ClearinghouseCommunity_Mannixetal-Published-Article-with-Copyright.pdf

[48] Jennifer Wagner & Judith Solomon, Ctr. On Budget & Policy Priorities, States' Complex Medicaid Waivers Will Create Costly Bureaucracy and Harm Eligible Beneficiaries, 12 (2018), https://www.cbpp.org/sites/default/files/atoms/files/5-23-18health2.pdf.

[49] Gina Mannix, Marc Cohan, and Greg Bass, "How to Protect Clients Receiving Public Benefits When Modernized Systems Fail: Apply Traditional Due Process in New Contexts," Clearinghouse Community, January 6, 2016, http://nclej.org/wpcontent/uploads/2016/01/ClearinghouseCommunity_Mannixetal-Published-Article-with-Copyright.pdf.

[50] Jennifer Wagner & Judith Solomon, Ctr. On Budget & Policy Priorities, States' Complex Medicaid Waivers Will Create Costly Bureaucracy and Harm Eligible Beneficiaries, 12 (2018), https://www.cbpp.org/sites/default/files/atoms/files/5-23-18health2.pdf.

[51] Richard Frank and Sherry Glied, Work Requirements in Medicaid for People with Mental Illnesses and Substance Use Disorders (2018) https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201800126

[52] Richard Frank and Sherry Glied, Work Requirements in Medicaid for People with Mental Illnesses and Substance Use Disorders (2018) https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201800126

[53] Gina Mannix, Marc Cohan, and Greg Bass, "How to Protect Clients Receiving Public Benefits When Modernized Systems Fail: Apply Traditional Due Process in New Contexts," Clearinghouse Community, January 6, 2016, http://nclej.org/wpcontent/uploads/2016/01/ClearinghouseCommunity_Mannixetal-Published-Article-with-Copyright.pdf.

[54] LaDonna Pavetti, Michelle K. Derr, and Heather Hesketh Zaveri, "Review of Sanction Policies and Research Studies: Final Literature Review," Mathematica Policy Research, Inc., March 10, 2003, https://www.mathematica-mpr.com/ourpublications-and-findings/publications/review-of-sanction-policies-and-research-studies-final-literature-review.

[55] https://www.kff.org/medicaid/issue-brief/implications-of-work-requirements-in-medicaid-what-does-the-data-say/

exception.[56] Hence, a significant amount of individuals who qualify for exceptions are often not exempted.[57]

2. Work requirements will not meet South Carolina's stated objectives

a. Work requirements do not increase employment

South Carolina's proposal that work requirements will produce economic self-sufficiency is not accurate: work requirements do *not* increase employment. First, as discussed previously, the majority of Medicaid nonelderly adult beneficiaries in South Carolina are already living in working families or are working themselves.[58] Second, work requirements have been shown to be counterproductive, often leading to a *decrease* in employment. Various studies on the TANF work requirement implementation show that after an initial bump of increased employment rates, there was no long-term increase in stable employment and overall employment rates decreased.[59] This is in part because SNAP, Medicaid, and TANF are frequently used to support individuals in between jobs. One study found that in more than 80 percent of SNAP households with a nonelderly adult, at least one adult used SNAP while they were in between jobs.[60] Medicaid beneficiaries in South Carolina are highly likely to experience a similar gap in employment because the vast majority are employed in industries that are highly volatile.[61]

Enrollment in Medicaid has been shown to help employment. Various studies have found that Medicaid helps workers maintain their health and well-being so they can search for and retain jobs.[62] A report from Ohio Department of Medicaid found that enrollees believed Medicaid made it easier to secure and maintain employment (52.1 percent) as well as, if unemployed, made it easier to look for employment

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[56] Richard Frank and Sherry Glied, Work Requirements in Medicaid for People with Mental Illnesses and Substance Use Disorders (2018) https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201800126

[57] *See, e.g,.* See Michael Morris et al., Burton Blatt Inst. at Syracuse Univ., Impact of the Work Requirement in Supplemental Nutrition Assistance (SNAP) on Low-Income Working-Age People with Disabilities 4, 14 (2014), https://researchondisability.org/docs/publications/snap-paper-8-23-2014-withappendix.pdf?sfvrsn=2; Correction: Benefits Dropped Story, U.S. NEWS & WORLD REPORT, May 26, 2017, https://www.usnews.com/news/best-states/georgia/articles/2017-05-25/work-requirements-dropthousands-in-georgia-from-food-stamps (stating that hundreds of SNAP enrollees were wrongly classified as able-bodied when they were unable to work)

[58] Rachel Garfield et al., Kaiser Family Found., Understanding the Intersection of Medicaid and Work, Appendix, Table 1 (2018), http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work

[59] See, e.g., Heather Hahn, Work Requirements, Time Limits, and Work Incentives in TANF, SNAP, and Housing Assistance, April 2018, https://www.urban.org/sites/default/files/publication/98086/work_requirements_in_safety_net_programs_0.pdf.

[60] Heather Hahn, Work Requirements, Time Limits, and Work Incentives in TANF, SNAP, and Housing Assistance, April 2018, https://www.urban.org/sites/default/files/publication/98086/work_requirements_in_safety_net_programs_0.pdf

[61] See, e.g., Rachel Garfield, Robin Rudowitz, and Anthony Damico, "Understanding the Intersection of Medicaid and Work, Appendix, Table 3 (2017), http://kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work/; Kristin F. Butcher & Diane Whitmore Schanzenbach, Ctr. On Budget & Policy Priorities, Most Workers in Low-Wage Labor Market Work Substantial Hours, in Volatile Jobs figure 6 (2018), https://www.cbpp.org/research/poverty-and-inequality/most-workers-in-low-wage-labor-market-worksubstantial-hours-in.

[62] Jessica Gehr and Suzanne Wikle, "The Evidence Builds: Access to Medicaid Helps People Work, December 2017, https://www.clasp.org/sites/default/files/publications/2017/04/The-Evidence-Builds-Access-to-Medicaid-Helps-People-Work.pdf

(74.8 percent).[63] In a Michigan report on Medicaid beneficiaries, 69 percent of enrollees indicated Medicaid helped them "do better at work."[64] Similarly, Medicaid coverage has been associated with a reduction in financial stresses, such as by making it easier to buy food and pay rent, which helps individuals focus on finding and keeping jobs.[65] For individuals living with chronic illness and disabilities, enrollment in Medicaid has been shown to increase employment. A recent study found that in states that expanded Medicaid post-ACA, overall employment increased for individuals with disabilities from 41.3 percent to 47 percent.[66] This study also found that individuals were less likely to report not working because of a disability.[67] Overall, the compelling body of literature suggests that increasing Medicaid enrollment "itself acts as a work incentive program"[68] for individuals with disabilities, thus undermining the need for work requirements.

b. Work requirements do not improve health outcomes

South Carolina's proposed work requirements will not improve health outcomes for beneficiaries. Work requirements have a negative impact on health outcomes by increasing the likelihood of being uninsured. Insurance coverage increases access to care, which improves health outcomes.[69] A recent analysis found that Medicaid coverage is associated with increased outpatient utilization, increased preventive service visits, and increased prescription drug use and adherence.[70] Most studies have also shown Medicaid coverage to increase rates of improved self-reported health and well-being.[71]

Health insurance coverage is crucial for health outcomes in individuals with chronic illnesses and disabilities. For example, Medicaid coverage is correlated with higher rate of diagnosis of diabetes as

[63] The 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.
[64] Renuka Tipirneni, Jeffrey Kullgren, John Ayanian, Edith Kieffer, Ann-Marie Rosland, Tammy Chang, Adrianne Haggins, Sarah Clark, Sunghee Lee, and Susan Goold, "Medicaid Expansion Helped Enrollees Do Better at Work or in Job Searches," University of Michigan, June 2017, http://ihpi.umich.edu/news/medicaid-expansion-helped-enrollees-do-better-work-orjob-searches.
[65] Jessica Gehr and Suzanne Wikle, "The Evidence Builds: Access to Medicaid Helps People Work, December 2017, https://www.clasp.org/sites/default/files/publications/2017/04/The-Evidence-Builds-Access-to-Medicaid-Helps-People-Work.pdf
[66] Jean Hall, Adele Shartzer, Noelle Kurth, and Kathleen Thomas, "Medicaid Expansion as an Employment Incentive Program for People with Disabilities." American Journal of Public Health, 1236 (2018) https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2018.304536.
[67] Jean Hall, Adele Shartzer, Noelle Kurth, and Kathleen Thomas, "Medicaid Expansion as an Employment Incentive Program for People with Disabilities." American Journal of Public Health, 1235 (2018) https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2018.304536.
[68] Jean Hall, Adele Shartzer, Noelle Kurth, and Kathleen Thomas, "Medicaid Expansion as an Employment Incentive Program for People with Disabilities." American Journal of Public Health, 1235 (2018) https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2018.304536.
[69] https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/
[70] Benjamin D. Sommers, M.D., Ph.D., Atul A. Gawande, M.D., M.P.H., and Katherisne Baicker, Ph.D., Health Insurance Coverage and Health — What the Recent Evidence Tells Us, New England Journal of Medicine, July 21, 2017, http://www.nejm.org/doi/full/10.1056/NEJMsb1706645.
[71] Benjamin D. Sommers, M.D., Ph.D., Atul A. Gawande, M.D., M.P.H., and Katherisne Baicker, Ph.D., Health Insurance Coverage and Health — What the Recent Evidence Tells Us, New England Journal of Medicine, July 21, 2017, http://www.nejm.org/doi/full/10.1056/NEJMsb1706645.

well as greater adherence to diabetes medication.[72] For individuals reporting chronic conditions, obtaining health coverage has been shown to increase access to regular care.[73] Access to regular care is critical to health outcomes because chronic diseases require ongoing management to prevent the escalation of symptoms.[74]

South Carolina hypothesizes that the community engagement will result in beneficiaries moving from Medicaid to other sources of health care coverage. However, most Medicaid enrollees in South Carolina work in low-wage jobs that likely have no employer-sponsored health insurance offered –and if insurance is offered it may be prohibitively expensive.[75] Highlighting this, a Kaiser Family Foundation analysis found that workers in households below 100 percent of the federal poverty line were significantly less likely to receive employee-offered insurance (30 percent) than those with higher incomes above 400 percent of the federal poverty line (78 percent).[76] Another report found that among low-wage workers in the lower 10 percent of earnings, 78 percent did not have access to health care through employment.[77]

Additionally, even if disenrolled beneficiaries are able to re-enroll in Medicaid or find other health insurance, the impact of insurance disruption on health outcomes is significant. One study found that Medicaid enrollees in Oregon who experienced a coverage gap of less than 10 months were less likely to have a primary care visit and more likely to have unmet health care and medication needs than those continuously insured.[78] For individuals living with HIV, treatment disruptions have both individual and public health concerns: individuals that stay in treatment and virally suppressed cannot transmit HIV.[79] For chronically ill and disabled individuals, various research shows that interruptions in Medicaid

[72] See, e.g., Benjamin D. Sommers, M.D., Ph.D., Atul A. Gawande, M.D., M.P.H., and Katherisne Baicker, Ph.D., Health Insurance Coverage and Health — What the Recent Evidence Tells Us, New England Journal of Medicine, (2017) http://www.nejm.org/doi/full/10.1056/NEJMsb1706645; Christopher J. King et al., Diabetes mortality rates among African Americans: A descriptive analysis pre and post Medicaid expansion, *Preventive Medicine Reports* (2018) https://www.clinicalkey.com/service/content/pdf/watermarked/1-s2.0-S2211335518301281.pdf?locale=en_US.

[73] Benjamin D. Sommers, M.D., Ph.D., Atul A. Gawande, M.D., M.P.H., and Katherisne Baicker, Ph.D., Health Insurance Coverage and Health — What the Recent Evidence Tells Us, New England Journal of Medicine, (2017), http://www.nejm.org/doi/full/10.1056/NEJMsb1706645

[74] *See e.g.*, Brian Ward, Barriers to Health Care for Adults with Multiple Chronic Conditions: United States, 2012–2015, Nat'l Ctr. H. Statistics (2017) https://www.cdc.gov/nchs/products/databriefs/db275.htm.

[75] *See* U.S. Bureau of Labor Statistics, Employee Benefits Survey, Healthcare Benefits, March 2016, Table 11: Medical care benefits, single coverage: Employer and employee premiums by employee contribution requirement, private industry workers, March 2016, https://www.bls.gov/ncs/ebs/benefits/2016/ownership/private/table11a.pdf.

[76] Kaiser Family Found., Trends in Employer-Sponsored Insurance Offer and Coverage Rates: 1999- 2014 (2016) http://files.kff.org/attachment/issue-brief-trends-in-employer-sponsored-insurance-offer-andcoverage-rates-1999-2014-2.

[77] Tanya L. Goldman et al., Ctr. for Law and Social Policy, The Struggles of Low Wage Work (2018), https://www.clasp.org/sites/default/files/publications/2018/05/2018_lowwagework.pdf.

[78] Matthew J. Carlson, Jennifer DeVoe, and Bill J. Wright, "Short-Term Impacts of Coverage Loss in a Medicaid Population: Early Results From a Prospective Cohort Study of the Oregon Health Plan," Annals of Family Medicine (2006) http://www.annfammed.org/content/4/5/391.full.pdf+html

[79] Eisinger RW, Dieffenbach CW, Fauci AS. HIV Viral Load and Transmissibility of HIV Infection: Undetectable Equals Untransmittable. JAMA. Published online January 10, 2019321(5):451–452. doi:10.1001/jama.2018.21167

coverage are associated with a higher rate of hospitalization for conditions such as asthma, diabetes, and hypertension.[80]

c. Work requirements will be costly for South Carolina

South Carolina's proposed work requirement will increase health and administrative costs for the state. In order to implement work requirements, South Carolina will need to implement costly system changes. For example, Tennessee estimated that the necessary system changes would cost at least $5.6 million to implement work requirements.[81] Even greater costs will be associated with the administration of work requirements, such as hiring new staff, monitoring compliance, providing supportive services to assist enrollees, and hiring additional administrative law judges.[82] Michigan's fiscal agency estimates the administrative costs of imposing work requirements would be in the range of $15 to $30 million per year.[83]

Because work requirements will lead to disenrollment or gaps in coverage, high costs to the state will likely occur. In 2013, states and localities provided $19.8 billion to offset the cost of uncompensated care resulting from uninsured individuals.[84] For individuals with chronic conditions, obstacles to access to care can result in poor disease management and the need for late, high-cost interventions.[85] Additionally, individuals without insurance are less likely to seek preventive care, which in turn prevents opportunities to prevent, screen, diagnose and treat conditions before costs escalate.[86]

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[80] Andrew Bindman, Amitabha Chattopadhyay, and G. M. Auerback. "Interruptions in Medicaid coverage and risk for hospitalization for ambulatory care-sensitive conditions," Annals of Internal Medicine (2008) https://annals.org/aim/fullarticle/744152/interruptions-medicaid-coverage-risk-hospitalization-ambulatory-care-sensitive-conditions

[81] Jennifer Wagner & Judith Solomon, Ctr. On Budget & Policy Priorities, States' Complex Medicaid Waivers Will Create Costly Bureaucracy and Harm Eligible Beneficiaries 15 (2018), https://www.cbpp.org/sites/default/files/atoms/files/5-23-18health2.pdf.

[82] Jennifer Wagner & Judith Solomon, Ctr. On Budget & Policy Priorities, States' Complex Medicaid Waivers Will Create Costly Bureaucracy and Harm Eligible Beneficiaries 15 (2018), https://www.cbpp.org/sites/default/files/atoms/files/5-23-18health2.pdf.

[83] Jennifer Wagner & Judith Solomon, Ctr. On Budget & Policy Priorities, States' Complex Medicaid Waivers Will Create Costly Bureaucracy and Harm Eligible Beneficiaries 15 (2018), https://www.cbpp.org/sites/default/files/atoms/files/5-23-18health2.pdf.

[84] https://www.kff.org/uninsured/report/uncompensated-care-for-the-uninsured-in-2013-a-detailed-examination/

[85] See, e.g., Lisa C. Richardson et al., Vital Signs: Colorectal Cancer Screening, Incidence, and Mortality — United States, 2002–2010, 306(7) J. Am. Medical Assoc. 701, 701 (2011) https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6026a4.htm

[86] See, e.g., Lisa C. Richardson et al., Vital Signs: Colorectal Cancer Screening, Incidence, and Mortality — United States, 2002–2010, 306(7) J. Am. Medical Assoc. 701, 701 (2011) https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6026a4.htm

3. Conclusion

We appreciate the opportunity to provide comments on the South Carolina Application. 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.

For the reasons discussed, we urge we urge HHS to reject 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. Please contact HHCAWG Co-Chairs Amy Killelea with the National Alliance of State and Territorial AIDS Directors at akillelea@nastad.org or Phil Waters with the Center for Health Law and Policy Innovation at pwaters@law.harvard.edu with any questions or concerns.

Respectfully submitted by the undersigned organizations:

ADAP Educational Initiative | AIDS Alabama | AIDS Action Baltimore | AIDS Alliance for Women, Infants, Children, Youth & Families | AIDS Foundation of Chicago | AIDS Research Consortium of Atlanta | AIDS United | American Academy of HIV Medicine | APLA Health | AIDS Resource Center of Wisconsin | Bailey House, Inc. | Black AIDS Institute | Communities Advocating Emergency AIDS Relief (CAEAR) | Community Access National Network (CANN) | Georgia AIDS Coalition | Harm Reduction Coalition | HealthHIV | HIV Medicine Association| Housing Works | Legal Council for Health Justice | Michigan Positive Action Coalition | Minnesota AIDS Project | National Alliance of State and Territorial AIDS Directors | National Latino AIDS Action Network | National LGBTQ Task Force Action Fund | NMAC | Positive Health Solutions of the University of Illinois | Positive Women's Network - USA | Rocky Mountain CARES | San Francisco AIDS Foundation | SisterLove | Southern AIDS Coalition | Southern HIV/AIDS Strategy Initiative | St. Louis Effort for AIDS | The AIDS Institute | Treatment Access Expansion Project | Treatment Action Group | Thrive Alabama