Medicaid Work Requirements Place a Burden on Access to Health Care

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Many states are now moving to impose work requirements for Medicaid benefits, a process that has been in the works for quite some time under the Trump administration. Currently, two states have been approved to impose work requirements and several other states have applications pending. Here are some of the key events leading up to this point:

- On March 14, 2017, Seema Verma, the Administrator of the Center for Medicare and Medicaid Services, ("CMS") and Tom Price, the former Health and Human Services ("HHS") Secretary issued a letter to the nation's governors showing their support for Medicaid work requirements (1).
- On November 6, 2017, CMS announced its plan to streamline and expedite the section 1115 Medicaid waiver process.
- On November 7, 2017, Seema Verma addressed the National Association of Medicaid Directors saying that work requirements will transform Medicaid delivery from "just handing out Medicaid cards" to incentivizing the poor to "break the chains of generational poverty."
- Finally, on January 11, 2018, CMS issued a policy guidance letter advising states on how to implement such requirements. This letter took a different tone and cited improved health outcomes associated with employment as a justification for the requirements.

Section 1115 Waivers: What Are They and How Do They Work?

Section 1115 of the Social Security Act allows the Secretary of HHS to waive certain federal requirements of the Medicaid program for states that propose demonstration projects that are 1) experimental, 2) consistent with the objectives of Medicaid, and 3) budget neutral. (2) Many states have used these waivers in the past to expand coverage. *Id.* Waivers are generally approved for an initial five-year period and may be extended for an additional three years. (3)

HHS requires public notice and comment making at the state and federal level before new Section 1115 waivers and extensions are approved. (4) The Affordable Care Act ("ACA") implemented evaluation requirements for the waivers. *Id*. The purpose of these evaluations is to assess the demonstration project to see if it's actually furthering objectives of Medicaid or saving money|however, the General Accountability Office reported that many states do not complete their evaluations until *after* the federal government renews the project, arguably rendering this requirement pointless. (5)

So far, Indiana, Kentucky, and Arkansas have been approved to impose work requirements through the waiver process, yet many more states have requests pending. (6) Alaska, Arizona, Kansas, Maine, Wisconsin, Mississippi, New Hampshire, Utah, and Ohio are seeking to impose some type of community engagement or work requirements to access Medicaid benefits.

Work Requirement Proposals Do Not Satisfy Section 1115 Waiver Requirements

As noted, HHS requires that Section 1115 waivers must be 1) experimental, 2) consistent with the objectives of Medicaid, and 3) budget neutral. Proposals for work requirements fail two of these criteria.

First, it is unlikely that the implementation of work requirements will be budget neutral. Requiring participants to fill out additional documentation will necessitate infrastructure that can process and enforce the new procedure. To illustrate, the implementation of work requirements in Kentucky will cost an estimated $187 million in the first six months alone.

Second, work requirements are not consistent with the objectives of Medicaid. One of the basic tenets of the Medicaid program is ensuring health care access. But if states impose work requirements, it will only be harder for vulnerable populations to access health care. In fact, it is estimated that 95,000 people in Kentucky will lose coverage as a result of these requirements. (7) Requiring participants to fill out documentation verifying that they're actively looking for work or participating in an approved activity risks taking coverage away from those who are unable to fulfill procedural requirements, but are eligible for benefits otherwise. Kaiser Family Foundation explains, "there is a real risk of eligible people losing coverage due to their inability to navigate these processes, miscommunication, or other breakdowns in the administrative process." (8) People with disabilities, limited English proficiency, and people with limited literacy abilities may be at risk of losing their health care. Furthermore, people who suffer from a severe illness or injury will also be at risk of losing their coverage under these requirements. It is difficult to see how work requirements improve or increase access to health care in any way.

Yet, those in favor of work requirements argue that the ACA's expansion of Medicaid has gone too far and that work requirements serve as a mechanism to rein in this expansion. In her speech to the National Association of Medicaid Directors, Seema Verma stated that Medicaid was intended to be a program

that covered only the "most vulnerable" and that the size and reach of the present-day Medicaid program has far surpassed its intended limits. By "encouraging" able-bodied individuals to seek employment, work requirements will allow Medicaid resources to go to individuals who *actually* need the services—individuals who, some might argue, *actually deserve* them. Perhaps those who barely meet the Medicaid eligibility threshold are frustrated with their inadequate access to care, and the imposition of work requirements offers them a sense of fairness.

But many people receiving Medicaid are already working. According to a report from the Kaiser Family Foundation ("KFF"), 42% of the non-elderly adults receiving Medicaid are already working, 18% are working part-time, 14% are not working due to disability or illness, 6% are not working due to school attendance, 12% are not working because they are engaging in caregiving for family members or friends, and only 7% are not working for some "other" reason. *Id*. KFF found that the "other" category includes individuals who were retired or currently looking for a job, but unable to find work. *Id*.

Thus, the imposition of work requirements would only affect a very small fraction of Medicaid recipients. Imposing requirements on a mere 7% of recipients will not reallocate resources in a way that would drastically improve access or quality of health care for the remaining 93%. By ignoring this reality, the true sentiment behind Medicaid work requirements is exposed. Aside from assuming that Medicaid recipients aren't already working or actively engaged in their communities, Verma seems to imply that low-income individuals willingly choose to be in poverty, and but for a barrier to health care access, will choose to stay there. Of course, this is not the case and there's research to back it. Furthermore, studies show that work requirements don't actually facilitate stable employment. (9) Many individuals subject to work requirements remain

impoverished despite finding jobs or complying with procedural requirements. *Id*. Although some might find jobs to comply with these requirements, there is no guarantee that the job will pay a living wage or provide room for any upward mobility. Moreover, there is no guarantee that the job will be permanent. Finding a job in which one can barely subsist does not eradicate the issue of poverty nor poor health. Work requirements don't "encourage" the poor to escape poverty. One doesn't need encouragement to do so.

While the Medicaid program has always been a vehicle that addresses the imbalance of wealth by providing health care access to low-income individuals, proponents of work requirements blatantly ignore the complexities of poverty and social inequality. By ignoring the longstanding history of Medicaid, work requirements completely divert the program from its intended purpose and objectives.

Work Requirements Only Impose a Burden on Low-Income Individuals in Accessing Care

Medicaid work requirements are a tone-deaf response to larger systemic issues of poverty and inequality. These proposals use the poor as scapegoats for inept government policy and perpetuate a narrative that if only we'd work harder, we'd be deserving of health care. When in fact, one can work full time at the federal minimum wage in many states and still be poor enough to qualify for Medicaid.

CMS' most recent justification for the imposition of work requirements– improved health outcomes associated with employment– is equally absurd. It assumes that poor health may be remedied by simply looking for employment, instead of by addressing policies that systematically disadvantage the poor, women, people of color, and other marginalized communities.

Social determinants of health are very real and central to the discussion of improving the health outcomes. For people to be healthy, there needs to be adequate education, housing, and health care available. (10). Once we as a nation decide to stop punishing the poor for the absence of these fundamental rights, we will be able to achieve better health outcomes across the country. Until then, policies like Medicaid work requirements do nothing to solve the problem, but only work to prevent already vulnerable populations from accessing the health care they need.

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