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Forging Pathways from Poverty
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August 18, 2018

The Honorable Alex Azar, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Submitted electronically via Medicaid.gov

Re: Medicaid Workforce Training Initiative 1115 Demonstration Waiver - Amended Application

Dear Secretary Azar,

The Colorado Center on Law and Policy (CCLP) is writing to comment on a waiver application submitted by the Mississippi Division of Medicaid ("DOM"). The DOM's amended Medicaid Workforce Training Initiative 1115 Demonstration Waiver Application ("waiver") seeks to institute "workforce training requirements" ("work requirements") on the parent/caretaker relative population and transitional Medicaid population in Mississippi.

CCLP is a nonprofit, nonpartisan organization that advocates at the state legislative level as well as in administrative and legal proceedings to advance the needs and legal rights of Coloradans facing economic insecurity. Economic insecurity is the condition of not always having enough money to afford basic needs, like adequate nutrition, safe housing, necessary medical care, transportation, and child care. We understand that social and economic forces are at the root of economic insecurity, which in turn negatively impacts health and further diminishes social and economic wellbeing. We pursue policy objectives that mitigate the effects of poverty and that support the health and economic security of Coloradans struggling to make ends meet.

Protecting the accessibility of Colorado's Medicaid program is fundamental to our mission of advancing the health and wellbeing of Coloradans facing economic insecurity. We oppose the waiver because it violates the federal legal requirement that 1115 waivers must further the objective of the Medicaid program, which is to provide health care services to people in low-income households. That legal requirement protects all Medicaid eligible people, including those in Colorado. We write to defend

Furthermore, we object to the waiver because it reinforces a false narrative about Medicaid enrollees: that they are poor because they don't work and won't work unless they are forced too. In fact, a large majority of Medicaid adults work and those that don't are students, care for sick relatives, or face other signifcant barriers to employment. False narratives that blame poverty on the poor are divisive and cruel and they result in failed policy.

Below we set out the reasons we believe approval of the DOM waiver would be contrary to law. We also show that the waiver won't connect people to gainful employment and that it will deacrease the efficiency of Medicaid and harm people living in poverty.

The waiver is unlawful because it does not further the objectives of Medicaid

Section 1115 of the federal Social Security Act allows the federal Department of Health and Human Services to waive some federal Medicaid requirements if, and only if, those waivers have an experimental purpose and promote the objective of Medicaid. Since Medicaid's primary objective is to provide medically necessary care to low-income individuals and families,[1] 1115 waivers that cause substantial coverage losses cannot further Medicaid's purpose. Recently, a federal judge confirmed this line of reasoning and invalidated Kentucky's Medicaid work requirement program due to the 95,000 potential coverage losses that were expected as a result. Since Secretary Azar did not consider these coverage losses in his approval, the judge ruled that his approval was invalid.

That Medicaid work requirements will result in coverage losses is well known. Last year, two Colorado state legislators introduced a bill that would have required our state Medicaid agency to pursue a Medicaid work requirement waiver.[2] Analysis of the bill completed by legislative staff estimated that implementation of the waiver would have caused 65,183 Medicaid recipients to lose Medicaid coverage in FY 2020-21 due to the work requirements in the bill.[3] In addition, Arkansas recently reported that in the first month of implementing its work requirement program, almost 7,500 individuals[4] reported not meeting the requirement.

Mississippi DOM estimates that almost 5,000 individuals will lose coverage as a result of the work requirement. This evidence confirms that work requirements in no way further the purpose of Medicaid. The Secretary should carefully consider how Mississippi's work requirements will impact access to health care for these 5,000 individuals.

The amended application does not resolve the issues with the old

The Centers for Medicare & Medicaid Services ("CMS") has expressed concern with Medicaid work requirements in non-expansion states and rejected a work requirements proposal from Kanses due to those concerns. Mississippi is a non-expansion state and we understand the state is submitting this amended application to avoid the same concerns. But the amended waiver still presents the same problem.

The work requirements are supposed to apply to adults that do not have a recognized disability. In non-expansion states, the income eligbility threshold for that population is so low that basically any amount of employment would make them ineligible. Therefore, CMS was concerned the populations subject to the work requirements in non-expansion states would be

[1] 42 USC 1396(a)(1)
[2] https://leg.colorado.gov/sites/default/files/documents/2018A/bills/2018a_214_01.pdf
[3] https://leg.colorado.gov/sites/default/files/documents/2018A/bills/fn/2018a_sb214_f1.pdf
[4] Arkansas Department of Human Services, Arkansas Works Program, June 2018 report

placed in a "catch-22" in which they would become ineligible for Medicaid for both complying and not complying with the requirement.

In an effort to avoid CMS's concerns, Mississippi has amended its application to provide an additional 12 months of benefits to individuals who comply with the work requirement. But this change does nothing to address or solve the "catch-22" problem. Providing an additional 12 months of benefits only postpones, rather than removes, the harmful "catch-22" effect.

Health care needs can arise at any time, whether they are immunizations, doctors' visits, surgeries or medical emergencies. Cutting off Medicaid after 12 months for individuals who comply with the work requirement is an arbitrary and punitive policy that will put individuals at risk of medical debt or bankruptcy.

The amended application ultimately does not protect Mississippi Medicaid enrollees from experiencing a harmful loss of health coverage even when they're complying with the work requirement. We therefore urge the Department of Health and Human Services (HHS) to reject the proposal.

Mississippi's work requirements will leave individuals without any coverage options
Mississippi's income eligibility threshold for parents/caretaker relatives is 27% FPL. That means, in order remain eligible a household of three must have less than $5,600 *per year* in income. It will not be possible for a parent or caretaker to meet both the work requirement and the income eligibility requirements. For example, since the state doesn't have its own minimum wage law, a parent or caretaker in a minimum-wage position would earn the federal standard of $7.25/hour. If the individual were working 20 hours per week, his or her annual income will be $7,540. However, a parent or caretaker caring for a dependent could not earn more than $4,385 (27% FPL) to maintain income eligibility.

In addition, a household income of $7,540 puts a family with one parent/caretaker and one dependent at 46% FPL, which makes them ineligible for financial assistance on the Affordable Care Act's marketplaces. Not only that, but as described in more detail below, the lack of available employment opportunities in the state, coupled with the fact that many employers of low-wage positions do not offer health insurance, means these individuals will be left without any coverage options. Therefore, imposing work requirements on the parent and caretaker population will make it impossible for this population to keep Medicaid, and exceedingly difficult to find any other coverage option, which will make them less healthy and less able to work as a result.

Medicaid work requirements would be detrimental to individuals and families in Colorado
An approval of Mississippi's waiver will encourage other states, such as ours, to introduce Medicaid work requirements. As mentioned above, two Colorado state legislators introduced a Medicaid work requirements bill during our 2018 legislative session that was expected to result in over 65,000 adult enrollees losing coverage due to work requirements.

In Colorado, Medicaid is an important program for the small percentage of Medicaid adults that don't work. This adult population includes students, people that are caring for sick family members, and people that face signifiant barriers to employment, including past convictions, undiagnosed disabilities, substance use disorders, and homelessnes. For all of these populations, losing access to needed health care services only harms their chances of finding and maintaining gainful employment.

After Colorado expanded Medicaid, many struggling adults gained health care coverage for the first time. For new enrollees Medicaid has meant a chance at improved health, which is necessary for greater stability and self-sufficiency. At a time when homelessness and the opioid epidemic are reaching crisis points in communities across Colorado, denying coverage to adults in need of services will only cause more harm and generate more costs in homeless services, emergency care, and uncompensated hospital costs.

In addition, Colorado's work requirement proposal would have put a huge whole in our health care budget. For one thing, the proposal was the expected to increase Colorad Medicaid's administrative costs by $40.7 million in FY 2020-21 and $91.9 million in FY 2021-22. In addition, health care services for the Medicaid adults that were targeted by the proposal are funded almost entirely by federal Medicaid funds, with the small remainder paid by hospital fee dollars. So, while health care service providers in Colorado would have lost access to 265.7 million Medicaid dollars, Colorado's share of the "savings" would have been negligble, and likely in the negative when considering the fiscal externalities that result from depriving high needs populations of needed health care.

Finally, work requirements have a disproporately negative impact on economically depressed areas. Unemployment rates vary across Colorado with lows of 2.8 in the Denver-metro region to highs of 6.1 in San Miguel County and 5.7 in Huerfano and Pitkin counties. Cutting people off of Medicaid because there are no jobs available in a community is harmful to health and undermines the effort to connect people to employment.

Medicaid enrollees already work when they can

Work requirements seek to solve a problem that doesn't exist. The majority of Medicaid enrollees who can work, do so.[5] The remainder includes students, people that are caring for sick family members, and people that face signifiant barriers to employment, including past convictions, undiagnosed disabilities, substance use disorders, and homelessnes. Work requirements will not address the employment barriers experienced by this population.

An accessible Medicaid program supports work

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[5] Rachel Garfield, Robin Rudowitz, Anthony Damico, *Understanding the Intersection of Medicaid and Work*, Kaiser Family Foundation, February 2017, http://kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work

Medicaid, in its current form, helps enrollees gain and maintain their employment.[6] Enrollment in health coverage has been shown to be a significant factor in helping individuals find jobs. Individuals who have access to the health system are more likely to be healthy, and individuals who are healthy are more likely to work. For example, after Ohio expanded Medicaid, over 75 percent of enrollees looking for work stated having health coverage made it easier for them to search for employment because it helped them receive treatment for chronic conditions that previously hindered their ability to work or look for work.[7]

Conversly, restricting Medicaid access harms employment chances. Illness and disability are among the primary reasons working-age adults are not employed. In fact, a significant percentage of low-income adults report that lack of access to oral health services in particular negatively affects their ability to interview for a job.[8] Without access to services, even easily treatable conditions may prevent an individual from obtaining or maintain a job.

Work requirements don't connect individuals to employment or move people out of poverty
Although DOM states its intended goals for the waiver are to "increas[e] our member engagement activities," work requirements do not help individuals find or sustain employment. Welfare – or Temporary Assistance for Needy Families (TANF) as the program is officially called – has long required participants to work or attend job-training programs. But the percentage of TANF recipients who were working in 2013 – 63% - was the same as it had been in 1996, before TANF work requirements went into effect.[9] Moreover, the TANF experience demonstrated that recipients with barriers to employment did not find employment with the implementation of work requirements and that most TANF recipients remained poor and some became poorer.

Medicaid work requirements don't provide the kinds of supports that allow unemployed people to find work – job training, affordable childcare, and education. Taking away health coverage only makes it harder for people with health conditions to maintain employment. If Mississippi truly wants to help its low-income residents find work, it could better spend its money on programs and initiatives that help create jobs in the state, rather than on tracking and verifying whether individuals are, in fact, working.

Federal and Mississippi data suggests jobs are not readily available in Mississippi
Certainly improving job skills and opportunities for low income Mississippians is a worthy goal, but Medicaid work requirement are likely to leave Mississipians without health care and without

[6] Jessica Gehr, Suzanne Wikle, *The Evidence Builds: Access to Medicaid Helps People Work*, Center for Law and Social Policy, March 2017, https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/The-Evidence-Builds-Access-to-Medicaid-Helps-People-Work.pdf
[7] Ibid.
[8] *Oral Health in America: A Report of the Surgeon General*, National Institute of Dental and Craniofacial Research, July 2018, https://www.nidcr.nih.gov/research/data-statistics/surgeon-general
[9] Center on Budget and Policy Priorities, *Policy Basics: An Introduction to TANF*, June 2015, https://www.cbpp.org/research/policy-basics-an-introduction-to-tanf

a job. Federal and state data suggests jobs are not readily available in Mississippi**.** According to the Mississippi Department of Employment Security, 70 out of 82 counties (or 85 percent) have a higher unemployment percentage than the rest of the country.[10] Additionally, the United States Department of Labor issues an annual list of Labor Surplus Areas, defined as areas where the average annual unemployment rate during the previous two calendar years is 20 percent or more above the national average. According to the most recent report dated October 1, 2017, 50 out of Mississippi's 82 counties are labor surplus areas.[11]

For Mississippi Medicaid enrollees, the pathway to other forms of healthcare is uncertain
The DOM's proposal suggests that current Medicaid enrollees will transition from Medicaid to "other forms of health care." In Mississippi, only a small percentage of those who work for employers in low-wage sectors receive health insurance through their job. While the ACA's marketplaces provide Advanced Premium Tax Credits to individuals between 100-400% FPL, as noted above, individuals working 20-hours per week in a minimum-wage position will be over-income for Medicaid, but still under 100% FPL. Commenters at the state level voiced this concern, but DOM's only response is that "this waiver in and of itself is not enough to guarantee successful transitions to other health insurance."

Work requirements will increase administrative burdens for individuals and the state
Identifying and tracking whether Medicaid enrollees are working will require upfront investments from the state to set up the processes, technological infrastructure, staffing and other elements needed. In its application, DOM proposes to enter into a data sharing agreement with the Office of Employment Security to identify and track eligible individuals who must comply with work requirements, as well as monitor claim activity to identify individuals who are both eligible for and exempt from the requirements.

Analysis and experience from multiple states demonstrates that high administrative costs. Ohio estimated that work requirements would cost local governments $380 million over 5 years in case management costs. Kentucky estimated that their proposal would cost $187 million in the first 6 months to implement work requirements. As mentioned above, Colorado's legislative council estimated that Colorado's work requirements proposal would have increased Colorado's administrative costs by $40.7 million in FY 2020-21 and $91.9 million in FY 2021-22.

Moreover, Medicaid enrollees will also have the increased administrative burden of needing to submit verifying documentation to prove they're either meeting the work requirement or are one of the populations eligible for an exemption. By placing bureaucratic hoops between individuals and the care they need, Mississippi will also likely see increased uncompensated care costs. Individuals who aren't working will lose coverage, and may even be discouraged from enrolling

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[10] Labor Market Information Department, *Mississippi Labor Market Data*, September 2017, http://mdes.ms.gov/media/23357/labormarketdata.pdf
[11] FY 2018 Labor Surplus List (October 2017) https://www.doleta.gov/programs/lsa.cfm

altogether out of fear for not meeting the requirement. If and when these individuals need medical care, however, their only option will be to seek it out from costly emergency room departments.

The request for enhanced matching funds for work requirements should be rejected
DOM states in its application that it's seeking to "garner enhanced federal matching funds to assist with workforce training programs." However, HHS's recent letter to State Medicaid Directors is clear that workforce-training activities are not eligible for federal Medicaid matching funds, either at a state's regular matching rate or at an enhanced rate.[12] We agree with this interpretation of federal law but feel that the lack of financial support for work requirements highlights the difficulty that states will face in implementing the work requirements, as well as the difficulty enrollees may face in meeting the work requirements without supports to access employment such as transportation, childcare, etc.

Overall, work requirements are unnecessary and detrimental to the health and financial security of low-income Mississippians. We are concerned that Mississippi's waiver will result in losses of coverage and worse health outcomes for Mississippi Medicaid enrollees, which will further reduce their well-being and economic security. Furthermore, the waiver violates the federal legal requirement that waivers must further the objective of providing health care services to people in low-income households. It thereby compromises the health care rights of Medicaid enrollees across the country, including in Colorado.

Rather than introducing barriers to coverage and undermining important Medicaid protections, the DOM should focus on providing comprehensive care and recognize the important role health coverage plays in keeping individuals employed and healthy. We encourage the HHS to reject the application.

Respectfully submitted,
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Colorado Center on Law and Policy

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[12] Centers for Medicare & Medicaid Services, *Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries*, SMD 18-002, January 2018, https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf.