



January 8, 2020

The Honorable Xavier Becerra  
 Secretary-Designate  
 Department of Health and Human Services  
 Biden-Harris Transition Team

Dear Secretary-Designate Becerra:

The undersigned organizations, representing more than one hundred million Americans living with chronic or serious health conditions, urge you to immediately rescind guidance (SMD 18-002) to state Medicaid programs regarding work and community engagement requirements upon taking office. These requirements reduce healthcare coverage for patients who need access to care. Our non-profit, non-partisan organizations are dedicated to working with the Administration, Members of Congress and state governments to ensure coverage is affordable, accessible and adequate for patients, including those who rely upon Medicaid for their healthcare coverage.

On January 11, 2018, the Centers for Medicare and Medicaid Services (CMS) issued a letter to state Medicaid directors inviting states to apply for Section 1115 waivers that condition Medicaid benefits on meeting work and community engagement requirements. Since that time, CMS has approved waivers in 12 states including such requirements.<sup>1</sup> Due to legal challenges and states' decisions to suspend implementation, no states are currently implementing a work requirement policy. While states cannot terminate individuals' coverage for noncompliance with such

requirements during the public health emergency (PHE) under the maintenance of effort requirements of the Families First Coronavirus Response Act, the PHE is not indefinite and having this policy in place still jeopardizes the healthcare coverage for low-income individuals across the country.

On December 4, 2020, the Supreme Court agreed to hear oral arguments in *Azar v. Gresham* and *Azar v. Philbrick*, cases regarding the approval of Medicaid waivers in Arkansas and New Hampshire that include work requirements and other policies that jeopardize patients' coverage. When the U.S. Court of Appeals for the District of Columbia reviewed these cases, it reaffirmed that the purpose of the Medicaid program is to provide healthcare coverage and these restrictive waivers, including the work requirement policy, did not meet that objective.<sup>2</sup> The Supreme Court's pending review underscores the urgency of the Biden Administration immediately rescinding the January 2018 guidance, as well as rejecting the pending waiver applications from Arkansas and New Hampshire; oral arguments in the case are currently scheduled for March 2021.

Many of our organizations have sent multiple letters to leaders at CMS asking them to rescind the January 11, 2018 letter to state Medicaid directors on work and community engagement requirements.<sup>3</sup> Collectively, we have also submitted more than 20 comment letters asking CMS to reject states' applications for 1115 demonstration waivers that add work requirements and other substantial barriers to care for patients and families. Simply put, work requirement policies reduce coverage for patients with serious and chronic health conditions. When Arkansas implemented this policy, the state terminated coverage for over 18,000 individuals,<sup>4</sup> and in New Hampshire, nearly 17,000 individuals would have lost coverage if the state had not suspended implementation of its requirement.<sup>5</sup>

Exemptions to work requirements cannot capture all individuals with, or at risk of, serious and chronic health conditions that prevent them from working, and even for exempt enrollees, the reporting process can be arduous and creates opportunities for administrative error that jeopardize individuals' coverage. This loss of coverage could have serious – even life threatening – consequences for people with serious, acute and chronic diseases. Individuals who are in the middle of treatment for a life-threatening disease, rely on regular visits with healthcare providers or must take daily medications to manage their chronic conditions cannot afford a sudden elimination of coverage and gap in their care.

The evidence is clear that most people on Medicaid who can work already do so. Those who are unable to work often have physical or mental health conditions that interfere with their ability to work.<sup>6,7</sup> Evaluations of Arkansas's waiver demonstrate that it did not lead to increased employment among the Medicaid population.<sup>8</sup> In contrast, continuous Medicaid coverage helps people to stay as healthy as possible and to find and sustain employment. For example, a report examining Medicaid expansion in Ohio found that the majority of enrollees reported that being enrolled in Medicaid made it easier to work or look for work (83.5% and 60%, respectively).<sup>9</sup> Terminating individuals' Medicaid coverage for non-compliance with work requirements will hurt rather than help people search for and obtain employment.

There is no doubt that work requirement policies significantly harm access to care for patients, including those with serious and chronic health conditions, in the Medicaid program. Our organizations urge you to immediately rescind guidance to state Medicaid programs regarding

work and community engagement requirements, and we look forward to working with the new Administration to restore and expand access to care in the Medicaid program. If you have any questions, please contact Erika Sward of the American Lung Association at [erika.sward@lung.org](mailto:erika.sward@lung.org).

Sincerely,

American Cancer Society Cancer Action Network  
American Diabetes Association  
American Heart Association  
American Kidney Fund  
American Lung Association  
Arthritis Foundation  
Asthma and Allergy Foundation of America  
Cancer Support Community  
CancerCare  
Cystic Fibrosis Foundation  
Epilepsy Foundation  
Family Voices  
Hemophilia Federation of America  
Lutheran Services in America  
March of Dimes  
National Alliance on Mental Illness  
National Health Council  
National Hemophilia Foundation  
National Kidney Foundation  
National Multiple Sclerosis Society  
National Organization for Rare Disorders  
National Patient Advocate Foundation  
Susan G. Komen  
The AIDS Institute  
The Leukemia & Lymphoma Society  
United Way Worldwide  
WomenHeart: The National Coalition for Women with Heart Disease

CC: Chiquita Brooks-LaSure, Transition Team Lead, Department of Health and Human Services  
Robert Gordon, Transition Team Lead, Department of Health and Human Services

The Honorable Patty Murray  
The Honorable Richard Burr  
The Honorable Ron Wyden  
The Honorable Michael Crapo  
The Honorable Frank Pallone  
The Honorable Cathy McMorris Rodgers  
The Honorable Richard Neil  
The Honorable Kevin Brady  
The Honorable Bobby Scott

The Honorable Virginia Foxx

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<sup>1</sup> <https://www.kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/>

<sup>2</sup> US Court of Appeals for the District of Columbia Circuit, *Gresham v. Azar*, Feb. 14, 2020. Available at: <https://healthlaw.org/wp-content/uploads/2020/02/Gresham-v.-Azar-DC-Circuit-Ruling-Feb-14.pdf>; <https://healthlaw.org/news/appeals-court-again-rejects-administrations-medicaid-barriers/>.

<sup>3</sup> Letter to Administrator Verma Re: Work Requirement Policies, May 14, 2018, Available at <https://www.lung.org/getmedia/7aeb9942-21d9-4f1c-8d26-3660b2445ea5/letter-to-cms-admin-re-medicaid-work-req.pdf>; Letter to Administrator Verma Re: Kentucky Decision, July 24, 2018. Available at: <https://www.lung.org/getmedia/4d0a1b72-7535-40f1-9a62-169f66709244/partners-letter-to-cms-re-ky-1115-decision.pdf>.

<sup>4</sup> Robin Rudowitz, MaryBeth Musumeci, and Cornelia Hall, “A Look at February State Data for Medicaid Work Requirements in Arkansas,” Kaiser Family Foundation, December 18, 2018. Accessed at: <https://www.kff.org/medicaid/issue-brief/a-look-at-november-state-data-for-medicaid-work-requirements-in-arkansas/>; Arkansas Department of Health and Human Services, Arkansas Works Program, December 2018. Available at: [http://d31hzhk6di2h5.cloudfront.net/20190115/88/f6/04/2d/3480592f7fbd6c891d9bacb6/011519\\_AWReport.pdf](http://d31hzhk6di2h5.cloudfront.net/20190115/88/f6/04/2d/3480592f7fbd6c891d9bacb6/011519_AWReport.pdf).

<sup>5</sup> New Hampshire Department Health and Human Services, DHHS Community Engagement Report, June 2019. Available at: <https://www.dhhs.nh.gov/medicaid/granite/documents/ga-ce-report-062019.pdf>.

<sup>6</sup> Rachel Garfield, Robin Rudowitz, and Anthony Damico, “Understanding the Intersection of Medicaid and Work,” Kaiser Family Foundation, February 2017. Available at: <http://kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-and-work/>.

<sup>7</sup> Renuka Tipirneni, Susan D. Goold, John Z. Ayanian. Employment Status and Health Characteristics of Adults With Expanded Medicaid Coverage in Michigan. *JAMA Intern Med*. Published online December 11, 2017.

<sup>8</sup> Sommers BD, Goldman AL, Blendon RJ, Orav EJ, Epstein AM. Medicaid Work Requirements - Results from the First Year in Arkansas. *N Engl J Med*. 2019 Sep 12; 381(11):1073-1082; Sommers BD, Chen L, Blendon RJ, Orav EJ, Epstein AM. Medicaid Work Requirements In Arkansas: Two-Year Impacts On Coverage, Employment, And Affordability Of Care. *Health Aff (Millwood)*. 2020 Sep; 39(9):1522-1530.

<sup>9</sup> Ohio Department of Medicaid, 2018 Ohio Medicaid Group VII Assessment: Follow-Up to the 2016 Ohio Medicaid Group VIII Assessment, August 2018. Accessed at: <http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Final-Report.pdf>.