

Medicaid

Work requirements ill-suited for low-wage workers, may violate labor protections, burden all patients

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Good day. I am Wendy Patton, a senior project director with Policy Matters Ohio, a not-for-profit, non-partisan research institute with a mission of contributing to a more vibrant, equitable, inclusive and sustainable Ohio. Thank you for the opportunity to testify on the proposal to impose work requirements on Medicaid expansion enrollees. We oppose this for many reasons, including the loss of coverage for an estimated 18,018 people and the ineffectiveness of work requirements in other programs.¹ In this testimony, we highlight three other, critical problems.

Census data reveals that in Ohio, 61 percent of Medicaid recipients work. Another 22 percent are disabled in some way and 12 percent are taking care of someone who is disabled.² The balance is made up of students, early retirees and job seekers. In other words, those who can work, do, and almost all of the rest are disabled, caring for someone who is disabled, or otherwise engaged in the community. We oppose the proposed work requirement waiver because it may violate labor protections, including the Fair Labor Standards Act and the 13th Amendment of the Constitution which protects Americans from involuntary servitude. The proposal's rigid monthly time requirement doesn't account for the unpredictable nature of work schedules in the low-wage labor market. All enrollees bear the administrative burden of proof that they are complying or are entitled to an exemption.

Many workers in low wage sectors do not get scheduled for the hours they want and need. The rigid work requirement, for 20 hours per week or 80 hours a month, does not reflect the reality of the low-income labor market. Seven of Ohio's 10 largest occupational groups – fast food, retail, janitorial, and so forth – pay so little at the median hourly wage that a family of three qualifies for public assistance. The low hourly wage

¹ LaDonna Pavetti, Work Requirements don't cut poverty, evidence shows, Center on Budget and Policy Priorities, June 7, 2016 at <https://www.cbpp.org/research/poverty-and-inequality/work-requirements-dont-cut-poverty-evidence-shows>

² Policy Matters Ohio, "Medicaid works: Work requirements don't, January 2018 at <https://www.policymattersohio.org/research-policy/pathways-out-of-poverty/basic-needs-unemployment-compensation/fact-sheet-medicaid-works-work-requirements-dont>

and involuntary part-time nature of those jobs mean that workers cannot make ends meet. Low-wage and part-time jobs are so prevalent in our economy that many will work these jobs throughout their careers. In January 2018, the average work week for employees in the leisure and hospitality industry (fast food, hotel cleaners, restaurant work, etc.) was 26 hours; in retail trade, it was 30 hours.³ Many workers in these sectors do not get a guaranteed schedule of 20 hours per week, despite wanting more hours. Many low-wage jobs offer no sick leave. Tragically, those who lose hours because they are sick or caring for a sick child could lose health coverage. Those in temporary, intermittent or seasonal jobs are at particular risk for losing eligibility.

The proposal does not describe how the work and community engagement activities will pay people for their required hours of participation. Some people will not find work, or enough work, to meet the work and community engagement requirement for Medicaid eligibility. They will seek work and community engagement through programs presumably run by Ohio's counties. Some of these activities will likely constitute employment under the Fair Labor Standards Act, requiring payment of the federal minimum wage for hours worked. Unlike TANF or SNAP, Medicaid has no mechanism to assure payment of minimum wage.⁴ Further, the work and community engagement proposal may violate the U.S. Constitution's 13th Amendment's prohibition of involuntary servitude. Ohio's program would legally compel work by Group VIII participants, by threat of loss of Medicaid eligibility. The proposal offers no wages, no effective option to stop participating without losing Medicaid coverage, and no ability on the part of participants to meaningfully influence their working conditions or activities. As a result, an accurate characterization of Ohio's proposed requirements for Medicaid is involuntary servitude, not work or employment.⁵

All 700,000 members of the Medicaid expansion will bear the burden of proof that they are complying or should be exempt. The waiver proposal allows for exemptions, but it's up to enrollees to prove they meet the prerequisites. What might seem like a small errand to those of us fortunate enough to own a car or computer can be a time and money drain for a low-income person who depends on Medicaid. Many patients would have to understand the requirements and procedures, chase down paperwork, buy the stamp and envelope, or take a bus to an office to get a receipt. These new barriers would threaten all Medicaid expansion enrollees, compliant and exempted.

Thank you for the opportunity to testify today. I am happy to answer questions.

³ <https://www.bls.gov/news.release/empsit.t18.htm>

⁴ National Employment Law Project, comments submitted to the Department of Health and Human Services opposing the Kentucky HEALTH Section 1115 Waiver application, October 6, 2016.

⁵ *Id.*