



March 16, 2018

Barbara Sears, Director
Ohio Department of Medicaid
50 W. Town Street St. #400
Columbus, Ohio 43215

RE: Comments in Opposition to Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver Application

Dear Director Sears,

We write to oppose the Group VIII Work Requirement and Community Engagement Demonstration Waiver application that was released for public comments on February 16, 2018. The Kasich administration should not submit this request to waive Medicaid rules and should not require work as a condition of eligibility Medicaid expansion participation in Ohio.

To summarize the problems: The proposed demonstration project has deficiencies that will cause tens of thousands of unhealthy Ohioans to lose access to life-saving and life-preserving medical care. All patients in the Medicaid expansion are at risk of losing access to health care because proving compliance or exemption to the new eligibility requirement will pose an insurmountable barrier for some people with poor health, lack of transportation, uncertain access to food or unstable housing. The proposal is unnecessary, because the vast majority of Medicaid patients are working, disabled or caring for someone who is disabled. The proposed requirement is ill-suited to the uncertain schedules and other realities of the low-wage work place. The state fails to fund necessary components of the program. Finally, the proposed program may violate labor laws.

Ohio's work requirement proposal is contrary to the goals of Medicaid. The federal government web page on Medicaid's 1115 demonstration waivers describes the objectives of the waivers relative to objectives of the Medicaid program, stating:

"A core objective of the Medicaid program is to serve the health and wellness needs of our nation's vulnerable and low-income individuals and families. Traditional Medicaid approaches to serving this diverse and medically complex population have not always been effective at eliminating barriers to access and quality services, and often lack adequate focus on long-term health and independence. Section 1115 demonstration projects present an opportunity for states to institute reforms that go beyond just routine medical care and focus on evidence-based interventions that drive better health outcomes and quality of life improvements."¹

Ohio's proposal is contrary to these core objectives of Medicaid. We provide other objections below.

Ohio's proposal will cause thousands of Ohioans - including many who meet the work requirement - to lose their Medicaid coverage and become uninsured. The goal of Medicaid is to expand access to health care. The proposal itself admits the work requirement will cause loss of health care for more than 18,000,² but that dramatically underestimates the impact. In fact, the coverage of all Medicaid

¹ <https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html>

² Ohio Department of Medicaid, Group VIII Work Requirement and Community Engagement 1115 Demonstration waiver at <http://bit.ly/2p4MC19>

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expansion enrollees is at risk because all must prove they are exempt or comply with the program. What might seem like a small task to those of us who own a car or computer can be a time and money drain for a low-income person who depends on Medicaid. Patients would have to understand the requirements and procedures, chase down paperwork, buy a stamp, or take a bus to an office to get a receipt. These new barriers would endanger program participation by all enrollees.

Ohio's request to impose a work requirement is unnecessary and potentially harmful. Most Medicaid enrollees already work, or are caregivers, disabled, students or job seekers.³ For working people enrolled in Medicaid the problem is this: many low wage jobs do not regularly schedule workers for 20 hours a week. The average hours worked in these sectors is far below 40 per week.⁴ Many workers do not get scheduled for the hours they want and need. They risk losing their health care because their employer doesn't provide them the required 80 hours per month. 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.⁵

The rigid work requirement, for 20 hours a week or 80 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 others – pay so little at the median that a family of three qualifies for public assistance.⁶ Many low-wage jobs offer no sick leave. 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.

Ohio's proposal will reverse improvements in employment of Medicaid patients. The state assessment of the Medicaid expansion program found having access to health care improved employment and employability of enrollees. Three-quarters of Medicaid expansion enrollees (74.8 percent) who were looking for work in 2015 reported that access to health care made it easier to seek employment and more than half (52.1 percent) of those who were working reported that Medicaid enrollment helped them continue working.⁷ The administrative burden will cause thousands to lose such access to medical care, making it harder for them to continue working or looking for work.

Ohio's proposal does not promote health and wellness. The federal guidance on work requirements states:

“Such programs [work requirement programs] should be designed to promote better mental, physical, and emotional health in furtherance of Medicaid program objectives. Such programs may also, separately, be designed to help individuals and families rise out of poverty and attain independence, also in furtherance of Medicaid program objectives.”⁸

³ 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. 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. Based on analysis of American Community Survey data for 2015 by the Center on Budget and Policy Priorities for Policy Matters Ohio.

⁴ Bureau of Labor Statistics, Table B-2. Average weekly hours and overtime of all employees on private nonfarm payrolls by industry sector, seasonally adjusted, at <https://www.bls.gov/news.release/empsit.t18.htm>

⁵ Bureau of Labor Statistics, Op.Cit.

⁶ Ohio Labor Market Information, Op.Cit.

⁷ Ohio Department of Medicaid, Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly at <http://medicaid.ohio.gov/portals/0/resources/reports/annual/group-viii-assessment.pdf>

⁸ Federal guidance to Medicaid Directors, Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries, February 11, 2018, <http://bit.ly/2EuNfWX>



Ohio's proposal does not include a design that will promote better mental, physical, and emotional health. It is narrowly focused on work requirements, as emphasized in the description of goals:

“The goals of this 1115 Demonstration waiver are (i) to promote economic stability and financial independence, and (ii) to improve health outcomes via participation in work and community engagement activities.”⁹

The proposal provides no strategy that will leverage work requirements to promote better mental, physical and emotional health.

Causal links between employment in the kind of low-wage jobs Medicaid expansion employees hold, and improved health, is not widely accepted. The federal guidance letter on work requirements cites studies claiming a relationship, but other literature refutes it. For example, a review of literature on health and work finds many studies that found part-time, insecure or non-standard work had negative effects, like psychological distress and in some cases, poorer physical health.¹⁰ Studies found the negative health impact of non-standard work is concentrated by gender, race and education levels, stating: “Women are heavily overrepresented in non-standard work, as are minorities and less-educated individuals, suggesting the nature of bad jobs themselves has relevance for understanding the contribution of some forms of paid work to health disparities.”¹¹

Ohio's 1115 waiver proposal will increase the risk of poor health for those who lose coverage or are forced into work. The proposal provides no program to mitigate such negative consequences.

Ohio's proposal should not be approved because the evaluation procedure does not meet federal requirements. The federal guidance on work requirements says:

“States will also be required to evaluate health and other outcomes of individuals that have been enrolled in and subject to the provisions of the demonstration, and will be required to conduct robust, independent program evaluations. Evaluations must be designed to determine whether the demonstration is meeting its objectives, as well as the impact of the demonstration on Medicaid beneficiaries and on individuals who experience a lapse in eligibility or coverage for failure to meet the program requirements or because they have gained employer-sponsored insurance.”¹²

There is no provision in Ohio's 1115 waiver proposal to evaluate the health outcomes of those who experience a lapse in eligibility or coverage for failure to meet program requirements.

Ohio's proposal will not drive long-term improvement in health outcomes and quality of life. Ohio's labor market cannot be counted on to lift people out of low-wage jobs into jobs with reliable, employer-sponsored health insurance. In Ohio, 1.7 million jobs, or about one-third of all jobs, leave a family of three eligible for and needing Medicaid at the median annual wage.¹³ Low-wage jobs are so

⁹ Ohio Department of Medicaid, Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver at <http://bit.ly/2p4MC19>

¹⁰ Mulatu MS, Schooler C. Causal Connections between Socio-Economic Status and Health: Reciprocal Effects and Mediating Mechanisms. *Journal of Health and Social Behavior*. 2002;43(1):22-41, cited in Sarah A. Burgard and Katherine Y. Lin in “Bad Jobs, Bad Health? How Work and Working Conditions Contribute to Health Disparities,” *American Behavioral Scientist*, August 2013 at <https://www.ncbi.nlm.nih.gov/pubmed/24187340>

¹¹ Id.

¹² Federal Guidance to Medicaid Directors, Op.Cit.

¹³ Ohio Labor Market Information, Occupational Wage Survey Estimate, <http://ohiolmi.com/>

dominant in our economy that many people work them throughout their careers, without access to employer-sponsored health insurance. For example, just 23 percent of workers in retail trade and 30 percent in accommodations and food service have access to employer sponsored health insurance; far fewer can afford to participate in them. Just 16 percent of workers in the bottom quartile of earners have access to employer sponsored health insurance, and just 10 percent of part-time workers do.¹⁴ Medicaid expansion is and will continue to be critically important to the health of this huge workforce of low-wage workers. The state's own assessment of the Ohio Medicaid expansion confirms this: Most enrollees in Ohio's Medicaid expansion were uninsured prior to obtaining Medicaid coverage, either because they had no prior insurance at all (75.1 percent) or they had lost employer-based insurance (13.9 percent). They will have no access to health care upon losing Medicaid coverage.¹⁵

Work requirements have not helped people gain financial independence in other programs that allow them. A review of research on work requirements in other programs found short-term gains vanished after five years. Wages did not rise to a level that moved people out of poverty.¹⁶ Research does not support the notion that work requirements move people into sustainable, well-paying jobs or improve their health.

Ohio's request may violate federal labor law. Some expansion enrollees subject to the work requirement will not find work, or enough work, to meet this new condition of eligibility. They will seek work and community engagement through work experience programs (WEP) or employment training. Some of these activities will constitute employment under the Fair Labor Standards Act (FLSA), requiring payment of the federal minimum wage for hours worked.¹⁷ This applies whether the person is receiving public benefits or not.¹⁸ FLSA compliance keeps a work requirement from being involuntary servitude. In 1997, when changes were made to the federal food aid program (Supplemental Nutrition Assistance Program, or SNAP) and the Temporary Assistance for Needy Families (TANF) program was created, the Department of Labor (DOL) issued guidance that addressed the question of FLSA and Medicaid:

Q: "Aside from food stamps, may noncash benefits provided by the state, such as child care services or transportation, be credited toward meeting FLSA minimum wage requirements?"

...

A: "Credit may not be taken for pensions, health insurance (including Medicaid), or other benefit payments otherwise excluded under the FLSA."¹⁹

Ohio's 1115 waiver request mentions the FLSA in relation to the WEP²⁰ but cannot tie work hours to Medicaid benefits and identifies no source of state funding for the work component of the program.

¹⁴ United States Bureau of Labor Statistics, National Compensation Survey, Table 9. Healthcare benefits: Access, participation, and take-up rates, private industry workers, March 2017 at <http://bit.ly/2p1nMio>

¹⁵ Ohio Department of Medicaid, Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly at <http://medicaid.ohio.gov/portals/0/resources/reports/annual/group-viii-assessment.pdf>

¹⁶ LaDonna Pavetti, Work Requirements don't cut poverty, evidence shows, Center on Budget and Policy Priorities, June 7, 2016 at <http://bit.ly/2tH7Vpy>

¹⁷ See 29 U.S.C. § 206(a)(1)(C); Dep't of Labor, Questions and Answers About the Minimum Wage, <https://www.dol.gov/whd/minwage/q-a.htm>.

¹⁸ DOL, How Workplace Laws Apply to Welfare Recipients at 2 (1997), <http://bit.ly/2DhanqO>.

¹⁹ DOL, How Workplace Laws Apply to Welfare Recipients at 4 (1997), <http://bit.ly/2DhanqO>.

²⁰ The 1115 waiver request mentions the FLSA once: "As mentioned, the 1115 Demonstration waiver will leverage existing state programs, including but not limited to WEP. WEP, which is administered by ODJFS and operationalized by CDJFS' offices, aids TANF and SNAP recipients to obtain work experience from private or government entities, while helping them meet TANF and SNAP "work activity" requirements. WEP can be designed in coordination with employment or other training programs and can be full or part-time if the hours of participation are in accordance with the Fair Labor Standards Act (FLSA). Work initiated

Ohio has a poor track record in administering work requirement programs. An assessment of the work requirement program in Franklin County’s SNAP program found almost a third of people who did not receive an exemption reported physical, mental and other limitations that affected their ability to work, although such problems should have been caught and necessary exemptions granted.²¹ A consultant to the state found that in the Ohio Works First program, the cash assistance component of the TANF program, strict application of work requirements were used to lower the case load (drop people from enrollment) in many places.²²

The 1115 waiver proposal links the Medicaid work requirement to SNAP and TANF work requirement programs that demonstrate serious flaws in some places. The waiver includes no plan to mitigate these problems on a statewide basis, across Ohio’s county-run programs.

Ohio’s request to link a Medicaid work requirement to SNAP exemptions will lead to discrimination on the basis of race. The Legal Aid Society of Columbus filed a civil complaint against the State of Ohio for requesting geographical exemptions to SNAP work requirements in a manner that discriminated against racial minorities. In a 2014 civil rights complaint, they outlined how the Kasich Administration’s method for choosing counties for place-based exemptions to work requirements led to dramatically disparate access to federal food aid for white and non-white Ohioans, in violation of Title VI.²³ This pattern persists in the state’s request for a waiver of SNAP work requirements in 2018, as the 26 counties for which the waiver was requested have an overwhelmingly majority (white) population, while eligible cities and metropolitan areas, where larger minority (non-white) populations live, were left out of the waiver request. Civil rights violations in Ohio’s SNAP program will carry over to the Medicaid work requirement through its linkage to the SNAP work requirement exemptions.

Ohio’s request is not sufficiently funded by the State of Ohio. Ohio’s proposal is inadequately funded at the state and local levels, as demonstrated by the request to use Medicaid funds for work supports. Federal guidance for the 1115 work requirement and community engagement specifically forbids use of Medicaid funds for this purpose:

“States will be required to describe strategies to assist beneficiaries in meeting work and community engagement requirements and to link individuals to additional resources for job training or other employment services, child care assistance, transportation, or other work supports to help beneficiaries prepare for work or increase their earnings. However, this demonstration opportunity will not provide states with the authority to use Medicaid funding to finance these services for individuals.”²⁴

under WEP, while unpaid, requires the individual to perform in a manner like that performed by paid employees.” Ohio Dep’t of Medicaid, Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver, <http://bit.ly/2p4MC19>.

²¹ A comprehensive assessment of able-bodied adults without dependents and their participation in the work experience program in Franklin County, Ohio, Report 2015 at <http://bit.ly/1R8XJe2>

²² The state “all family” work participation rate of 35.2 percent in 10/2011 jumped to 55 percent in 11/2012 due to a 45 percent drop in the “denominator” (total caseload): number of families served fell from 39,531 to 21,913. Public Consulting Group, “Ohio Works First Participation Improvement Project,” 5/2013 (p.9). The first observation of the consultant’s report: “An after effect of procedural and process changes at the county level is <that it> has had the impact on reducing the denominator <case load> to improve the work participation rate.

²³ Jackie Borchardt, Food stamp discrimination alleged in civil rights complaint brought against Ohio, Cleveland.com, August 18, 2014 at <http://bit.ly/1lhH1ix>

²⁴ Federal Guidance to Medicaid Directors, Op.Cit. -



Sources of state money for training, work support and work experience is neither mentioned in the proposal nor described in any other materials on waiver on the Department of Medicaid website. The program as proposed is underfunded and will face the same problems as Ohio's other work requirement programs, which have resulted in poor outcomes in some places.²⁵

Conclusion

We oppose the state's proposal for a 1115 waiver because it places access to life saving and life preserving medical care for all 700,000 Medicaid expansion enrollees at risk. The risk stems from the fact that enrollees will have to prove they are exempt or that they comply with the work requirement. Thousands may lose health care because they fail in some way to adequately perform administrative tasks of reporting. The work requirement is unnecessary: The majority of Medicaid enrollees are working or are disabled. Those who lose coverage because of the work requirement will become uninsured, since most low-wage jobs do not offer health benefits. This will reverse the benefit of the Medicaid expansion, which helps enrollees work or seek work. It links to Ohio's existing work requirement programs in SNAP and TANF, which have flaws in assessing disabled people for exemption, a history of using work requirements to reduce caseload, and racial discrimination in the state's use of place-based exemptions. The program as proposed is not sufficiently funded by the state. It may violate existing labor laws.

The Medicaid expansion is the state's most important tool in improving health and fighting the growing drug epidemic in Ohio. Placing the entire Medicaid expansion population at risk of losing access to health care, especially at a time of a public health crisis, is a profound disservice to Ohio and Ohioans. We urge you not to submit this request to the federal government. If it is submitted, we urge the federal government to reject it.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Hanauer".

Amy Hanauer
Executive Director

²⁵ Wendy Patton, Op.Cit., Public Consulting Group, Op.Cit.