



SENT VIA ELECTRONIC SUBMISSION

June 12, 2018

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

Seema Verma, Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Blvd.  
Baltimore, MD 21244-8013

**RE: Comments in Opposition to Ohio's "Group VIII Work Requirement and Community Engagement" 1115 Demonstration Waiver Application**

Dear Secretary Azar and Administrator Verma:

We write to oppose the Group VIII Work Requirement and Community Engagement Demonstration Waiver application that Ohio has submitted to the federal government. The proposal will place an estimated 318,000 Ohioans at risk of losing health care. Ohio should not be allowed to establish a demonstration program that will make the health of low-income people worse through decreased access to medical care.

Ohio's proposal is contrary to the core objectives of Medicaid. The federal government web page on Medicaid's 1115 demonstration waivers states: "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..."<sup>1</sup> A work requirement linked to Medicaid health coverage works against this. The federal government's rationale for allowing work requirements was based in part on an [incomplete and misleading analysis](#) of research on the links between work and health.<sup>2</sup> The federal government should not allow work requirements in Medicaid. Since it does so, however, we outline deficiencies in the Ohio proposal.

Ohio's demonstration proposal puts [hundreds of thousands at risk](#) of losing Medicaid<sup>3</sup> because the inflexible work requirement is ill-suited to the characteristics of the low-wage labor market and because proving compliance or exemption to the new requirement will pose an insurmountable barrier for those with a disability, 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, looking for work, disabled or providing care for young children or for someone who is disabled.
- The proposal threatens disabled people, including veterans, because of the difficulty and expense of proving chronic and disabling conditions like post-traumatic stress syndrome, mental illnesses, heart disease, rheumatism, autism and other.
- The rigid work requirement is ill-suited to the low hours, uncertain schedules and lack of sick leave that characterize the low-wage labor market in which Medicaid enrollees work.
- Ohio's proposal is not budget neutral. It will cost hundreds of millions of dollars to implement but does not include full implementation costs in the proposal submitted for approval.

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

<sup>2</sup> Patton, Wendy, "Medicaid work requirements deceptively cite academic research," May 10, 2018 at <https://bit.ly/2LnvvRp>

<sup>3</sup> Woodrum, Amanda, "Medicaid work requirements put 300,000 at risk of losing care," cleveland.com, June 4, 2018 at [https://www.cleveland.com/metro/index.ssf/2018/06/ohios\\_medicaid\\_plan\\_puts\\_30000.html](https://www.cleveland.com/metro/index.ssf/2018/06/ohios_medicaid_plan_puts_30000.html)

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- People of color face disproportionate risk of loss of Medicaid because the Kasich administration’s exemptions, aligned with Ohio’s SNAP work requirement waivers, are targeted to predominantly rural white counties. The administration did not request exemptions for eligible cities where minority communities are concentrated and unemployment is high.
- The proposal may violate labor laws and civil rights.

We provide more detail on each of our concerns below.

**Ohio’s proposal will cause thousands of Ohioans—including many who meet the work requirement—to lose Medicaid coverage and become uninsured.** The goal of Medicaid is to expand access to health care. The Ohio proposal admits the work requirement will cause thousands to lose health care.<sup>4</sup> Our analysis shows more than 300,000 are at risk.<sup>5</sup> This is because the patient bears the burden of proof of exemption or compliance. 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. Patients would have to understand the requirements and procedures, chase down paperwork, and undergo expense to submit and verify information. This population is the least likely to have a computer or smart phone to communicate electronically. Many have limited monthly cell phone minutes, so even a telephone call can tax limited resources.

**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.<sup>6</sup> For working people enrolled in Medicaid the problem is this: many low-wage jobs do not regularly schedule workers for 20 hours a week, reliably giving them the required 80 hours per month of work.

In January 2018, the average work week for employees in the leisure and hospitality industry (fast food, hotel cleaners, restaurant work, etc.) was just 26 hours; in retail trade, it was 30 hours.<sup>7</sup> Average work weeks are short and schedules in low-wage jobs are irregular.<sup>8</sup> Many workers will lose Medicaid because their employers do not provide enough hours on a regular basis to satisfy the rigid work requirement. Moreover, many low-wage jobs offer no sick leave. Those who lose hours because they are sick or caring for a sick child could fail to get 80 hours a month and lose health coverage. Those in temporary, intermittent or seasonal jobs are at particular risk.

The hours of low-wage workers can fluctuate so significantly that reporting on changes weekly or monthly poses another threat to coverage, as some will be dropped by Medicaid due to mistakes in reporting by the patient or by the county administrative system.

The Center on Budget and Policy Priorities estimates that nearly half (46 percent) of low-wage workers in Medicaid who would be affected by work requirements would fail to get 80 hours per week at least one month out of each year.<sup>9</sup> This leads

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<sup>4</sup> Ohio Department of Medicaid, “Group VIII Work Requirement and Community Engagement 1115 Demonstration waiver” at <http://medicaid.ohio.gov/Portals/0/Resources/PublicNotices/GroupVIII/Detail-GroupVIII-021618.pdf?ver=2018-02-16-092910-683>

<sup>5</sup> The entire Medicaid expansion population is not at risk because some exemptions—for age, for those in counties granted a SNAP exemption, or for those participating in an exempted program like unemployment compensation—could be automatically verified through state information systems.

<sup>6</sup> Census data reveals that in Ohio, 61 percent of working-age Medicaid recipients who are not in the Social Security Disability Insurance Program work. Another 22 percent are disabled in some way and 12 percent are taking care of young children or 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, caregivers, or otherwise engaged in the community. This information is based on analysis of American Community Survey data for 2015 by the Center on Budget and Policy Priorities for Policy Matters Ohio, February 2, 2018.

<sup>7</sup> 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>

<sup>8</sup> National Women’s Law Center, “Collateral Damage: Scheduling challenges for workers in low wage jobs and their consequences,” April 2017 at <https://nwlcl.org/wp-content/uploads/2017/04/Collateral-Damage.pdf>

<sup>9</sup> Aron-Dine, Aviva, Raheem Chaudry and Matt Broaddus, “Many Working People Could Lose Health Coverage Due to Medicaid Work Requirements,” April 11, 2018 at <https://www.cbpp.org/research/health/many-working-people-could-lose-health-coverage-due-to-medicaid-work-requirements>



to worse health outcomes. According to the Kaiser Family Foundation, research shows that interruptions in Medicaid coverage can lead to health crisis, emergency department use and avoidable hospitalization. Studies examining the short-term impact of lost Medicaid coverage found unmet health care and medication needs and significant declines in health status.<sup>10</sup>

**Ohio's proposal will not result in financial stability and independence.** Work requirements imposed in other social service programs have not helped people gain financial independence. A review of research on work requirements in Temporary Assistance for Needy Families (TANF) and the Supplemental Nutritional Assistance program (SNAP) found short-term gains vanished after five years. Wages did not rise to a level that moved people out of poverty.<sup>11</sup> Research does not support the notion that work requirements move people into sustainable, well-paying jobs or improve their health.

Ohio's Medicaid expansion, on the other hand, has successfully fostered financial stability and independence. The state assessment of the Medicaid expansion program found having health care improved employment and employability. 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.<sup>12</sup> The proposed work requirements threaten the success of Ohio's Medicaid expansion in helping Ohioans to financial stability and independence.

**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.”<sup>13</sup>

Ohio's proposal does not include a design that will promote better mental, physical, and emotional health. It does the opposite. Taking away treatment for chronic health conditions, access to mental health services and drug addiction therapy from people who struggle to find and maintain employment will hurt the health of Medicaid beneficiaries. In turn, this lack of access to treatment will hurt their ability to keep and maintain a job.

The proposal is narrowly focused on work, 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.”<sup>14</sup>

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

Research has not established causal links between employment in the kind of low-wage jobs Medicaid expansion employees hold and improved health. One review of studies on health and work found negative health impacts of non-standard work is

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<sup>10</sup> Paradise, Julia and Rachel Garfield, “What is Medicaid's Impact on Access to Care, Health Outcomes, and Quality of Care? Setting the Record Straight on the Evidence,” August 2, 2013 at <https://www.kff.org/medicaid/issue-brief/what-is-medicaids-impact-on-access-to-care-health-outcomes-and-quality-of-care-setting-the-record-straight-on-the-evidence/>

<sup>11</sup> LaDonna Pavetti, “Work Requirements don't cut poverty, evidence shows,” Center on Budget and Policy Priorities, June 7, 2016 at <http://bit.ly/2tH7Vpy>

<sup>12</sup> 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>

<sup>13</sup> Federal guidance to Medicaid Directors, “Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries,” February 11, 2018, <http://bit.ly/2EuNfWX>

<sup>14</sup> Ohio Department of Medicaid, “Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver” at <http://bit.ly/2p4MC19>



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.”<sup>15</sup>

The federal guidance letter on work requirements cites studies that it claims justify work requirements, but even the cited body of research includes studies that refute this claim for non-standard, insecure, low-paid work.<sup>16</sup>

**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.”<sup>17</sup>

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

**Ohio’s proposal will not drive long-term improvement in quality of life.** Six of Ohio’s 10 most common jobs—fast food, retail, janitorial, and others—pay so little at the median that a family of three qualifies for public assistance.<sup>18</sup> Ohio’s labor market cannot be counted on to lift people into jobs with reliable, employer-sponsored health insurance. Low-wage jobs are so dominant in the Ohio economy that many people work them throughout their careers, without employer-sponsored health insurance.

On a national basis, 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. 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.<sup>19</sup>

Ohio’s Medicaid expansion is and will continue to be critical to the health of this huge low-wage workforce. 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). The vast majority will have not have access to health care upon losing Medicaid.<sup>20</sup>

**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

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<sup>15</sup> Mulatu MS, C. Schooler. “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>

<sup>16</sup> Patton, “Medicaid work requirements deceptively cite...,” *Op.Cit.*,

<sup>17</sup> Federal Guidance to Medicaid Directors, *Op.Cit.*

<sup>18</sup> Halbert, Hannah, Working for less: Too many jobs pay too little, April 30, 2018 at

<https://www.policymattersohio.org/research-policy/fair-economy/work-wages/working-for-less-too-many-jobs-pay-too-little>

<sup>19</sup> United States Bureau of Labor Statistics, National Compensation Survey, Table 9. Healthcare benefits: Access, participation, and take-up rates, 1 private industry workers, March 2017 at <http://bit.ly/2p1nMio>

<sup>20</sup> 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>



Labor Standards Act (FLSA), requiring payment of the federal minimum wage for hours worked.<sup>21</sup> This applies whether the person is receiving public benefits or not.<sup>22</sup>

The Fair Labor Standards Act prevents a work requirement from being involuntary servitude. In 1997, when changes were made to the federal food assistance program (SNAP) and the TANF program was created, the Department of Labor (DOL) issued guidance that addressed the question of the Fair Labor Standards Act 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.”<sup>23</sup>

Ohio’s 1115 waiver request mentions the Fair Labor Standards Act in relation to the work experience programs some Medicaid patients may use to retain health care coverage,<sup>24</sup> but as indicated in the DOL guidance cited above, Ohio cannot tie work hours to Medicaid benefits. The proposal for Medicaid work requirements identifies no source of funding to pay the wages of participants enrolled in WEP. It is possible the state envisions that Medicaid enrollees seeking to maintain health care coverage will participate in such programs on an unpaid basis—in violation of the Fair Labor Standards Act.

**Ohio has a poor track record in administering work requirement programs.** The proposed Medicaid work requirement is linked to work requirements in Ohio’s SNAP and TANF programs, which have administrative problems the proposed Medicaid work requirement can be expected to have as well:

- 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.<sup>25</sup>
- A consultant to the state found that in the Ohio Works First program, the cash assistance component of TANF, rigid application of work requirements was used to lower the case load (drop people from enrollment) in many places.<sup>26</sup>

Ohio’s proposed Medicaid work requirement is linked to these programs, but the proposal includes no plan to mitigate problems in the SNAP and TANF programs on a statewide basis, across Ohio’s county-run programs.

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<sup>21</sup> 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>

<sup>22</sup> DOL, How Workplace Laws Apply to Welfare Recipients at 2 (1997), <http://bit.ly/2DhanqO>

<sup>23</sup> DOL, How Workplace Laws Apply to Welfare Recipients at 4 (1997), <http://bit.ly/2DhanqO>

<sup>24</sup> 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 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>

<sup>25</sup> “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>

<sup>26</sup> 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.



**Ohio's proposal is racially biased.** Ohio's proposal would exempt Medicaid enrollees from work requirements in counties that have a waiver of SNAP work requirements.<sup>27</sup> Racial discrimination in Ohio's SNAP program would be extended to the proposed Medicaid waiver through this exemption.

In 2018, the Kasich Administration requested a waiver of SNAP work requirements in 26 counties. According to the Center on Budget and Policy Priorities, eight additional counties and eleven cities were eligible for the same waiver and could have gotten it, if the Kasich Administration had requested it.<sup>28</sup> The population in the 26 exempted counties is 95 percent white;<sup>29</sup> higher concentrations of people of color are in the eligible cities that were excluded from the waiver request. The racial discrimination in Ohio's SNAP work requirement waiver<sup>30</sup> will be extended to Medicaid through alignment of exemption with the SNAP program. This policy may be illegal, as a violation of basic civil rights, due to its disparate impact on people of color.

**Ohio's request is not budget neutral, as required by the 1115 demonstration program.** Ohio's proposal fails to meet the budget neutrality requirements of the 1115 demonstration program. Ohio's counties administer Medicaid intake, eligibility, reporting and case management. The unfunded cost for Ohio's 88 counties to administer the work requirement is estimated to be up to \$378 million,<sup>31</sup> but the proposal does not fully fund anticipated costs.

Just because certain administrative activities are carried out by local, not state, government, does not mean that the cost is irrelevant to the proposal nor to the evaluation of the proposal. The state is aware of the funding gap, as demonstrated by the request to use Medicaid funds for work supports. Yet federal guidance for the 1115 work requirement and community engagement specifically forbids use of Medicaid funds for this purpose. The program as proposed is not revenue neutral, as required under the rules of the 1115 demonstration program. It is underfunded and as such, will face the same problems as Ohio's other work requirement programs, which have resulted in poor outcomes in some places.<sup>32</sup>

## Conclusion

We oppose the state's proposal for a 1115 waiver because it places access to life-saving and life-preserving medical care for 318,000 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. Disabled people, including veterans who rely on Medicaid (particularly in rural places, where veterans do not have access to Veterans Administration health care) will have to prove they qualify for exemption, and may not be able to afford or obtain the necessary documentation. 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 and basic civil rights.

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<sup>27</sup> Ohio Department of Job and Family Services, "Federal Fiscal Year 2018: Able-Bodied Adults without Dependents," Family Assistance Letter 165, Sept. 18, 2017.

<sup>28</sup> E-mailed communication from the Center on Budget and Policy Priorities and Policy Matters Ohio, Feb. 17, 2018

<sup>29</sup> Corlett, John, "Proposed Ohio Medicaid Waiver Raises Civil Rights and Bias Concerns," March 1, 2018 at <https://www.communitysolutions.com/proposed-ohio-medicaid-waiver-raises-civil-rights-bias-concerns/>

<sup>30</sup> Civil rights administrative complaint on Ohio's SNAP waiver filed by the Legal Aid Society of Columbus and sent to Assistant Secretary Joe Leonard, Jr., Office of Assistant Secretary for Civil Rights, U.S. Department of Agriculture on August 14, 2014.

<sup>31</sup> Anthes, Loren, "Medicaid work requirement budget analysis: Budget neutrality," Center for Community Solutions, March 13, 2018 at <https://www.communitysolutions.com/research/medicaid-work-requirement-waiver-analysis-budget-neutrality/>

<sup>32</sup> Wendy Patton, "Shrinking Aid for Ohio's Poorest Families," Policy Matters Ohio, November 21, 2013 at <https://www.policymattersohio.org/research-policy/pathways-out-of-poverty/basic-needs-unemployment-compensation/shrinking-aid-for-ohios-poorest-families>; see also, Public Consulting Group, Op.Cit.



The Medicaid expansion is the state's most important tool in improving health and fighting the growing drug epidemic in Ohio. Placing hundreds of thousands of Ohioans 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 the federal government to reject it.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy Patton", is placed on a light gray rectangular background.

Wendy Patton  
Senior Project Director