HHS Approves Harmful Section 1115 Waiver in Arkansas: Effects on People with Disabilities

By David Machledt

The U.S. Department of Health & Human Services, under the leadership of President Trump, continues to approve state Medicaid waiver projects that are aimed at yanking low-income individuals and families off of Medicaid, with its March approval of the so-called "Arkansas Works" waiver project.[1] This approval adds new waivers, including a work requirement, that will dramatically worsen access to care. The approval also allows Arkansas to continue to ignore numerous critical and long-standing Medicaid protections for eligible Arkansans.

The amended Arkansas Works doubles down on existing provisions that discourage enrollment, like premiums, and then adds even more red tape, including conditioning health coverage on fulfilling a work requirement. All told, hundreds of thousands of Arkansans with low incomes and few resources will be hurt by the changes in this 1115 project, and tens of thousands may lose coverage.

Under the law, HHS may only approve section 1115 proposals that are valid experiments likely to promote the objective of Medicaid — to help *furnish* health services to low-income individuals. Arkansas' approved extension, in contrast, will harm low-income Arkansans, making it harder to access needed services and stay covered.

Arkansas's waiver applies to adults in the Medicaid expansion, a catchall group that nationally includes millions of people with disabilities as well as low-wage workers, parents, and other caretakers. In Ohio, about one in five newly eligible expansion enrollees had claims' histories that correspond to a serious disabilities. Other studies show about 3 in 10 expansion enrollees live with behavioral health conditions. A typical expansion enrollee could be, for example, a young adult injured in a crash who is still in the lengthy process of obtaining a formal disability determination from the Social Security Administration (SSA) or a person with a mental health diagnosis who may not meet Medicaid's strict disability definition but who needs access to prescriptions and who may have difficulty finding or maintaining employment.

The approved provisions will impact everyone in the "Arkansas Works" waiver, including people with disabilities. First, the state has to screen enrollees to identify who should be exempt from certain policies based on a disability or medical frailty. This process increases administration costs, complicates enrollment, and, based on the number who currently qualify, leaves many people with significant disabilities out. Second, even those who qualify for exemptions due to disability or medical frailty must document and

update their status, a process that increases red tape and makes it harder for people with disabilities to get and stay covered.

Taken together, these changes will make it harder for people with disabilities to get the supports and services they need. Numerous studies of Temporary Assistance for Needy Families (TANF) programs have found that participants with physical and mental health issues are more likely to be sanctioned for not completing the work requirements.[2] Other studies of work requirements in the Supplemental Nutrition Assistance Program (SNAP) have suggested that states regularly fail to exempt many of the nearly 20 percent of all SNAP participants who have a disability but receive no disability benefits.[3] These are lessons that Indiana has ignored in seeking this punitive new requirement.

The **new** features of Arkansas's program that impact people with disabilities are:

Work requirements for enrollees to maintain access to Medicaid coverage. Beginning as soon as June 2018, Arkansas will terminate Medicaid eligibility for expansion adults under 50 years old who do not meet "community engagement" (work) requirements or qualify for an exemption. In late 2016, HHS reviewed the proposed work requirements and concluded the agency lacks the legal authority to allow states to implement them.[4] The new administration reversed its position.

- These requirements are based on the false premise that Medicaid beneficiaries do not work. To the contrary, almost 4 in 5 adult Medicaid enrollees live in a working household, and 60 percent are working themselves. Almost all of those not working have a disabling condition, are caring for a child or an older adult who needs help, or are students or retirees. This new work requirement forces everyone to jump through more hoops to maintain access to vital medical care through Medicaid.
- Work requirements create more red tape for all Medicaid enrollees, *including people with disabilities who might be exempt on paper*. All "Arkansas Works" enrollees will be required to prove they are working or exempt. Every exemption requires someone to fill out a form, complete a screen, or any number of other requirements that add red tape and make it harder to stay enrolled. Many people will not even know they have to file paperwork, others will struggle to get the verification documents. This adds bureaucratic costs for individuals and the state.
- The state will require people to verify their hours or exemptions online. Individuals with limited internet access or those who require accommodations to access a computer may face significant barriers just to document their exemption or hours, with hours requiring monthly documentation.
- Arkansas claims that it will exempt medically frail enrollees from work requirements. However, the most recently available data show the state's current system has only flagged about 7.5 percent of applicants as medically frail. This number falls far short of other states' enrollment estimates for Medicaid

expansion enrollees with disabilities and serious chronic conditions. For example, Indiana classifies nearly 20 percent as medically frail. Arkansas's gross undercount suggests the state's work requirements may fail to exempt tens of thousands of enrollees with disabilities who face substantial barriers to work force participation.[5]

- The state also proposes to exempt adult enrollees who care for "an incapacitated person," without any definition of what that means. Caregivers for adult relatives with a disability may have difficulty qualifying for this vague exemption and will face ongoing barriers related to renewing this exemption.
- Experience shows that, if provided adequate supports, many people with disabilities build successful careers. But it takes significant investment and adequate supports – from personal care to appropriate wheelchairs to necessary employer accommodations. In contrast, Arkansas's Sec. 1115 waiver identifies no added resources or initiatives for employment supports that facilitate work. It simply takes away coverage from those who do not comply.

Coverage lock-outs. Medicaid law allows eligible individuals to apply and (if they ever lose coverage) re-apply at any time. Arkansas instead received a waiver to lock people out of coverage (i.e., bar them from re-applying) for the remainder of the coverage year if they do not meet the work requirement.

- Outreach and notice for reporting requirements is often lacking. It can be especially challenging for some people with disabilities who require accommodations, such as large print or screen readable electronic documents. The lockout period in Arkansas can be up to eight months, triggered after an enrollee does not meet the work requirements or provide documentation for three months of the calendar year. This will leave many individuals unable to access health care for the majority of the year. Churning in and out of Medicaid, or having extended periods without insurance, is linked with inconsistent treatment for chronic conditions and poorer health outcomes, particularly for people with disabilities. Locking people out of coverage flouts the objective of Medicaid – to furnish coverage.

Reducing retroactive coverage. Many eligible individuals apply for Medicaid *after* an accident or serious illness that requires urgent treatment. Federal law requires states to provide retroactive coverage so treatment received up to 90 days before enrollment is covered. Arkansas wants to shorten this to 30 days, but provides no valid reason to justify this waiver of Medicaid law.

- Retroactive coverage helps protect consumers and medical providers (such as hospitals) from bankruptcies due to expensive, uninsured care. People with chronic conditions and the medically frail, who are more likely to be hospitalized

or require emergency care, are strongly impacted by this waiver but are not exempt from the waiver under the approval.

- Arkansas's waiver seeks to save the state money by reducing access to care and shifting costs onto low-income families and providers. The approval suggests that retroactive coverage encourages low-income people to avoid coverage until they are sick, but this defies common sense. In reality, few low-income individuals even know retroactive coverage is available, so it is not a deterrent to signing up for and staying on Medicaid.

The amended Arkansas Works 1115 project includes **existing** waivers for policies that add roadblocks to coverage and make accessing care more complicated and costly. Though Medicaid law expressly prohibits premiums for individuals under 150% of the federal poverty line, the approval allows Arkansas to continue to charge premiums to individuals just above poverty. The state plans to collect on past due premium debts through garnishing income tax returns. Numerous studies consistently show that imposing premiums on low-income individuals means fewer people will stay on Medicaid. There is nothing experimental about charging premiums, and the known outcome contradicts the objectives of Medicaid.

Finally, Arkansas has a tarnished history of implementing new policies related to Medicaid expansion, yet the state laid out an extremely aggressive timeline to operationalize work requirements – potentially as soon as June 2018**.** In prior years, the state abandoned a program to implement health expense accounts for Medicaid enrollees due to massive complexity and administrative costs exceeding $9 million per year. The state also struggled with a persistent and substantial backlog in processing applications and appears to have an inadequate medical frailty screening process. CMS seems to acknowledge this poor implementation record by requiring the state to develop an eligibility and enrollment monitoring plan, but prior Sec. 1115 approvals also required remedial actions from the state with mixed results and delays. This history of implementation failures and cost overruns raises serious doubts about the state agency's readiness and how the readiness issues will exacerbate the negative impact of added red tape from work requirements. People with disabilities will be among those most negatively affected by administrative snafus, inadequate notice, insufficient accommodations, and not enough employment supports to meet their needs.

Additional Issue Briefs can be found below:

- HHS Approves Harmful Section 1115 Waivers in Arkansas – Including Work Requirements with Lockouts
- Arkansas's Section 1115 Medicaid Waiver & Its Impact on Health Equity
- Arkansas's Section 1115 Waiver – Harming Medicaid Enrollees Who Need Reproductive Health Services

[1] Centers for Medicare and Medicaid Services, Arkansas Works Health Approval Letter and Special Terms and Conditions (Mar. 5, 2018), https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ar/ar-works-ca.pdf.
[2] *See, e.g.,* Yeheskel Hasenfeld et al., *The Logic of Sanctioning Welfare Recipients: An Empirical Assessment*, Departmental Paper, University of Pennsylvania School of Social Policy and Practice (2004), https://repository.upenn.edu/cgi/viewcontent.cgi?article=1028&context=spp_papers.
[3] *See*, Michael Morris et al., Burton Blatt Inst. at Syracuse Univ., *Impact of the Work Requirement in Supplemental Nutrition Assistance (SNAP) on Low-Income Working-Age People with Disabilities*, 4, 14 (2014).
[4] *See* Centers for Medicare and Medicaid Services, AHCCCS 1115 Demonstration Extension 2 (Sept. 30, 2016), https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/az/Health-Care-Cost-Containment-System/az-hccc-demo-ext-09302016.pdf; Letter from Vikki Wachino, Director, CMS, to Jeffrey A. Meyers, Comm'r, N.H. Dep't of Health & Human Servs. 1-2 (Nov. 1, 2016), https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/nh/health-protection-program/nh-health-protection-program-premium-assistance-cms-response-110116.pdf.
[5] Some may request a "good cause exemption," but the approval suggests this exemption must be requested monthly, which could prove quite burdensome.