

Medicaid Expansion Work Requirements

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Q: My state is considering submitting a state plan amendment or waiver request to extend Medicaid coverage to the ACA Expansion population. It wants to include a requirement that individuals be working or looking for work to qualify for coverage. Is this permissible?

A. No. States should not be able to impose work requirements on ACA Expansion individuals under either traditional Medicaid rules or via a waiver or demonstration project.

Discussion

Federal Medicaid law imposes mandatory requirements that states must meet to qualify for federal Medicaid funding, including rules regarding administration, eligibility, scope of services, and procedural protections for enrollees.¹ Each state must submit a written plan to the Department of Health and Human Services (HHS) that describes the state's Medicaid program and includes assurances that it will operate the program in conformity with the federal Medicaid Act and related regulations.² The plan must be approved by the HHS Secretary before the state can receive federal funds for its implementation.³

Prior to 2014, Medicaid coverage was generally limited to low income women and children, people with disabilities, and the aged.⁴ Beginning January 1, 2014, however, most citizens and qualified immigrants whose incomes do not exceed 138 percent of the federal poverty line will qualify for coverage if the state adopts the ACA Expansion.⁵ The expansion will particularly benefit non-disabled, non-elderly adults.

¹ See 42 U.S.C. §§ 1396-1396w-5. Medicaid is an entitlement for individuals who qualify. See 42 U.S.C. §§ 1396a(a)(10), 1396a(a)(8), 1396d(a); *Bowen v. Roy*, 476 U.S. 693, 731 (1986).

² See 42 U.S.C. § 1396a(a) (listing required contents of state plan).

³ See generally 42 U.S.C. § 1396a; 42 C.F.R. § 430.10.

⁴ 42 U.S.C. §§ 1396a(a)(10)(A)(i)(III), (IV), (VI), 1396a(l)(1)(A)-(D), 1396(n)(1) (financial requirements); 42 U.S.C. §§ 1396a(a)(10)(A)(i)(II); 1396a(f), 42 C.F.R. § 435.120, 121 (people with disabilities); 42 U.S.C. §§ 1396d(p); 1396d(p)(2)(C)(iv), 1396d(p)(4); 42 C.F.R. § 435.121(b) (Medicare beneficiaries).

⁵ 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII) (added by ACA § 2001(a)(1)). Although the ACA Expansion category remains a mandatory group, the Court in *NFIB v. Sebelius* ruled that HHS cannot terminate Medicaid funding for states that refuse to participate in the Expansion. See

Work Requirements Are Impermissible Under Traditional Medicaid Rules

Federal law clearly enumerates Medicaid eligibility criteria.⁶ Although states have flexibility in designing and administering their Medicaid programs, the Medicaid Act requires that they provide assistance to all individuals who qualify under federal law.⁷ Thus, for example, a court struck down a state's attempt to add eligibility requirements beyond those contained in federal law, including ensuring childhood immunizations, wellness check-ups, school attendance and refraining from substance abuse.⁸ The court reasoned that since the Medicaid Act contains no such requirements, the state restrictions were inconsistent with and therefore preempted by federal law. A state "cannot add additional requirements for Medicaid eligibility," it declared.⁹

Notably, Congress has allowed only one group of Medicaid recipients to be terminated for failure to meet work requirements.¹⁰ These individuals receive Medicaid because they would have qualified under rules governing the former AFDC program (now called Temporary Assistance to Needy Families, or TANF).¹¹ Under federal law, most TANF recipients must engage in work activities to receive TANF benefits. If those recipients lose their TANF benefits for failure to meet those requirements, federal law permits (but does not require) states to terminate their related Medicaid coverage as well.¹² Congress had the opportunity to create a similar requirement for ACA Expansion individuals, but did not do so, nor did it extend the TANF work requirement to ACA Expansion individuals.¹³

NFIB v. Sebelius, 132 S. Ct. 2566, 2607 (2012). HHS has clarified that states must extend coverage to the entire ACA expansion category to receive increased federal funds for that group. See CENTERS FOR MEDICARE AND MEDICAID SERVICES, FREQUENTLY ASKED QUESTIONS ON EXCHANGES, MARKET REFORMS, AND MEDICAID (2012), <http://www.cms.gov/CCIIO/Resources/Files/Downloads/exchanges-faqs-12-10-2012.pdf>.

⁶ See generally 42 U.S.C. § 1396a.

⁷ 42 U.S.C. §§ 1396a(a)(10)(A),(B).

⁸ *Camacho v. Texas Workforce Comm'n*, 408 F.3d 229 (5th Cir. 2005), *aff'g*, 326 F. Supp. 2d 803 (W.D. Tex. 2004).

⁹ *Id.* at 235. See generally *Carleson v. Remillard*, 406 U.S. 598 (1972) (invalidating state law that denied AFDC benefits to children whose fathers were serving in the military where no such bar existed in federal law governing eligibility).

¹⁰ Various initiatives do exist to make it easier for certain people with disabilities to pursue work and still receive Medicaid, see 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(XV), 1396a(r)(2); 42 C.F.R. §§ 1396a(a)(10)(A)(ii)(XVI), 1396d(v)(1)(D); 42 U.S.C. § 1396a (note).

¹¹ These "Section 1931" recipients must have qualified for the state's AFDC program under rules in effect on July 16, 1996. 42 U.S.C. § 1396a(a)(10)(A)(i)(I); 42 U.S.C. § 1396u-1(a).

¹² 42 U.S.C. § 1396u-1(b)(3)(A). Pregnant women, infants, and minors who are not head of household may not have their Medicaid terminated. *Id.* at (A), (B).

¹³ *Id.* § 1396a(a)(10)(A)(i)(VIII). In fact, people who are dropped from the 1931 category will qualify for the Expansion category, if they are otherwise eligible.

Work Requirements Should Not Be Permitted Via Waivers

States may request permission from HHS to deviate from traditional Medicaid rules under certain very specific circumstances.¹⁴ Section 1115 of the Social Security Act grants the HHS Secretary the authority to waive requirements found in § 1396a(a) of the Medicaid Act to the extent and for the period necessary for the state to carry out a specific experimental project.¹⁵ These waivers may be granted only “(1) for experimental, demonstration or pilot projects, which (2) in the judgment of the Secretary are likely to assist in promoting the objectives of the Social Security Act and only (3) for the extent and period she finds necessary.”¹⁶

HHS approved a number of Section 1115 work requirement waivers in the *AFDC context* in the 1970’s and 1980’s.¹⁷ Under these waivers, states were required to conduct “rigorous evaluations of the impact of their demonstrations,” typically requiring the random assignment of one group to a program operating under traditional rules and another to the more restrictive waiver rules.¹⁸

But Medicaid is not AFDC. While the AFDC program required states to establish a “job opportunities and basic skills” program and was explicitly intended to move recipients to gainful employment, the Medicaid Act has no such goal.¹⁹ Rather, Medicaid’s stated objective is clear: it is intended to provide “medical assistance [to eligible individuals] whose income and resources are insufficient to meet the costs of necessary medical services” and “rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care.”²⁰ In the 48 years of Medicaid’s existence, HHS has never approved a waiver permitting a work requirement.

¹⁴ See 42 U.S.C. § 1396n(b); 42 C.F.R. §§ 430.25, 431.55. See CMS, STATE MEDICAID MANUAL §§ 2108.A (cost effectiveness), 2108.B (access to services and quality of care).

¹⁵ Some Medicaid provisions cannot be waived. For example, Medicare cost sharing requirements cannot be waived. *Id.* § 1396a(a)(10)(E). The spousal impoverishment protections cannot be waived. *Id.* § 1396r-5(a)(4). Transitional medical assistance coverage cannot be waived. *Id.* § 1396r-6(c)(1).

¹⁶ *Beno v. Shalala*, 30 F.3d 1057, 1069 (9th Cir. 1994); see 42 U.S.C. § 1315(a) (§ 1115(a) of the Social Security Act).

¹⁷ See generally *Aguayo v. Richardson*, 473 F.2d 1090 (2nd Cir. 1973). In fact, by the late 1980’s “virtually all states” had applied for and received waivers to apply more stringent work requirements to AFDC populations than were required under federal law. RICHARD MOFFITT, NATIONAL BUREAU OF ECONOMIC RESEARCH, MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES: THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM 296 (2003), available at <http://www.nber.org/chapters/c10258.pdf>.

¹⁸ UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, STATE WELFARE WAIVERS: AN OVERVIEW, <http://aspe.hhs.gov/hsp/isp/waiver2/waivers.htm>.

¹⁹ 42 U.S.C. § 682(d)(1)(A) (repealed July 1, 1997).

²⁰ 42 U.S.C. § 1396-1.

Congress' objective in passing the Medicaid expansion is also clear: it is intended to provide nearly universal coverage for all qualifying adults with incomes below 138% of the poverty line.²¹ The ACA also emphasizes access to care, particularly preventive care, and provides an efficient, streamlined system for determining eligibility and reducing “churning,” the inefficient movement of people between programs and eligibility statuses.²² Work requirements would require time-consuming and costly verification procedures, increase levels of churning, and reduce the number of people accessing preventive and other necessary care. None of those outcomes are consistent with the goals of the Medicaid Act or the ACA.

CMS has already addressed questions regarding its willingness to permit states to bar otherwise eligible members of the Expansion group from coverage, and has stated that it “does not anticipate” approving any 1115 waivers that impose enrollment caps or periods of ineligibility for the Expansion group because such barriers do not further the objectives of the Medicaid program.²³ A work requirement would be impermissible for the same reason.

Conclusion

The Medicaid Act provides flexibility in the operation of state Medicaid programs. However, federal law requires state Medicaid agencies to provide coverage to all people eligible under federal law. States are not permitted to add restrictions on eligibility, such as work requirements. When considering a waiver request, the Secretary's duty is to consider first the impact of the proposal on the persons the Medicaid Act “was enacted to protect” – in this case, the persons who would be covered by the ACA Expansion.²⁴ Work requirements would reduce access to preventive care, decrease efficiency, and complicate the ACA's goal of near-universal coverage under a streamlined system, in defiance of the goals of Congress, the Medicaid Act, and the ACA.

²¹ 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII) (added by ACA § 2001(a)(1)).

²² See *generally* ACA § 1001 (reforms to individual and group markets, including coverage of many preventive services); ACA § 1311 (streamlined enrollment).

²³ CENTERS FOR MEDICARE AND MEDICAID SERVICES, AFFORDABLE CARE ACT: STATE RESOURCES FAQ (2013), <http://www.medicaid.gov/state-resource-center/FAQ-medicaid-and-chip-affordable-care-act-implementation/downloads/Affordable-Care-Act-FAQ-enhanced-funding-for-medicaid.pdf>. States may desire to impose work requirements for reasons of politics, money or morality, but waivers cannot be granted for those reasons. See *Beno*, 30 F.3d at 1069, *Newton-Nations v. Betlach*, 660 F.3d 370, 382 (9th Cir. 2011).

²⁴ *Beno*, 30 F.3d at 1070.