



Medicaid Work Requirements – Legally Suspect

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States have flexibility in designing and administering their Medicaid programs. However, there are federal requirements that states must meet if they are to receive federal matching funds for their programs.

Participating states must cover low-income individuals who fall within certain designated eligibility categories (children, people with disabilities, pregnant women, older adults). The Affordable Care Act amended the Medicaid Act to add childless, non-pregnant, non-disabled adults with incomes below 133% of the federal poverty level as a mandatory coverage group; however, a Supreme Court ruling effectively made this Medicaid Expansion optional.¹ Under the Medicaid Act, states also have the option to cover some additional groups (e.g., working people with disabilities). There are also consumer protections that attach to Medicaid, including requirements to cover particular categories of services, to provide those services in sufficient amount, duration, and scope, to provide medical assistance with reasonable promptness, and to allow individuals to complain when coverage is denied or unreasonably delayed.

Beyond the minimum requirements, states have flexibility in how they operate their Medicaid programs. Some states have expressed interest in imposing work requirements on individuals as a prerequisite for Medicaid coverage. The Secretary of Health and Human Services (HHS) appears open to allowing work requirements.² Some members of Congress have also expressed support.³ In a separate issue brief,

¹ See *Nat'l Fed'n Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012) (discussing 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII)).

² Letter from Thomas E. Price, Secretary of Health & Human Services, and Seema Verma, CMS Admin., to Dear Governor (undated 2017).

³ See *Manager's Amend (Policy Changes)* (Mar. 20, 2017), https://rules.house.gov/sites/republicans.rules.house.gov/files/115/AMDT/policy-mngr_01_xml.pdf.

[Medicaid Work Requirements – Not a Healthy Choice](#), we discuss the policy issues raised by work requirements. This issue brief focuses on the serious legal questions raised by such requirements.

Work requirements as a condition of Medicaid eligibility

Medicaid's stated purpose is to provide medical assistance to certain low-income individuals and to furnish medical assistance and services to help these individuals attain or retain the capacity for independence and self-care.⁴ Medicaid has traditionally dealt with work through initiatives that make it *easier* for people with disabilities to pursue work and still receive Medicaid.⁵

The Medicaid Act establishes four requirements that an individual must meet to obtain coverage. The individual must: (1) be a U.S. citizen or a "qualified immigrant" who is lawfully present in the U.S.; (2) be a resident of the state where s/he is applying for Medicaid; (3) fit within a covered population group (e.g., children, older adults); and (4) have income that falls below the eligibility cut offs. The Medicaid Act does not generally include a requirement for the individual to be working or seeking work as a condition of qualifying for Medicaid coverage. A number of courts have recognized that states may not "add additional requirements for Medicaid eligibility" that are not set forth in the Medicaid Act.⁶

Notably, Congress has enacted legislation intending to promote work or including work requirements. The now-repealed Aid to Families with Dependent Children (AFDC) Act required states to establish a "job opportunities and basic skills" program and included an explicit goal of moving recipients to work.⁷ AFDC was enacted before Medicaid, and when Congress drafted the Medicaid Act, it lifted a number of provisions from the AFDC

⁴ See 42 U.S.C. §§1396-1, 1396d(a).

⁵ See, e.g., 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(XV); 1396a(a)(10)(A)(ii)(XVI); 1396a(r)(2); 1396d(v)(1)(D); 42 U.S.C. § 1396a (note). See also CMS, *Medicaid Employment Opportunities*, <https://www.medicaid.gov/medicaid/ltss/employment/index.html>.

⁶ See *Camacho v. Texas Workforce Comm'n*, 408 F.3d 229, 235, 237 (5th Cir. 2005) (enjoining Texas regulation that terminated Medicaid coverage of TANF recipients who were substance abusers or whose children did not get immunizations, check-ups, or were missing school because the regulation was inconsistent with the federal Medicaid and TANF statutes), *aff'g*, 326 F. Supp. 2d 803 (W.D. Tex. 2004). See also, e.g., *Dalton v. Little Rock Family Planning Services*, 516 U.S. 474, 478 (1996) (holding state coverage of abortion services needed to be consistent with federal provisions setting forth the circumstance for that coverage); *accord Carleson v. Remillard*, 406 U.S. 598, 604 (1972) (enjoining California regulation that denied AFDC eligibility to children whose parent was absent from the house due to military service when no such requirement existed in the federal AFDC Act).

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

Act; however, it did not include these work programs and goals.

In 1996, Congress repealed AFDC and replaced it with Temporary Assistance for Needy Families (TANF). TANF was enacted to, among other things, “end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.”⁸ Under the TANF laws, states must ensure that most TANF recipients engage in “work activities.”⁹ If an individual refuses, their TANF payments will be reduced or terminated.¹⁰ Congress was concerned that the sanctions of the TANF program not be undercut, so it gave states the option to terminate the Medicaid coverage of some parents who have had their TANF benefits terminated because they have refused to work.¹¹ This option does not extend to children or pregnant women.

Thus, Congress knows how to pass legislation that promotes work as a program objective and knows how to include work requirements in legislation. However, beyond the limited group of individuals who can lose Medicaid coverage for refusing to work, it has not authorized work requirements as part of the Medicaid Act. Notably, Congress had the opportunity but did not insert a work requirement when it included the Medicaid Expansion as part of the ACA. “Where Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”¹²

Work Requirements May Not be Permitted Via a Waiver

Absent authorization in the Medicaid Act, states cannot implement work requirements unless there is some other statutory authority.

States can request permission from HHS to ignore, or “waive,” Medicaid’s rules. One such waiver authority is section 1115 of the Social Security Act.¹³ Section 1115 permits the Secretary of HHS to allow states to implement “experimental, pilot or demonstration

⁸ 42 U.S.C. § 601(a).

⁹ 42 U.S.C. § 607(a); 42 U.S.C. § 607(d)(1)-(12) (listing 12 work activities). 42 U.S.C. § 607 also contains a number of exemptions to these work activities.

¹⁰ 42 U.S.C. § 607(e)(1).

¹¹ 42 U.S.C. § 1396u-1(b)(3)(A). Since 1996, the Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps) has also included a time limit on benefits for able-bodied adults without children who are not meeting work requirements. For explanation, see <https://www.fns.usda.gov/snap/able-bodied-adults-without-dependents-abawds>.

¹² *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (citation omitted).

¹³ 42 U.S.C. § 1315.

projects” which are “likely to assist in promoting the objectives” of the Medicaid Act.¹⁴ This part of section 1115 gives the Secretary the discretion to approve only those projects that will test an experimental concept, and it ensures that the Secretary will not exercise the discretion in a way that ignores the Medicaid Act’s purpose.

Under section 1115, the Secretary can waive only certain requirements of the Medicaid Act—those found in 42 U.S.C. § 1396a. (Medicaid is a large statute with more than 45 other provisions outside section 1396a.¹⁵) In addition, a waiver may be granted only to the extent and for the period necessary for the state to carry out the experiment. Courts have assessed section 1115 and commented on its limits. The Ninth Circuit Court of Appeals, for instance, has stated that “[t]he [1115] statute was enacted to allow states to test experiments, not to enable states to save money or to evade federal requirements.”¹⁶

Given the limits imposed by section 1115, there are serious legal questions as to whether the HHS Secretary has authority under section 1115 to allow a state to impose work requirements beyond the limited circumstance already authorized by Congress.

Work requirements are not consistent with Medicaid’s objectives.¹⁷ The purpose of the Medicaid Act is to enable states to furnish medical assistance to low-income individuals who cannot afford the costs of medically necessary services and to furnish “rehabilitation and other services to help [such individuals] attain or retain capability for independence or self-care.”¹⁸ A mandatory work requirement is not medical assistance; it is not a service provided to Medicaid beneficiaries. Moreover, according to the wording of the statute, independence and self-care are the desirable results of furnishing medical, rehabilitative, and related services; they are not goals in and of themselves.

Work requirements applied to health coverage get it exactly backwards. They block access to necessary care that individuals need to be able to work. Work requirements

¹⁴ 42 U.S.C. § 1315(a) (§ 1115(a) of the Social Security Act).

¹⁵ See 42 U.S.C. §§ 1396-1396-1, 1396b-1396w-5.

¹⁶ *Beno v. Shalala*, 30 F.3d 1057, 1069 (9th Cir. 1994).

¹⁷ By contrast, as far back as the 1970s, states obtained section 1115 waivers to test work requirements for the AFDC population (which, in contrast to Medicaid, does have work promotion as a purpose of the program). These waivers required states to conduct “rigorous evaluations of the impact,” typically requiring the random assignment of one group to a program operating under traditional rules and another to the more restrictive waiver rules. United States Dep’t of Health & Human Services, State Welfare Waivers: An Overview, <http://aspe.hhs.gov/hsp/isp/waiver2/waivers.htm>.

¹⁸ 42 U.S.C. § 1396-1.

also ignore Medicaid's essential role as a safety net for people in need. Medicaid enrollment fluctuates with the economy. Enrollment increases during economic recessions and the resultant losses in jobs and employer-sponsored insurance.

In the 50-plus years of Medicaid's existence, HHS has never approved a waiver permitting a work requirement for Medicaid applicants or enrollees. Instead, HHS has denied these requests. For example, HHS denied work requirement requests from Arizona, Arkansas, Indiana, and New Hampshire because such requirements are not consistent with the purposes of the Medicaid program. The Arizona and New Hampshire requests were rejected because a work requirement "could undermine access to care" and is not consistent with the purposes of Medicaid.¹⁹

Finally, in almost any system in which eligibility is conditioned on or attached to work requirements, these requirements will hit individuals with chronic and disabling conditions the hardest. Thus, work requirements implicate the civil rights protections contained in the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act, laws which make it illegal for states to take actions that have a discriminatory impact on people with disabilities.²⁰ Section 1115 does not authorize the Secretary of HHS to waive these laws.²¹

¹⁹ See CENTERS FOR MEDICARE AND MEDICAID SERVICES, AHCCCS 1115 DEMONSTRATION EXTENSION (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. (Nov. 1, 2016) (on file with authors). Pennsylvania rescinded its request to include a work requirement in a section 1115 demonstration project after HHS indicated that it would not grant the request. See Kaiser Fam. Found., *Medicaid Expansion in Pennsylvania: Transition from Waiver to Traditional Coverage* (Aug 3, 2015), <http://kff.org/medicaid/fact-sheet/medicaid-expansion-in-pennsylvania/#footnote-159781-6>. After discussion with HHS, Utah also abandoned a request to impose work requirements.

²⁰ 42 U.S.C. § 12312; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (prohibiting recipients of federal funds from discriminating on the basis of disability). See also, e.g., Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*

²¹ See *Burns-Vidlak v. Chandler*, 939 F. Supp. 765, 772 (D. Haw. 1996) (finding Rehabilitation Act and ADA are not included in section 1396a and "none of the statutes for which § 1315 authorizes waivers contain anti-discrimination provisions."). See generally *Alexander v. Choate*, 469 U.S. 287, 301 (1985) ("[A]n otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be *defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled* [.]") (emphasis added).

Conclusion

The Medicaid Act provides states with flexibility in the operation of their Medicaid programs. However, that flexibility has limits and does not extend to adding restrictions on eligibility that are not contained in the Medicaid Act. This includes work requirements. Moreover, when considering a section 1115 waiver request, the HHS Secretary's duty is to consider, among other things, whether the proposal is consistent with the purpose of Medicaid, including the impact of the proposal on people whom the Medicaid Act "was enacted to protect."²² Work requirements would stand Medicaid's purpose on its head by creating barriers to coverage and the pathway to health that the coverage represents. This issue bears close monitoring as some states (*e.g.*, Arizona, Indiana, Kentucky) continue to press HHS to approve work requirement waivers under section 1115, and Congress could consider whether to amend the Medicaid Act to allow work requirements.

²² *Beno*, 30 F.3d at 1070.