



Summary of Lawsuit Filed Against HHS Approval of Indiana’s “Healthy Indiana Plan 2.0” Waiver

Background

On February 1, 2018, the U.S. Department of Health and Human Services (HHS) approved Indiana’s request to condition Medicaid coverage of needed health care on work requirements. The approval, which extended the “Healthy Indiana Plan 2.0” (HIP 2.0) project, also allows the State to require low-income enrollees to pay a monthly premium, to be locked-out of coverage for failing to pay or to complete certain paperwork, and to eliminate retroactive coverage and coverage of non-emergency medical transportation. Because HHS’s approval of the HIP 2.0 extension violates numerous provisions of law and will harm tens of thousands of individuals in Indiana, the National Health Law Program, joined by Indiana Legal Services and Jenner & Block, LLP, filed a lawsuit challenging it on September 23, 2019.

Basics of the Lawsuit

The law at the heart of the case is Section 1115 of the Social Security Act. Section 1115 allows HHS to waive some designated federal Medicaid requirements if, and only if, those waivers have an experimental purpose and promote the objectives of the Medicaid Act. Congress stated the purpose of the Medicaid Act in the Act itself – to furnish health coverage to low-income people. The waiver can last only for as long as needed to do the experiment.

The lawsuit (initiated in a filing known as a “Complaint”) seeks to have HHS’s approval declared illegal and to enjoin the implementation of that project. According to the Complaint, in approving HIP 2.0, HHS exceeded its authority. HIP 2.0 does not have an experimental purpose, it is at odds with the objectives of Medicaid because it reduces access to health coverage and services, and violates other legal requirements. This lawsuit alleges violations of the federal Administrative Procedure Act (APA) and the U.S. Constitution.

The lawsuit was filed in the United States District Court for the District of Columbia against HHS and its Centers for Medicare & Medicaid Services (CMS), as well as senior federal officials responsible for considering, approving, and overseeing HIP 2.0. (The State of Indiana is not sued in this lawsuit.) The lawsuit was filed on behalf of individuals who currently have health coverage through Medicaid and will

suffer serious harms under HIP 2.0. For example, plaintiff Monte Rose, Jr. is 48-years-old and lives in Bloomington, Indiana. He completed high school and took some college courses. In the past he has collected scrap metal, worked as a research assistant at Indiana University, and written columns for local newspapers. Mr. Rose is not currently working and does not have any income. He goes to his local food pantry for food and eats organic vegetables that he grows himself. Mr. Rose does not have internet in his home. He does not have a driver's license or a car. To get around he rides his bike, asks for rides, or takes public transportation. Mr. Rose has Meniere's disease, an inner ear condition that periodically causes migraines, dizzy spells, and headaches, and he needs eyeglasses. Mr. Rose has been told he must meet work requirements to keep his Medicaid. He is not sure if he can count the time he has spent planning a gardening invention or helping his 82-year-old neighbor read his mail and do housecleaning. Mr. Rose finds the reporting process confusing. He does not have internet access at home, which will make it more difficult for him to report hours. Mr. Rose is concerned that he is going to lose his health insurance at the end of the year because he has not met the work requirement.

Legal Claims

Administrative Procedure Act:

The lawsuit includes two claims under the Administrative Procedure Act (APA), a federal law that governs the way federal agencies must operate. The APA requires courts to find unlawful and set aside agency actions that fail to meet the standards set forth in the statutes that govern them, in this case the Social Security Act. For example, courts must set aside agency actions that are "an abuse of discretion or otherwise not in accordance with law." As mentioned earlier, when HHS approved the HIP 2.0 extension, it authorized restrictive eligibility requirements that do not have an experimental purpose, that ignore provisions of the Medicaid Act that cannot be ignored, and that do not promote the objectives of Medicaid. For example, HHS is allowing Indiana to terminate individuals who fail to document that they are working, completing other employment-related activities, or qualify for some kind of exception. Because this requirement will reduce, rather than furnish health coverage, it violates the Section 1115 requirement to promote the objectives of Medicaid.

The second APA violation identified in the lawsuit concerns a policy guidance improperly implemented by CMS. On January 11, 2018, CMS issued a "Dear State Medicaid Director" letter that encourages states to condition Medicaid coverage on work requirements and sets forth the guidelines states are to use when doing so. The lawsuit alleges that this letter violates the APA by announcing a significant new Medicaid policy without going through the required public notice and comment process. The lawsuit also argues that the policy is contrary to law. The HIP 2.0 work requirement was expressly approved under this new policy.

Take Care Clause:

Finally, the Complaint alleges a violation of the Constitution. The claim flows from the Trump administration's explicit efforts to dismantle the Affordable Care Act (ACA), which includes the Medicaid expansion. Congress passed the ACA, making it the law of the land. The Executive Branch of the

government is empowered to implement laws, but it cannot re-write or undermine them. Under Article II, Section 3 of the U.S. Constitution, the Executive must “take Care that the Laws be faithfully executed.” The Trump administration’s efforts to rewrite the Medicaid Act and undermine the ACA’s Medicaid expansion through the approval of HIP 2.0 violate this constitutional requirement, known as the “Take Care Clause,” and form a clear basis for the District Court to declare the approval unlawful. The Trump administration has taken numerous steps to block or alter the ACA, starting with an Executive Order on his first day in office that instructs the relevant federal agencies to undo the ACA. Numerous members of the Trump administration have worked to implement this goal.

Next Steps

We expect the federal defendants to file the Administrative Record promptly. They will also need to respond to the lawsuit, either by filing an “Answer” to the Complaint or otherwise responding to the merits of the claims. It is still too early to predict the timeline for the case.