



January 27, 2017

*Submitted via the Federal Medicaid.gov Portal*

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8016  
Baltimore, MD 21244-8016

**Re: Comments for Kansas State Extension Application - Revised December 2017**

To Whom It May Concern:

The HIV Health Care Access Working Group (HHCWAG) appreciates the opportunity to comment on Kansas's Section 1115 Demonstration Renewal Application (the "Kansas Application") under Section 1115 of the Social Security Act. HHCWAG is a coalition of over 100 national and community-based HIV service organizations representing HIV medical providers, public health professionals, advocates, and people living with HIV who are all committed to ensuring access to critical HIV- and Hepatitis C (HCV) related health care and support services.

The Medicaid program is a critical source of health coverage for life-saving care for people living with HIV. More than 40 percent of people living with HIV in care count on the Medicaid program for the health care and treatment that keeps them healthy and productive.<sup>1</sup> Ensuring uninterrupted access to effective HIV care and treatment is important to the health of people living with HIV and to public health.<sup>2</sup> When HIV is effectively managed, the risk of transmitting the virus drops to near zero.<sup>3</sup> Kansas's proposals imposing work requirements and time limits on vulnerable populations threaten to reverse the progress in providing access to prevention, care, and treatment and reducing health care costs.

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<sup>1</sup> Kates, Jennifer and Lindsey Dawson. [Insurance Coverage Changes for People with HIV Under the ACA](#). Kaiser Family Foundation. February 2017.

<sup>2</sup> Panel on Antiretroviral Guidelines for Adults and Adolescents. Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents. Department of Health and Human Services. Available at <http://www.aidsinfo.nih.gov/ContentFiles/AdultandAdolescentGL.pdf>.

<sup>3</sup> Cohen, MS., et al. [Antiretroviral Therapy for the Prevention of HIV-1 Transmission](#). N Engl J Med 2016; 375:830-839. September 1, 2016.

HHCAWG is very concerned about the work requirement and time limit policies put forth in the Kansas Application. While people living with HIV are formally exempt from these new requirements, HHCAWG is concerned that Kansas's Application would substantially decrease meaningful access to care for many low-income individuals, including people who do not have HIV but are at risk of exposure and people living with HCV and other chronic health conditions. For the reasons discussed in detail below, we strongly oppose the Kansas Application and urge the Centers for Medicare and Medicaid Services (CMS) within the Department of Health and Human Services (HHS) to reject it.

**I. Kansas's proposed work requirement would violate the core objectives of the Medicaid program and would thus be unlawful**

If approved, the Kansas Application would violate the basic conditions required for approval of a section 1115 waiver. Section 1115(a) of the Social Security Act, codified at 42 U.S.C. § 1315(a), allows a federal waiver to facilitate a State's "experimental, pilot, or demonstration project" that, "in the judgment of the Secretary, is likely to assist in promoting the objectives" of the Medicaid program. One of the primary objectives of Medicaid, as explained by § 1901 of the Social Security Act, is to enable each State to furnish "medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and costs are insufficient to meet the costs of medically necessary services."<sup>4</sup> The work requirement and related time limits on eligibility would achieve the exact opposite result intended by this objective, resulting in more individuals losing access to health coverage and medically necessary services.

These restrictive work requirements and time limits would not achieve the objective Kansas sets out in its application, let alone the objectives of the Medicaid program. Kansas states that in implementing these policies, it seeks to test the hypothesis that "[assisting] members with accessing affordable housing, food security, employment, and other social determinants of health and independence will increase independence, stability, and resilience and improve health outcomes." Forcing enrollees to find and maintain employment to receive health coverage, and subsequently locking them out of health coverage after 36 months, will in no way achieve this objective. Instead, these policies will leave vulnerable individuals without health care, pushing them further into poverty.

A robust body of research shows that tying Medicaid eligibility to work or work-related activities would fail to increase long-term employment or reduce poverty.<sup>5</sup> The proposal does not contemplate any action to increase the availability of jobs across the state, or to assist beneficiaries with finding and keeping employment such as by providing transportation, education, job search services, or training. Beneficiaries living in rural areas without opportunities or transportation are

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<sup>4</sup> 42 U.S.C. § 1396-1.

<sup>5</sup> LaDonna Pavetti, "Work Requirements Don't Cut Poverty, Evidence Shows," Center on Budget and Policy Priorities, June 2016, <https://www.cbpp.org/research/poverty-and-inequality/work-requirements-dont-cut-poverty-evidence-shows>.

likely to struggle to meet these new requirements. Further, the proposed time-limited eligibility presents no incentive to comply with a work requirement. If the immediate penalty for finding employment is not disqualification based on income, individuals will soon find themselves entirely locked out of the program due to the proposed 36-month limited eligibility even for those that meet the new work requirement.

Kansas's application could even end up keeping people from gaining employment, because without health services, it will be more difficult for them to find and hold a job. Ohio's Department of Medicaid found that three-quarters of Medicaid expansion enrollees who were looking for work reported that Medicaid made it easier to do so, and more than half of those who were working said that Medicaid made it easier to keep their jobs.<sup>6</sup> It is precisely *because* Medicaid meets enrollees' health needs that they are able to focus on finding and keeping employment. An analysis of Kansas's Medicaid enrollees reveals the majority of the program already works: 68% of non-SSI, nonelderly enrollees live in working families, 47% work full-time, and 21% maintain part-time employment.<sup>7</sup> Further, among non-SSI, nonelderly enrollees that do not work, most face some significant barrier, with 35% citing an illness or disability as reasons for not working.<sup>8</sup> These individuals depend on consistent access to care and treatment in order to stay healthy and lead productive lives. The policies contemplated by the Kansas Application will place access to these services in jeopardy, worsening health outcomes for those affected and removing any chances of economic mobility.

If implemented, the Kansas Application would take away health coverage for many who would otherwise be eligible. Far from addressing the health needs of vulnerable low-income populations, work requirements and time limits would decrease access to health coverage for these populations by creating new barriers to health care. As a result, individual and public health in the state will suffer, undermining the progress that Kansas has made on these issues and placing residents at unnecessary risk.

A work requirement, coupled with time-limited eligibility, would harm Kansas's Medicaid beneficiaries and restrict access to care, in direct conflict with the objectives of the Medicaid program. Accordingly, given the multitude of ways in which these proposals will take health care away from individuals and worsen health outcomes, HHS should reject Kansas's Application for failing to promote the objectives of the Medicaid program, thereby violating the requirements of section 1115.<sup>9</sup>

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<sup>6</sup> Ohio Department of Medicaid, "Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly," <http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf>.

<sup>7</sup> Rachel Garfield, Robin Rudowitz, Anthony Damico, Kaiser Family Foundation, *Understanding the Intersection of Medicaid and Work* (<http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work>) (Updated Jan. 2018)

<sup>8</sup> *Id.*

<sup>9</sup> *See, e.g., Beno v. Shalala*, 30 F.3d 1057 (9th Cir. 1994) (striking down a section 1115 waiver due, in part, to an inadequate determination by HHS that the plan was likely to promote the Act's objectives). Furthermore, the law requires that the Secretary's decision is based solely on a substantive "judgment" as to whether the waiver "is likely to assist in promoting the objectives" of Medicaid. As the Supreme Court has made clear in *Massachusetts v. EPA*, "the use of the word 'judgment' is not a roving license to ignore the statutory text. It is but a direction to exercise discretion within defined statutory limits." 549 U.S. 497, 533 (2007).

## II. Work Requirements and Time-Limited Eligibility will Disproportionately Harm Individuals Living with Chronic Health Conditions

Individuals living with chronic illnesses stand to be disproportionately harmed by the combined effect of these proposals. Many individuals who live with a chronic illness that is not classified severe enough by the Medicaid program to be considered a disability but that make maintaining employment impossible would be subject to the work requirement. Chronic illnesses can produce symptoms or disabilities that are not visible, yet serve as impediments to steady employment. Additionally, some chronic conditions like multiple sclerosis produce periods of inability to work due to medication side effects or symptom flare-ups; employees with these conditions require flexible work arrangements that can be hard to find or keep. Episodic disabilities can produce an uneven work history, which in turn can make it more difficult for a person to find consistent employment. These burdens particularly affect people living with chronic illnesses or disabilities, as consistent access to medical care is key to the management of symptoms and overall long-term wellness. Even if these individuals are able to comply with the requirement, they will be suddenly cut off from coverage after an arbitrary 36-month limit, potentially interrupting lifesaving medical treatment.

Further, while Kansas's Application ostensibly notes 14 categories of enrollees that will be exempt from the work requirement, the complexity involved in tracking and applying exemptions is likely to prove unduly burdensome on both Kansas and enrollees. The history of administering exemptions to work requirements in other public benefits program shows that states often make mistakes and end up sanctioning beneficiaries that are not formally subject to the requirement.

The administrative challenges associated with implementing work requirements and time limits would be more pronounced in Medicaid than in the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) programs, which have struggled with implementation. SNAP and TANF require substantial interactions with participants, including interviews and frequent reporting. States have encountered numerous obstacles to accurately applying these policies. States' administration of these policies in the SNAP program was error prone, applied inaccurately, and led to eligible individuals being denied benefits.<sup>10</sup> When first implemented, the U.S. Food and Nutrition Service did a study and found that policies were "difficult to administer and too burdensome for the States." One of the biggest shifts was tracking benefit receipt over time, rather than circumstances in a single month, which was a fundamental change to program administration.<sup>11</sup> Historical analysis of state experience implementing work requirements

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<sup>10</sup> USDA Office of Inspector General, FNS Controls over SNAP Benefits for Able-Bodied Adults Without Dependents, September 2016, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

<sup>11</sup> Mathematica Policy Research, Inc., Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Participation (2001).

in TANF suggests that adding similar requirements to Medicaid could cost states thousands of dollars per beneficiary.<sup>12</sup>

Further, while the Kansas Application notes that the “state may consider an exceptions process for members who have certain behavioral health conditions,” Kansas does not specify what specific conditions it would consider as qualifying for an exemption. Kansas does not contemplate any exceptions process for non-SSI beneficiaries that are living with chronic conditions that make maintaining employment impossible. Further, the time-limited eligibility policy proposed by the Application does not ensure that a beneficiary locked out of the program due to the 36-month limit can receive services should the member become eligible on other grounds. This presents numerous possibilities to improperly deny services to otherwise eligible individuals, such as an individual who, newly diagnosed with HIV, finds themselves unable to get care and treatment because they have previously met their eligibility limit under a separate eligibility category.

Kansas has not adequately considered the disproportionate effect these harmful policies will have on individuals living with chronic health conditions, despite numerous state comments speaking directly to this issue. Accordingly, Kansas has not satisfied the requirement that issues raised during the public notice procedure are considered during development of the final application.<sup>13</sup> It is clear from this Application that Kansas is not adequately protecting the health needs of its most vulnerable citizens.

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We appreciate the opportunity to provide comments on Kansas Application. For the reasons described above, we urge HHS to reject the Kansas Application in order to ensure that the 1115 waiver program promotes, rather than undermines, the objectives of the Medicaid program, and that vulnerable populations retain access to crucial medications and health care services. Please contact Robert Greenwald at [rgreenwa@law.harvard.edu](mailto:rgreenwa@law.harvard.edu) with the Center for Health Law and Policy Innovation, Amy Killelea with the National Alliance of State and Territorial AIDS Directors at [akillelea@nastad.org](mailto:akillelea@nastad.org), or Andrea Weddle at [aweddle@hivma.org](mailto:aweddle@hivma.org) with the HIV Medicine Association with any questions.

Respectfully submitted by the co-chairs of the undersigned organizations:

ADAP Educational Initiative  
AIDS Action Baltimore  
AIDS Alabama

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<sup>12</sup> Gayle Hamilton et al., “National Evaluation of Welfare-to-Work Strategies: How Effective Are Different Welfare-to-Work Approaches? Five-Year Adult and Child Impacts for Eleven Programs,” Manpower Demonstration Research Corporation, December 2001, Table 13.1.

<sup>13</sup> 42 C.F.R. § 431.412(a)(1)(viii).

AIDS Alliance for Women, Infants, Children, Youth & Families  
AIDS Foundation of Chicago  
AIDS Research Consortium of Atlanta  
AIDS Resource Center of Wisconsin  
AIDS United  
American Academy of HIV Medicine  
APLA Health  
Bailey House, Inc.  
Communities Advocating Emergency AIDS Relief (CAEAR)  
Community Access National Network (CANN)  
Duke Law Health Justice Clinic  
Georgia AIDS Coalition  
Harm Reduction Coalition  
HealthHIV  
HIV Medicine Association  
Housing Works  
Legal Council for Health Justice  
Michigan Positive Action Coalition  
Minnesota AIDS Project  
National Alliance of State and Territorial AIDS Directors  
National Latino AIDS Action Network  
National Working Positive Coalition  
NMAC  
Positive Women's Network - USA  
Project Inform  
Rocky Mountain CARES  
San Francisco AIDS Foundation  
SisterLove  
Southern AIDS Coalition  
Southern HIV/AIDS Strategy Initiative  
The AIDS Institute  
Treatment Access Expansion Project