



February 22, 2018

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 Mississippi State Waiver Application

To Whom It May Concern:

The HIV Health Care Access Working Group (HHCAGW) appreciates the opportunity to provide comments on Mississippi's Section 1115 Demonstration Application (the "Mississippi Application") under Section 1115 of the Social Security Act. HHCAGW 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 healthcare and treatment that keeps them healthy and productive.¹ Ensuring uninterrupted access to effective HIV care and treatment is important to the health of people living with HIV and to public health.² When HIV is effectively managed, the risk of transmitting the virus drops to near zero.³ Mississippi's proposal imposing work requirements on vulnerable populations threaten to reverse the progress in providing access to prevention, care, and treatment and reducing health care costs.

HHCAGW is very concerned about the work requirement policies put forth in the Mississippi Application. While HHCAGW understands and supports the value of work, we are concerned that the work requirement policy put forth in the Mississippi Application would decrease meaningful access to care for low-income people living with HIV, HCV, and other chronic health conditions. This misguided proposal will not achieve the laudable objectives of supporting

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

² 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>.

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

greater independence and promoting economic opportunities for low-income vulnerable populations, nor does it promote the objectives of the Medicaid program. For the reasons discussed in detail below, we strongly oppose the Mississippi Application and urge the Centers for Medicare and Medicaid Services (CMS) within the Department of Health and Human Services (HHS) to reject it.

I. Mississippi’s proposed work requirement would violate the core objectives of the Medicaid program and would thus be unlawful

If approved, the Mississippi 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.” The work requirement would achieve the exact opposite result intended by this objective, resulting in more individuals losing access to health coverage and medically necessary services.

In order to determine the experimental value of the project, HHS must make a judgment “that the project has a research or a demonstration value” – a simple benefits cut is not sufficient.⁴ Mississippi’s proposal to implement a work requirement has no research or demonstration value – requiring people to satisfy work requirements in order to receive public benefits is a mandate that has been well-researched, with studies finding that work requirements do not lead to significantly higher labor force participation or lift people out of poverty.⁵

Further, the State has an especially poor track record when it comes to exercising discretion when approving or denying applications for federal benefits programs. For example, in 2016 Mississippi turned down more than 98% of applicants for the Temporary Assistance for Needy Families (TANF) program, turning away otherwise eligible individuals by using procedural roadblocks.⁶ In 2017, the State outsourced eligibility verification to a private contractor, which gave beneficiaries of the Supplemental Nutrition Assistance Program (SNAP), TANF, and Medicaid just 10 days to prove eligibility.⁷ Mississippi’s track record of using any lever it has to

⁴ *Newton-Nations v. Betlach*, 655 F.3d 1066, 1074 (9th Cir. 2011)

⁵ 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>.

⁶ MISSISSIPPI DEPARTMENT OF HUMAN SERVICES, ANNUAL REPORT, STATE FISCAL YEAR 2016 1, 41 (2017), available at https://web.archive.org/web/20170522144136/http://www.mdhs.state.ms.us/media/400058/2016-Annual-Report_web.pdf.

⁷ Greg Kaufman, “A Cruel New Bill is About to Become Law in Mississippi,” Talk Poverty, March 2017 <https://talkpoverty.org/2017/04/03/cruel-new-bill-become-law-mississippi/>.

deny otherwise eligible beneficiaries access to federal benefits programs, coupled with the well-documented failure of work requirements to achieve their stated goals historically, strongly indicate that this waiver proposal is nothing more than an elaborately designed “simple benefits cut” violating the objectives of Section 1115.

In order to find that the project is likely to promote the objective of the Medicaid act, HHS must consider the impact of the project on the populations that Medicaid was designed to protect.⁸ Medicaid was designed to provide “medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services.”⁹ As described below, the waiver proposal will have its largest negative impact on families with dependent children and people living with disabilities, thus undermining the exact populations that the Medicaid program is designed to protect.

In its proposal, Mississippi indicates that the two eligibility groups who would be subject to work requirements include “Low Income Families, Parents/Caretaker Relatives” and those on Transitional Medical Assistance (TMA).¹⁰ There is no exception for parents of young children, meaning that mothers of children as young as two months old, and fathers of newborns, would be forced to either comply with work requirements or face losing coverage. In response to comments concerning loss of and access to health care, the Department of Medicaid focused on the temporary nature of TMA eligibility, completely ignoring parents/caretakers of minor children, the other category of Medicaid beneficiary subject to the work requirement.¹¹ To comply with the work requirements, parents will either have to work in paid employment or approved non-paying activities for 20 hours a week, neither of which would ultimately help their situation with respect to health coverage.

For example, under the waiver proposal, a single parent of four children would have to work 20 hours a week (or participate in approved non-paying activities, including workforce training) in order to maintain their Medicaid eligibility. If this parent finds paying employment at minimum wage for 20 hours a week (which is the type of work that rarely provides employer-based health insurance), they will make approximately \$580 over the course of a month, pushing them past the monthly income limit for a family of five, which is \$541.¹² That parent would then be placed in transitional medical assistance, and ultimately lose Medicaid, while still not qualifying for advanced premium tax credits to help make private coverage affordable, as these subsidies are only available for those making 100% of the federal poverty level: \$28,780 for a

⁸ *Newton-Nations*, 655 F.3d at 1074.

⁹ 42, U.S.C.S. § 1396-1

¹⁰ Mississippi Division of Medicaid, MEDICAID WORKFORCE TRAINING INITIATIVE 1115 DEMONSTRATION WAIVER APPLICATION 1, 8 (2017), available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ms/ms-workforce-training-initiative-pa.pdf> (last visited Feb. 19, 2018) (hereinafter “Application”).

¹¹ Application, *supra* note 10, at Appendix B.

¹² *Income Limits for Medicaid and CHIP Programs*, MISSISSIPPI DIVISION OF MEDICAID, <https://medicaid.ms.gov/medicaid-coverage/who-qualifies-for-coverage/income-limits-for-medicaid-and-chip-programs/> (last visited Feb. 19, 2018).

family of five.¹³ During those 20 hours a week they are working, this individual would have to find childcare, which could leave that parent worse off financially than if they had not worked at all. If that parent later loses their job or cannot maintain employment while caring for their children, they will qualify for Medicaid again, be subject to the work requirement, and start the cycle over again. Mississippi states the work requirement will help to “reduce the number of individuals who churn in and out of Medicaid on a routine basis,”¹⁴ but its design will only serve to *increase* churn, raising administrative costs and leading to worse health outcomes for individuals cycling in and out of Medicaid.

Reflecting this, the State projects to maintain budget neutrality – another requirement of Section 1115 waivers¹⁵ – because fewer people will maintain Medicaid eligibility. The State projects to save \$30 million in the first year of the program solely from covering fewer people.¹⁶ Over the course of the demonstration, more than 20,000 otherwise eligible people will be excluded from Medicaid coverage, even using the most conservative of estimates.¹⁷ Using work requirements as a pretext for reducing enrollment would not serve the purpose of Medicaid and is thus not a valid use of Section 1115 waiver authority.

In sum, a work requirement would harm low-income parents, a core group served by Medicaid’s express purpose, would disincentivize beneficiaries from working, increase churn, and ultimately take away health care from otherwise eligible individuals and worsen health outcomes. For those reasons, HHS should reject Mississippi’s application for failing to promote the objectives of the Medicaid program, thereby violating the requirements of Section 1115.

II. The waiver’s design and complexity mean the work requirements will have unforeseen administrative costs, which would disproportionately affect people with living HIV, HCV, and other chronic health conditions

Work requirements in other contexts have been the subject of rich research. This research demonstrates that work requirements carry high administrative costs and the complexity required to administer them yields high error rates that deny otherwise eligible individuals benefits, including individuals living with disabilities and chronic illnesses.¹⁸ There is no reason to think that Mississippi’s proposed work requirements is designed in a way that avoids those

¹³ Federal Poverty Level (FPL) - HealthCare.gov Glossary, HealthCare.gov, <https://www.healthcare.gov/glossary/federal-poverty-level-FPL/> (last visited Feb 19, 2018).

¹⁴ Application, *supra* note 10, at 7.

¹⁵ *About Section 1115 Demonstrations*, MEDICAID.GOV, <https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html> (last visited Feb. 19, 2018).

¹⁶ Application, *supra* note 10, at Appendix A.

¹⁷ Application, *supra* note 10, at Appendix A. The exact estimate is 20,134 individuals: Mississippi estimates a reduction of 241,613 member months over five years. Dividing this number by 12 months yields the estimate above, but this necessarily assumes that each individual remains in the program for a full year. This is unlikely to reflect Mississippi’s actual experience and is thus an extremely conservative estimate.

¹⁸ 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>. (“[I]mplementation of ABAWD requirements can be error prone, and when ABAWD policy is applied inaccurately, eligible ABAWDs are denied SNAP benefits, while otherwise ineligible ABAWDs are provided benefits.”)

pitfalls. Indeed, the State’s proposal does not answer the question of how the work requirement will be tracked, merely pointing to already existing work requirements other benefits programs have, including TANF and SNAP, and stating that the proposed Medicaid work requirements would “leverage those resources to develop a process to provide a level of health security to Medicaid members while they gain the tools necessary for them to become independent of Medicaid.”¹⁹

To the extent the State does indicate how the requirement will be tracked, its proposals – including entering into a data sharing agreement with other branches of state government to identify and track those subject to the work requirement and monitoring activity of those participating in alcohol or other drug abuse treatment programs – its proposals are labor and cost-intensive and will likely lead to high administrative costs. Compounding this, the State includes no indication of how much the administrative costs of implementing the waiver will be, and does not include administrative costs in its budget neutrality calculation. This suggests that Mississippi will be unprepared to implement the work requirement if it is approved, potentially leading to the arbitrary denial of benefits.

Individuals living with HIV, HCV, and other chronic illnesses and disabilities 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 HIV 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.

Individuals living with HIV, HCV, and other chronic health conditions have historically been the most likely to suffer adverse effects from work requirements.²⁰ Mississippi’s proposal would be no different. Mississippi proposes to exempt, among other categories, people diagnosed with mental illness, and members receiving SSI or SSDI. However, half of Medicaid beneficiaries with disabilities do not receive SSI or SSDI,²¹ which means they would be subject to a discretionary exemption for people “physically or mentally unable to work.” Further, an analysis of the State’s current enrollees reveals that among non-SSI adult enrollees, 47% are already working,

¹⁹ Application, *supra* note 10, at 2.

²⁰ MaryBeth Musumeci and Julia Zur, “Medicaid Enrollees and Work Requirements: Lessons from the TANF Experience,” Kaiser Family Foundation, August 2017, https://www.kff.org/report-section/medicaid-enrollees-and-work-requirements-issue-brief/#endnote_link_232243-15.

²¹ 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).

and those that are not working face some significant barrier to work, with 48% citing and illness or disability as reasons for not working.²² The State gives no indication of how exemption requests would be evaluated, or how the application or evaluation process would work. In short, like the administrative hurdles to tracking compliance with the work requirement generally, the State has not indicated how it would tackle logistical hurdles that lie at the heart of the proposed waiver, which would subject thousands of individuals living with a disability to uncertainty as to whether they will have their care and treatment taken away. Mississippi has not adequately considered the disproportionate effect these harmful policies will have on individuals living with HIV, HCV, and chronic health conditions.

We urge HHS to ensure that all 1115 waiver proposals document a meaningful exemption process that includes people living with HIV and other chronically ill and medically frail populations. Mississippi must be able to demonstrate that they are able to identify people who qualify for this exemption in an adequate and non-discriminatory way, including through self-identification and provider referral. We believe the State should further define their exclusionary criteria, with HIV, HCV, and other chronic conditions as medically frail to prevent interruption of health care coverage for these individuals. The Department should ensure that Mississippi puts in place adequate processes to ensure that individuals living with chronic illnesses who are unable to work as a result of their conditions are similarly exempted.

We appreciate the opportunity to provide comments on the Mississippi application. For the reasons described above, we urge HHS to reject the Mississippi 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 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, or Andrea Weddle at aweddle@hivma.org with the HIV Medicine Association with any questions.

Respectfully submitted by the undersigned organizations:

ADAP Educational Initiative
AIDS Action Baltimore
AIDS Alabama
AIDS Alliance for Women, Infants, Children, Youth & Families
AIDS Foundation of Chicago
AIDS Research Consortium of Atlanta
AIDS Resource Center of Wisconsin

²² 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).

AIDS United
American Academy of HIV Medicine
APLA Health
Bailey House, Inc.
Black AIDS Institute
Communities Advocating Emergency AIDS Relief (CAEAR)
Community Access National Network (CANN)
Georgia AIDS Coalition
Harm Reduction Coalition
HealthHIV
HIV Medicine Association
Housing Works
John Snow, Inc. (JSI)
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
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