

March 1, 2018

Testimony in Opposition to the Ohio Department of Medicaid Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver

Good Morning,

My name is Graham Bowman, I am an attorney with the Ohio Poverty Law Center. The Ohio Poverty Law Center is a non-profit law office and advocacy center that works closely with legal aid attorneys who assist low-income Ohioans navigate Medicaid and other safety net programs in all 88 counties. Every day our colleagues witness the ways in which the Medicaid program prevents or slows the descent into disability and dependency for low-income Ohioans with chronic health conditions. However, legal aid attorneys are also experts in the mystifyingly complex and, at times, contradictory bureaucracy used to administer Medicaid and other public benefits.

Ohio's proposed Medicaid work requirement for non-disabled adults is a misguided public policy because it tries to neatly divide people into three categories: those who work, those who can't, and those who could work but are perceived to not want to. Most people who have spent time working in low-income communities will tell you that it is never that simple.

I would like to use my time to first share a story from my own time representing homeless youth and then briefly outline our concerns with the waiver.

A few years ago, there was a severe cold snap where temperatures dropped well below zero. Later, in March, I was working with a young man at a youth shelter who was no older than 22. I noticed that each time we met he wore a pair of mittens, which was odd attire for springtime. After we got to know each other better he revealed that he was hiding severe and untreated frostbite on both hands. During the polar vortex he'd been accidentally locked out of his house and had to wait 45 minutes for a bus, which was long enough to permanently damage his exposed hands.

I asked him why he hadn't been to a doctor yet. His hands didn't look good and I was worried he would get a life-threatening infection. He told me he had seen a doctor, but that they told him that his ring and middle fingers on one hand would need to be amputated. He was terrified of the operation and said to me, "I'm a poor kid with no education. Who is going to hire me if I can't use my hands? I need a job. How else am I going to take care of myself?"

He was hoping his hands would heal on their own while he worked on his resume with his social worker and I helped him get the identification documents he needed to apply for a job. Ultimately, we were able to convince him that his life was worth more than his job prospects and he went through with the procedure.

My client was right to be terrified of his employment opportunities. According to the Bureau of Labor Statistics, in 2017 the unemployment rate for African American youth was 16.2%, twice the

rate of white youth. He knew that without the full use of one hand that finding a job would be even harder. He was willing to risk his health and life to be employable.

There are thousands of people in Ohio like my former client who desperately want to work but have an injury or health condition that makes it hard for them to find a job.

Which brings me to our first concern

Concern 1: The Waiver Application does not specify an adequate process for identifying Group VIII Medicaid recipients who are physically or mentally unfit for work.

The waiver application states that Medicaid recipients who are physically or mentally unfit for work will be exempt from the work requirements and that the existing process for exempting Supplemental Nutrition Assistance Program (SNAP) recipients from the work requirement will be expanded to Medicaid applicants. The problem is that the process for determining which able-bodied adults without dependents are exempt from the SNAP work requirements due to physical or mental unfitness for work is flawed and varies from county to county.

The Ohio Office of Health Transformation estimates that 18,000 Medicaid enrollees will lose coverage because of the work requirements. **However, an analysis conducted this month by the National Disability Institute puts the estimate much higher.**

SNAP recipients who receive Social Security disability benefits (SSI/SSDI) are exempt from the work requirement. In addition, there is a further exemption for SNAP recipients who are not impaired enough to qualify for SSI/SSDI but who are nevertheless “mentally or physically unfit for employment.” The Medicaid work requirement waiver would mirror this structure.

In Ohio, each county Jobs and Family Services agency may determine whether a SNAP recipient is “obviously mentally or physically unfit for employment.” If their unfitness is not obvious, then the county agency may accept a statement from a “physician, physician’s assistant, nurse, nurse practitioner, designated representative of the physician’s office, a licensed or certified psychologist, a social worker, or any other medical personnel the county agency determines appropriate, that he or she is physically or mentally unfit for employment.”

Each county implements this rule in their own way. However, legal aid agencies in Ohio find that many counties do not make independent judgements regarding an applicant’s ability to work and instead require all applicants seeking an exemption to submit an assessment from a doctor. For example, Franklin County requires an assessment similar to what is required to support a Social Security Disability determination, which is a complex form used to prove a much higher level of impairment.

This practice is inadequate for identifying persons whose health conditions do not rise to the Social Security level of disability but still leave them mentally or physically unfit to work because it merely applies the more stringent Social Security definition of disability without articulating a separate standard for non-disabled SNAP recipients. Because the state does not articulate what type of

statement from a health care professional or social worker is appropriate, there is a wide variety of interpretations among Ohio's 88 counties. Some of those interpretations, such as Franklin County's, run contrary to the SNAP program's intent to exempt non-disabled yet impaired recipients from the work requirement.

Before a Medicaid work requirement, a SNAP recipient with an impairment could always return to their doctor, using Medicaid, to obtain the proper documentation to prove that they are exempt. However, now that same individual will also lose their Medicaid and be unable to access the very health care they need to document their impairment to regain eligibility.

This Catch 22 will have severe consequences for those tens of thousands of enrollees who have significant barriers to work and is a fatal flaw embedded in the design of the work requirement waiver.

Concern 3: The list of exemptions is too narrow

Why we understand the desire to align the Medicaid work requirement and SNAP Able Bodied Adults Without Dependents (ABAWD) work requirement, there are certain vulnerable populations who should be exempt but currently are not. At the top of that list are homeless individuals and former foster care youth. Both groups face increased physical and mental health risks as well as unique barriers to work or complying with a community engagement activity. It would not be difficult to identify these individuals within the Medicaid system and exempt them automatically.

Concern 4: The Waiver should provide greater clarity regarding what support services are necessary to comply with the work requirement and what the process would be for granting reasonable modifications.

We are pleased to see that the Department recognizes that support services such as transportation are necessary for individuals to be able to work in certain areas of the state. We are also pleased to see that the state will grant exemptions or modifications to the work requirement for Medicaid applicants who are unable to access necessary support services. However, the waiver application neither identifies other support services that may be necessary nor the process for exempting those who do not have access to them. Poverty is complex and leaves people with a wide range of barriers to overcome before being able to work 20 hours a week or participate in a community engagement activity.

For example, an individual with a criminal background may require legal services in order to obtain a Certification of Qualification for Employment or to expunge a previous record. Some individuals may need assistance obtaining identification documents or professional clothing before they can begin their job search. We ask that ODM consult with support and legal service providers in Ohio to more thoroughly develop this section of the application so important barriers to employment are not overlooked.

Concern 5: The list of Community Engagement Activities should be expanded to include other settings in which people contribute to their community

The work requirement Community Engagement Activities include a much narrower scope of activities than was suggested by CMS's January guidance to states on work requirements. It only allows for the narrow scope of employment programs that qualify under the SNAP ABAWD work requirement. However, the January letter encourages States to consider activities beyond the SNAP work requirement:

“As many Medicaid beneficiaries live in areas of high unemployment, or are engaged as caregivers for young children or elderly family members, states should consider a variety of activities to meet the requirements for work and community engagement, including volunteer and tribal employment programs, in addition to the activities identified to meet the requirements under SNAP or TANF.”

We ask that the Department survey existing community-based organizations to determine what additional community service activities and job assistance programs are currently available that ought to qualify towards the work requirement. For example, my client was working with me and a social worker to create a resume and get needed identification documents.

Expanding the allowable activities serve the dual purpose of giving Medicaid recipients credit for contributions they are currently making to their community, perhaps through their church, library, or shelter, while at the same time lessening the burden on existing job training programs that will struggle to serve a large influx of applicants.

Thank you for your time.

/s/

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