



June 14, 2018

Submitted via <https://public.medicaid.gov>

Seema Verma, Administrator.  
DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-25-26  
Baltimore, Maryland 21244-1850

**RE: Comments in Opposition to Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver Application**

Dear Administrator Verma:

The following comments are submitted by Ohio Consumers for Health Coverage (OCHC) to express opposition to the Ohio Department of Medicaid Group VIII Work Requirement and Community Engagement Demonstration Waiver application (waiver application) that Centers for Medicare and Medicaid Services released for public comment on May 15, 2018.

OCHC opposes the waiver application for the following reasons:

1. It is premised on a misguided and disparaging view of people who rely on Medicaid for their health insurance as needing a greater stake in the condition of their lives, i.e., “skin in the game,” to deserve access to health care.
2. It perpetuates a racially-biased structure that will further exacerbate racial health disparities in Ohio.
3. It will result in vastly more individuals losing Medicaid coverage than the Department of Medicaid has predicted, based on data from experience with implementation of work requirements and deficiencies in resources devoted to helping people successfully navigate the new requirements.
4. It violates federal law because it neither achieves nor attempts to achieve the purpose of 1115 waivers, which is to expand and improve access to health care for low income individuals and families.
5. At great cost to Ohio taxpayers, it will neither help people be healthier and more employable, nor help them obtain employment in the living-wage jobs that they need.

During the public comment period from February 16, 2018 through March 18, 2018, Ohio Department of Medicaid received 945 comments, 93% of which were opposed to the waiver application and only 4% of which were supportive. A small sample of the many comments consumers shared with our member organizations is included with this letter as Attachment A. These few comments are illustrative of the hundreds received and provide real-life context to the harm that will result from implementation of this waiver. OCHC urges CMS to reject the waiver application, and in so doing help thousands of Ohioans maintain access to life-saving and life-preserving medical care.

Each of the reasons enumerated above is described and supported in greater detail below.

**Section 1: The waiver application is premised on a view that people who rely on Medicaid need greater incentives to reach self-sufficiency and that work requirements will provide such an incentive.**

ODM does a grave disservice to its hard-working Ohioans laboring in low-paying jobs by allowing the misconception to persist that health insurance is being “given away” to households of people who are taking advantage of public benefits. According to ODM’s own statistics, a work requirement is not needed in Ohio to encourage work. ODM anticipates that a full 95% of the 709,923 people receiving Medicaid as part of the Group VIII expansion will be either working or unable to work due to age, health, caregiving responsibilities, or other valid barriers.<sup>1</sup>

For the remaining 5% of the Group VIII population, their ability to meet a work requirement of 20 hours weekly or 80 hours monthly is largely out of their control. The available jobs are not steady “9 to 5” jobs where hours are predictable and paychecks are the same amount from week to week. Rather, employers control day-to-day and week-to-week schedules. The number of hours a worker is scheduled may be sufficient to meet a work requirement in summer, but drop off precipitously in winter, only to increase again in the spring. Should such a worker try to find more steady employment? If she is not able to locate alternative employment, will she lose her health insurance?

People relying on Medicaid do not need additional “skin in the game” to appreciate the significance of receiving medical benefits. Health care is a tool that people use to maintain their ability to work, play, interact with family and friends, and otherwise participate in their community. The potential consequences of poor health include missed work, loss of pay, isolation, and a cascading series of destabilizing events, including loss of employment, eviction,

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<sup>1</sup>Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver Application, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/oh/oh-work-requirement-community-engagement-pa.pdf>.

homelessness, and the inability to purchase essential items like food and clothing. The additional loss of health insurance, in the name of encouraging people to work, adds unnecessary insult to substantial injury. Ohioans deserve policies that remove barriers to accessing Medicaid, because having health insurance helps people *increase* their self-sufficiency.<sup>2</sup> Those struggling to find work or break free of poverty are the very people who need a safety net to secure the gains they achieve through their hard efforts.

The waiver application may inadvertently promote the idea that some significant segment of people who rely on Medicaid are able but unwilling to work, that requiring them to work will push them in the direction of self-sufficiency so that they will eventually no longer need to rely on public health insurance, and that those unwilling to work should not be permitted to consume social resources. This view ignores the reality that the employable individuals in Group VIII are already employed. Unemployed individuals who would not be exempt under the terms of the waiver application are struggling with other barriers to employment, including lack of job opportunities; lack of technical, trade, or soft skills needed to secure available jobs; and lack of employers willing to hire people who have prior interactions with the criminal justice system. The work requirement does little or nothing to eliminate these very real barriers.

Of equal concern, the waiver application may unintentionally promote false racial stereotypes about urban-dwelling African American “Welfare Queens” with multiple children who abuse social welfare programs. Although many people who rely on Medicaid are female and people of color, the typical Medicaid expansion enrollee is:

- male (55.8%),
- white (71.5%),
- unmarried (78.1%),
- without minor children in the home (82.1%), or
- having no more than a high school education (58.1%).<sup>3</sup>

This possible misperception is compounded by the fact that the waiver will build on Ohio’s SNAP program policy of only exempting predominantly white areas from the work requirement.

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<sup>2</sup>CLASP, *Doubling Down: How Work Requirements in Public Benefit Programs Hurt Low-Wage Workers* (June 2017) <https://www.clasp.org/sites/default/files/publications/2017/08/Doubling-Down-How-Work-Requirements-in-Public-Benefit-Programs-Hurt-Low-Wage-Workers.pdf>

<sup>3</sup> Ohio Medicaid Group VIII Assessment: A Report to the Ohio General Assembly; The Ohio Department of Medicaid; John R. Kasich, Governor; Barbara R. Sears, Director <http://medicaid.ohio.gov/portals/0/resources/reports/annual/group-viii-assessment.pdf>

**Section 2: The waiver application perpetuates a system of exemptions that is racially-biased by only exempting predominantly white areas of the state while ignoring minority populated urban areas with similar or greater levels of unemployment.**

By the terms of the waiver application, people who are exempt from the work requirement under SNAP are also exempt from the proposed Medicaid work requirements. Federal policy allows states to essentially waive the work requirement in areas that have high unemployment or lack sufficient jobs.<sup>4</sup> Ohio chose to take a county-level view of unemployment rates and exempted 26 Ohio counties from the work requirement.<sup>5</sup> These counties would also be exempt from the proposed Medicaid work requirement.

Several urban communities with large minority communities, such as Cleveland, Euclid, and Maple Heights, are designated Labor Surplus Areas<sup>6</sup> and therefore meet the federal parameters for taking advantage of the SNAP exemptions.<sup>7</sup> However, the counties in which they are located do not. The disparate racial impact of only exempting *counties* with high unemployment while ignoring *cities* with similar rates is tragic. Residents of the 26 exempt counties are 95% white, while African-Americans are the largest demographic group in the three urban communities identified above.<sup>8</sup> Moreover, the ongoing burden of historical racially discriminatory practices of redlining, zoning, urban renewal and similar practices continue to persist in these three communities, leaving them poorly-resourced in terms of employment and educational opportunities.

Juxtaposing the lack of good jobs and good schools with (1) Ohio's decision to opt out of more expansive and just exemptions from SNAP work requirements, and (2) the decision to align SNAP and proposed Medicaid work requirements, leaves African Americans in poor Northeast Ohio urban communities subject to work requirements while Whites in 26 other counties are not similarly encumbered. Because food security and access to medical care are both determinants of health outcomes, the racially disparate imposition of the work requirements will result in a widening gap of existing racial health disparities.

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<sup>4</sup> United States Department of Agriculture Food and Nutrition Service, ABAWD Waivers.

<https://www.fns.usda.gov/snap/abawd-waivers>

<sup>5</sup> Family Assistance Letter #165, September 18, 2017. Ohio Department of Job and Family Services. The 26 counties are: Adams, Athens, Belmont, Carroll, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Highland, Huron, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Ottawa, Perry, Pike, Scioto, Trumbull, and Washington.

<sup>6</sup> Labor Surplus Area. U.S. Department of Labor Employment and Training Administration. Updated April 5, 2018.

<https://www.doleta.gov/programs/lisa.cfm>. Accessed June 7, 2018.

<sup>7</sup> United States Department of Agriculture Food and Nutrition Service, ABAWD Waivers.

<https://www.fns.usda.gov/snap/abawd-waivers>. Accessed June 7, 2018.

<sup>8</sup> Census Reporter, Cleveland, OH. <https://censusreporter.org/profiles/16000US3916000-cleveland-oh/>

**Section 3: Many more people will be pushed off Medicaid than ODM estimates because they will lack sufficient proof of either their employment or an exemption due to a mental or physical impairment.**

By putting the ability of tens of thousands of Ohioans to access medical assistance at risk, the waiver application fails to achieve the basic purpose of the Medicaid program of promoting access to health care. According to the state's estimate in its waiver application, 709,923 people will be receiving Medicaid as part of the Group VIII Medicaid expansion and will be subject to the work requirement if it is approved. According to the application, most of these individuals would either be exempt from or are currently meeting the work requirement. A remaining 36,036 Group VIII recipients are not currently meeting the work requirement. ODM predicts that 50% of these individuals, approximately 18,000 people, will lose coverage for noncompliance.<sup>9</sup>

This estimate undercounts the number of individuals who will eventually lose coverage because they are unable to comply with the work requirement. An independent analysis by the National Disability Institute in February 2018 using American Community Survey data estimated that as many as 60,000 Ohioans who are Non-SSI Disabled and currently rely on Medicaid would be at risk of losing their coverage.<sup>10</sup>

ODM's estimate is too low because it: (1) assumes that each county department of Jobs and Family Services will be able to identify Medicaid recipients who are physically or mentally unfit for work; (2) does not exempt populations that face unique barriers to compliance or warrant heightened scrutiny of any action that increases barriers to health insurance; and (3) lacks detail regarding when exemptions will be provided to persons who require support services in order to comply. Each of these issues will be discussed in more detail below.

**A. 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 county Jobs and Family Services agencies will extend to the Medicaid expansion population the current process for determining when SNAP recipients are exempt from that program's work requirement due to physical or mental unfitness to work. The process for determining which Able-Bodied Adults Without Dependents (ABAWDs) are exempt from the SNAP work requirements due to physical or mental unfitness for work is flawed because it allows counties to apply too stringent a standard for showing physical or mental unfitness. This flaw will be exacerbated when people in the Group VIII population are denied Medicaid due to lack of documentation of their impairment because, without health insurance,

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<sup>9</sup> Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver Application, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/oh/oh-work-requirement-community-engagement-pa.pdf>.

<sup>10</sup> Goodman, Sr. Researcher, National Disability Institute, Analysis of the 2016 American Community Survey (ACS) One-Year Public Use Microdata Sample (PUMS) (February 20, 2018).

they will lose access to services that are necessary to remedy the problem, thus dooming their access to health care because of a technicality.

In Ohio, each county Jobs and Family Services agency must exempt Social Security disability benefits (SSI/SSDI) recipients, as well as non-disabled SNAP recipients who are “obviously mentally or physically unfit for employment,” from the SNAP work requirement. If someone’s 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.”<sup>11</sup>

Each county implements this rule in its own way. However, legal aid and social service agencies in Ohio find that many counties do not make independent, thoughtful judgements regarding an applicant’s ability to work; they instead require everyone to submit an overly-burdensome 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.<sup>12</sup>

This practice is inadequate for identifying persons whose health conditions do not rise to the level of Social Security disability but still leave them mentally or physically unfit to work. It merely applies Social Security’s more stringent definition of disability without articulating a separate standard for non-disabled SNAP recipients with physical or mental impairments. 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. The waiver application would apply this same flawed practice to the Medicaid Group VIII population because the waiver application similarly intends to exempt both SSI/SSDI recipients and non-disabled adults who are physically or mentally unfit to work.

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<sup>11</sup> OAC 5101:4-3-11 (B)(5)(b), Food Assistance: Work Registration and Exemptions.

<sup>12</sup> See Franklin County Jobs and Family Services Assessment Form. FCDJFS #611 (06/2013). See also Ohio Poverty Law Center, Franklin County Department of Jobs and Family Services, Testimony in Opposition to the Ohio Department of Medicaid Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver, (March 1, 2018) at 2. <http://www.ohiopovertylawcenter.org/wp-content/uploads/2018/03/OPLC-Group-VIII-Work-Requirement-Waiver-Testimony-2018-3-1.pdf>.

Ohio re-imposed the work requirement for SNAP in 2013. Since that time, SNAP enrollment has fallen by **403,281 people**—from 1,824,675 (in 2013<sup>13</sup>) to 1,421,394 (in February 2018<sup>14</sup>) — while enrollment in Medicaid expansion as a result of expansion has grown. Because eligibility criteria for the Medicaid Group VIII and SNAP programs are substantially similar, the fact that SNAP enrollment fell while Medicaid expansion enrollment rose suggests that SNAP recipients are exiting the program because of problems complying with the work requirement not because they are financially ineligible. Even when people with physical and mental disabilities are exempt as a matter of policy, the process itself of establishing and maintaining the exemption is more than they can manage. Despite the policy decision that this group of people *should* be receiving the boost that a safety net is supposed to provide, they nevertheless are unable to obtain or maintain access to it. The apparently compassionate exemption does this group no good, failing to achieve its goal.

Ohio Association of Food Banks (OAFB) partners with the Franklin County Jobs and Family Services to assist “able-bodied adults” (ABAWDs) in complying with the work requirement. In 2015, the Association released a comprehensive report on the program.<sup>15</sup> The report found that many ABAWDs were not as ready to work as their enrollment status would suggest.<sup>16</sup> OAFB conducted comprehensive assessments of their clients to assist them in finding an appropriate work or job training program. From 2014-2015, OAFB assessed over 5,000 ABAWDs. They found that 12.4% of ABAWDs, who by definition do not receive Social Security disability benefits, nevertheless reported a disability. Nearly one-third (32.5%) reported a physical or mental limitation, with 25% of these individuals indicating their condition limited their ability to perform daily activities. More than 70% of all ABAWDs reported some type of physical limitation and 30.1% reported a mental limitation, with these conditions being more heavily concentrated among older ABAWDs. The most common limitations reported were: back injuries (18.3%), Respiratory Difficulties (6%), Depression (10.1%), and Bipolar Disorder (9.3%). Despite this large prevalence of physical and mental limitations, only one in five ABAWD reported having filed for Social Security disability benefits.<sup>17</sup>

In addition to suffering from various physical and mental health impairments, the ABAWD population in Franklin County was less educated than the general Ohio population. Three times

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<sup>13</sup> Supplemental Nutrition Assistance Program, State Activity Report, Fiscal Year 2013. United States Department of Agriculture Food and Nutrition Service Supplemental Nutrition Assistance Program, Program Accountability and Administration Division, July 2014. <https://fns-prod.azureedge.net/sites/default/files/snap/2013-state-activity.pdf>. Accessed June 7, 2018.

<sup>14</sup> National and/or State Level Monthly and/or Annual Data, Latest Available Month February 2018, State Level Participation & Benefits, Persons. United States Department of Agriculture Food and Nutrition Service. <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap>. Accessed June 7, 2018.

<sup>15</sup> Ohio Association of Food Banks, Franklin County Work Experience Program –Comprehensive Report (2014 - 2015), [http://admin.ohiofoodbanks.org/uploads/news/ABAWD\\_Report\\_2014-2015-v3.pdf](http://admin.ohiofoodbanks.org/uploads/news/ABAWD_Report_2014-2015-v3.pdf). Accessed June 7, 2018.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 10.

as many ABAWDs were high school dropouts (30%<sup>18</sup> compared to 10.9%<sup>19</sup>). Lower educational achievement corresponds with greater unemployment rates both nationally and in Ohio. In 2015, the unemployment rate among Ohio high school dropouts was 17.27%, higher than the national average among high school dropouts of 12.57%.<sup>20</sup> In contrast, the average unemployment rate in Ohio in 2015 was 4.9%.<sup>21</sup>

The combination of physical and mental impairments and lack of education makes the ABAWD population's ability to obtain employment or participate in job training programs especially tenuous. The combination of these factors offers a plausible explanation for why SNAP enrollment has declined by more than 400,000 since 2013. SNAP recipients who are unhealthy and uneducated likely can neither find a job nor successfully complete a job training program and, as a result, lose eligibility for SNAP. Because the Medicaid Group VIII population consists of mostly the same individuals as the SNAP ABAWD population, the same issues can be anticipated if they are subject to Ohio's ABAWD work requirement.

According to the Kaiser Family Foundation, approximately 17% of non-elderly adults aged 19-64 on Medicaid (Group VIII) have a disabling condition but are not eligible for Social Security disability (Non-SSI Disabled).<sup>22</sup> For this population, the state Medicaid agency is unaware of their disability because the individual is not enrolled through the disability eligibility category. The National Disability Institute conducted an analysis of the Ohio Medicaid program in February 2018 using American Community Survey data and estimated that as many as 60,000 Ohioans relying on Medicaid are Non-SSI Disabled and would be at risk of losing their coverage.<sup>23</sup> This number is almost double ODM's estimate of 36,000.

If the SNAP ABAWD work requirement is to be extended to Medicaid applicants, then the waiver application must be amended to provide substantially more detail regarding how the Ohio Department of Medicaid will ensure that persons with severe impairments will be exempt from the work requirement in each of Ohio's 88 counties. CMS stated in their January 11, 2018 guidance to State Medicaid Directors that:

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<sup>18</sup> *Id.* at 12.

<sup>19</sup> OHIO DEVELOPMENT SERVICES AGENCY, Office of Research, Educational Attainment: Ohio by the Numbers (February 2017), <https://development.ohio.gov/files/research/P7006.pdf>. Accessed June 8, 2018.

<sup>20</sup> OHIO DEVELOPMENT SERVICES AGENCY, Office of Research, Educational Attainment: Ohio by the Numbers (February 2017), <https://development.ohio.gov/files/research/P7006.pdf>.

<sup>21</sup> Ohio Unemployment Rates Annual Average 2015 (Not Seasonally Adjusted), Ohio Department of Job and Family Services Office of Workforce Development - Bureau of Labor Market, <http://ohiolmi.com/laus/CLFE/AnnualAverages/2015CLFE.pdf>. Accessed June 8, 2018.

<sup>22</sup> Kaiser Family Foundation, MaryBeth Musumeci, Julia Foutz, Rachel Garfield, *How Might Medicaid Adults with Disabilities Be Affected By Work Requirements in Section 1115 Waiver Programs?* (Jan. 26, 2018), <https://www.kff.org/medicaid/issue-brief/how-might-medicaid-adults-with-disabilities-be-affected-by-work-requirements-in-section-1115-waiver-programs/>. Accessed June 7, 2018.

<sup>23</sup> Goodman, Sr. Researcher, National Disability Institute, Analysis of the 2016 American Community Survey (ACS) One-Year Public Use Microdata Sample (PUMS) (February 20, 2018).



CMS recognizes that adults who are eligible for Medicaid on a basis other than disability (i.e. classified for Medicaid purposes as “non-disabled”) will be subject to the work/community engagement requirements as described in this guidance. These individuals, however, may have an illness or disability as defined by other federal statutes that may interfere with their ability to meet the requirements. States must comply with federal civil rights laws, ensure that individuals with disabilities are not denied Medicaid for inability to meet these requirements, and have mechanisms in place to ensure that reasonable modifications are provided to people who need them.<sup>24</sup>

Applying Ohio’s current ad hoc process of determining physical or mental unfitness for work in the SNAP program to Medicaid applicants will uniquely hinder disabled Ohioans from accessing medical care by denying them access to the very program that is necessary for them to be able to document their disability. When a SNAP recipient is denied an exemption for failing to show a qualifying physical or mental impairment, they are still able to obtain an assessment from a doctor using their medical card. However, under the proposed waiver, a non-SSI disabled person who cannot work would be denied Medicaid if they were unable to produce the onerous documentation being required by county agencies. When a person has Medicaid terminated because they did not meet excessive documentation demands, they are less likely to have access to a medical provider to prove their disability and regain Medicaid.

**B. The list of exemptions is too narrow.**

Notwithstanding the desire to align Medicaid and SNAP work requirements, 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; both populations are tracked. Not doing so contributes to the waiver’s failure to meet the goals of the Medicaid program by jeopardizing the ability of these high-risk populations’ ability to access necessary health services related to their unique vulnerabilities.

A third group of people that merits increased attention is women of childbearing age who are not yet parents. Women who begin pregnancy healthy and receive early prenatal care (perhaps even before they are certain they are pregnant) are more likely to have a healthy pregnancy and healthy birth. Yet women who are affirmatively trying to get pregnant, as well as women who may become pregnant, are not assured access to Medicaid prior to becoming pregnant. Ensuring that women of childbearing age have unfettered access to the tools for good health *before they*

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<sup>24</sup> CENTERS FOR MEDICARE & MEDICAID SERVICES, Dear Medicaid Directors Letter (Jan. 11 2018) at 5-6, <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf>.

*become pregnant* proactively establishes a firm foundation for healthy babies. Given the abysmal infant mortality statistics for Ohio,<sup>25</sup> and the focus of the Ohio Department of Health on access to early pregnancy care,<sup>26</sup> ODM must forego imposing any additional rules that place obstacles between women of childbearing age and access to healthcare.

**C. The waiver application should provide greater detail on the reasonable modification for support services.**

OCHC is 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. OCHC is also pleased 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 identifies neither other support services that may be necessary nor the process for exempting those who do not have access to needed support services. ODM should provide more detail regarding the scope of support services it views as necessary for being able to participate in a community engagement activity and refer to guidance from the Federal Nutrition Services (FNS) SNAP 2 Skills program regarding their efforts to better fund support services in SNAP employment and training programs.

In the waiver application, ODM recognizes that while SNAP and TANF recipients are screened for the need for support services, some Medicaid Group VIII recipients are not eligible for SNAP or TANF and will therefore not be offered those services. The application states that in these cases Group VIII individuals may be granted a reasonable adjustment or good cause exception to the work requirement “if community supports are not available to meet the Work and Community Engagement Requirement”.<sup>27</sup> The application specifically mentions transportation as one of those services but leaves the door open for other services being necessary as well.

Poverty is complex and leaves people with a wide range of barriers beyond lack of transportation to overcome to be able to work 20 hours a week or participate in a community engagement activity. To thoroughly develop this section of the application, it is incumbent on ODM to consult with support and legal service providers in Ohio so important barriers to employment are not overlooked. For example, an individual with a criminal background may require legal services to obtain a Certification of Qualification for Employment or to expunge a previous

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<sup>25</sup> Brown, Steve. “Ohio Still Behind Most States In Mortality Rate Of Black Babies.” *WOSU Public Media* (Columbus) 4 January 2018. Web 15 March 2018. <http://radio.wosu.org/post/ohio-still-behind-most-states-mortality-rate-black-babies#stream/0>.

<sup>26</sup> Gorny, Nikki. “Faith Leaders, State Officials Tackle Infant Mortality.” *The Blade* (Toledo) 13 March 2018. Web 15 March 2018. <http://www.toledoblade.com/Religion/2018/03/13/Faith-leaders-tackle-infant-mortality.html>

<sup>27</sup> Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver Application at 5, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/oh/oh-work-requirement-community-engagement-pa.pdf>.

record before he or she can begin searching for work. Other individuals may need help from a social worker to obtain identification documents or professional clothing.

ODM should not assume that Medicaid applicants will receive adequate assistance by aligning support services in Medicaid with those provided to SNAP/TANF recipients. Ohio provides support services through SNAP/TANF in a disjointed manner. Substantially fewer services are offered than are allowed, and paid for, under federal law.

In Ohio, county agencies must submit a SNAP Employment and Training plan to the Ohio Department of Jobs and Family Services and include in it a list of what support services the county provides to SNAP recipients. In practice, most counties offer little assistance beyond transportation to approved SNAP work activity sites. However, federal SNAP funds are available to reimburse SNAP recipients or social service providers for expenses that are necessary for participating in an employment or training program.

In 2013, FNS released a toolkit for states on the SNAP Employment and Training program that listed a number of these reimbursable expenses.<sup>28</sup> ODM should consider expanding the list of necessary expenses to include items on the list in Figure 1:

**Fig. 1**

<b>Always reimbursable through SNAP</b>	<b>Sometimes Reimbursable through SNAP</b>
Books	Legal Services
Clothing for job interview	Tuition/Test fees
Course registration fees	Equipment/tools
Dependent care cost	Background checks/finger printing
Licensing and bonding fees for work	Drug tests
Personal safety items	Medical tests
Training materials	Vision needs
Uniforms	Dental work

The extensive list of services in Figure 1 illustrates the wide range of expenses or services that are necessary for low-income individuals to receive before they can meaningfully participate in a community engagement activity or work. FNS has devoted significant resources to assist states with improving their SNAP Employment and Training programs by removing barriers to participation and drawing down additional federal resources for support services. ODM should carefully consider these best practices and incorporate them into the waiver application.

<sup>28</sup> U.S DEPT. OF AGRICULTURE - FOOD AND NUTRITION SERVICES, SNAP Employment and Training Toolkit (2013), [https://fns-prod.azureedge.net/sites/default/files/ET\\_Toolkit\\_2013.pdf](https://fns-prod.azureedge.net/sites/default/files/ET_Toolkit_2013.pdf).

**Section 4: The work requirement waiver does not comply with federal law because its purpose is not permissible.**

The waiver application violates federal law by attempting to expand the purpose of the Medicaid program beyond its sole objective of providing medical assistance to low income persons to include “promoting economic stability and financial independence.”<sup>29</sup>

The Medicaid program was created in 1965 with the purpose, according to the statute, of furnishing medical assistance to people whose income and resources are insufficient to meet the costs of necessary medical services.<sup>30</sup> States that choose to participate in the Medicaid program must comply with all federal laws and regulations governing the program. In exchange, the federal government will cover a portion of the program’s cost.<sup>31</sup>

Section 1115 of the Social Security Act allows states to request permission to waive certain rules under the Medicaid Act.<sup>32</sup> A state may only seek a waiver of federal rules governing the program for an “experimental, pilot, or demonstration project which is likely to assist in promoting the objectives” of the Medicaid Act.<sup>33</sup> Accordingly, the waiver’s purpose must be to further the goal of furnishing medical assistance to low-income residents of the state in some way. However, the stated goal of the waiver application is to promote financial independence and economic stability.

Prior to 2018, the Centers for Medicare & Medicaid Services (CMS) had never approved a work requirement waiver because the agency has historically recognized that work requirements undermine access to care and do not support the objectives of the Medicaid Act. In September 2016, CMS denied Arizona’s work requirement waiver application for this reason. In the letter explaining their rationale, CMS Acting Administrator Slavitt wrote:

Consistent with Medicaid law, CMS reviews section 1115 demonstration applications to determine whether they further the objectives of the program, such as by strengthening coverage or health outcomes for low-income individuals in the state or increasing access to providers. After reviewing Arizona's application to determine whether it meets these standards, CMS is unable to approve the

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<sup>29</sup> Ohio Department of Medicaid, Group VIII Work Requirement and Community Engagement 1115 Demonstration Waiver at 5, <http://medicaid.ohio.gov/Portals/0/Resources/PublicNotices/GroupVIII/Detail-GroupVIII-021618.pdf?ver=2018-02-16-092910-683>.

<sup>30</sup> 42 USC § 1396-1

<sup>31</sup> 42 USC § 1396b(a)(1)

<sup>32</sup> 42 U.S.C. § 1315(a).

<sup>33</sup> 42 U.S.C § 1315(a)

following requests, which could undermine access to care and do not support the objectives of the program.<sup>34</sup>

Ohio's waiver application articulates a similarly inappropriate goal of promoting financial independence and economic stability among Medicaid recipients that is beyond the program's goals of expanding and improving the delivery of health care.

In addition to articulating inappropriate goals in the waiver application, Ohio Department of Medicaid Director Barbara Spears sent a report to leadership in the General Assembly on January 28, 2018 that shed light on the true intent behind submitting the waiver application. The "Cost Containment Report for State Fiscal Year 2018 (July 1 – December 31)" is required by state law.<sup>35</sup>

Director Sears states:

The Ohio Department of Medicaid (ODM) is committed to efficient and careful management of the public resources entrusted to our agency. The attached report is in accordance with Section 5162.131 of the Revised Code, which requires ODM to report on the cost-containment initiatives related to the administration of Ohio's Medicaid program.

Personal Responsibility/Work Requirements are included at the top of the list of current cost containment initiatives.

The waiver application stated goal of improving financial independence and the inclusion of work requirements in a report on current cost containment initiatives leads to the conclusion that the waiver application is primarily a vehicle to save money by cutting people off Medicaid rather than an attempt to improve health care for low-income Ohioans. For this reason, the waiver violates federal requirements for 1115 waivers and should not be approved.

**Section 5: The cost to Ohioans of implementing this proposed waiver is exorbitant and wasteful yet fails to provide the very supports that people need to be successfully employed.**

ODM, in the waiver application, has not speculated on the cost to taxpayers of administering this work requirement. Nor did the Ohio General Assembly allocate funds in the state budget to cover the cost. In an effort to determine the cost of administering the waiver, Center for Community Solutions (CCS) analyzed data extrapolated from Cuyahoga County Department of Job and Family Services' estimate of county expense to implement the waiver. CCS concluded that the

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<sup>34</sup> U.S DEPARTMENT OF HEALTH AND HUMAN SERVICES, Letter to Thomas Betlach, Director of Arizona Health Care Cost Containment System (Sept. 30, 2016) at 34, <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>.

<sup>35</sup> Ohio Department of Medicaid, Cost Containment Report for State Fiscal Year 2018. (January 25 2018). <http://www.medicaid.ohio.gov/Portals/0/Resources/Reports/Cost-Containment-2018.pdf?ver=2018-01-26-073918-840>.

estimated statewide cost of implementation is \$378 million over the course of the 5-year waiver.<sup>36</sup>

In light of this steep price tag, imposed without any state dollars to defray local costs, Ohioans must consider whether the benefit is worth the cost. The evidence suggests that the work waiver will not increase employment.<sup>37</sup> Nor will it improve health outcomes.<sup>38</sup> It is unconscionable for Ohio to spend this vast sum of money on an employment and healthcare initiative that will neither help people become employed nor improve their health.

If Ohio were serious about helping its unemployed and underemployed workforce get and retain jobs that would lift workers out of poverty, it would implement evidence-based work supports programs like those recommended in a recently-released Health Policy Institute of Ohio publication entitled: *A new approach to reduce infant mortality and achieve equity: Policy recommendations to improve housing, transportation, education and employment.*<sup>39</sup> In this publication, the authors note: “[a]number of policies and programs impact people with low-incomes in seeking and maintaining employment and earning additional income. Work support programs facilitate access to employment, increase worker earnings and can reduce disparities and inequities.” Three examples of evidence-based work supports, described in detail in the December 2017 publication, are:

- Workforce development, including career-technical education;
- Comprehensive Case Management and Employment Program; and
- Subsidized child care.

Ohioans deserve evidence-based work supports to help them help themselves, not punitive work requirements that will undermine low-wage workers efforts to do just that.

## Conclusion

OCHC is a coalition of over 20 organizations, both statewide and local, that has worked since 2007 to unite the consumer voice with the goal of achieving affordable, high quality health care for all. Its organizational membership is diverse, representing both those with illness and those in good health, both insured and uninsured, those with resources, and those of limited means.

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<sup>36</sup> Anthes, Loren. “Medicaid Work Requirement Waiver Analysis: Budget Neutrality.” *The Center for Community Solutions*. 13 March 2018. Web 15 March 2018. <https://www.communitysolutions.com/research/medicaid-work-requirement-waiver-analysis-budget-neutrality/>.

<sup>37</sup> See, e.g., Katch, Hannah. “Medicaid Work Requirements Will Harm Families, Including Workers.” *Center on Budget and Policy Priorities*. 29 February 2018. Web 16 March 2018.

<https://www.cbpp.org/research/health/medicaid-work-requirements-will-harm-families-including-workers>.

<sup>38</sup> *Id.*

<sup>39</sup> Bush Stevens, Amy, et al. *A new approach to reduce infant mortality and achieve equity: Policy recommendations to improve housing, transportation, education and employment*. Columbus: Health Policy Institute of Ohio. 1 December 2017. Print. Available at [http://www.healthpolicyohio.org/wp-content/uploads/2018/01/SDOIM\\_FinalCombined\\_posted-1.pdf](http://www.healthpolicyohio.org/wp-content/uploads/2018/01/SDOIM_FinalCombined_posted-1.pdf).

Earlier this year, in response to the mandatory public comment period in Ohio on this waiver application, nearly 600 people described their concerns with our member organizations. In response to this federal-level comment period, we anticipate an even greater response.

OCHC firmly believes that work is a positive force in many people's lives. OCHC supports the goal of helping low-income people participate in the workforce in meaningful jobs in which they are treated with respect, paid a living wage, and supported with initiatives that overcome generational barriers to work. However, this waiver does not achieve that goal; nor will it achieve the permissible goals of Medicaid.

The Group VIII Work Requirement and Community Engagement Demonstration Waiver application is fundamentally flawed because it fails to achieve the essential purpose of an 1115 waiver, which is to improve access to quality health care for low-income individuals and families. In addition to this fundamental deficiency, the waiver application further underestimates the number of individuals that will lose coverage by the tens of thousands by not adequately addressing three administrative and social barriers that low-income individuals will face while attempting to comply:

(1) The application applies to Medicaid a deeply flawed process used in SNAP for identifying individuals who are physically or mentally unfit for work, which will uniquely harm Medicaid recipients.

(2) The application does not exempt vulnerable populations that will face enormous challenges complying with the work requirement, such as the homeless and former foster youth; nor does it exempt women of childbearing age, despite Ohio's ongoing challenge in reducing infant mortality, and the knowledge that preconception health of the mother is a determinant of a healthy birth outcome.

(3) The application does not adequately address what types of support services are necessary for work and what process will be used for exempting Medicaid recipients who are unable to access those services.

The waiver will create major barriers to access to healthcare for individuals who are currently covered by Medicaid and able to access services relatively unencumbered. Any waiver that has the net effect of reducing coverage by tens of thousands of individuals fails to further the Medicaid program's most basic goal and should not be approved.

Sincerely,

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## Attachment A

### Excerpts of Comments from Consumers responding to Group VIII Work and Community Engagement 1115 Demonstration Waiver Application

- As a primary care doctor at a Federally Qualified Health Center, about 70-75% of my patients depend on Medicaid so they can stay healthy enough to work.... Many of my patients were too ill to go back to work until they got Medicaid.
- My friend was able to have her life-threatening asthma followed and treated. Before she qualified, she was in and out of the emergency room at least once a week for "band-aid" treatment, much more costly than ongoing treatment....
- My son is on Medicaid and works at a grocery store. There are no full-time jobs there. He constantly asks for more hours but his weekly schedule varies from 7 hours to 25. If you pass this law/policy YOU WILL BE PUTTING HIS HEALTH IN THE HANDS OF THE GUY MAKING THE SCHEDULE at the grocery store!!!
- If "work requirements" go into effect, I am concerned about what I will have to do to get an exemption or prove my disability since I have not applied for SSI. Medicaid expansion has helped me not have to apply for SSI to get Medicaid. Disabled, not receiving SSI, how will I get an exemption or prove my disability? I am very concerned how work requirements will affect me since I am unable to work at all (for many years) due to a physical, yet invisible disability.... I never applied for disability benefits as Medicaid was the main thing I needed help with and I was able to qualify under the expansion without the long and arduous task of proving my disability. ... These restrictions make it difficult to hold a job, keep a job, or perform the daily requirements of jobs in my area as my problems continue to exist and get worse. This is not due to lack of trying, lack of willpower, or being lazy. I have never abused [Medicaid] and appreciate having it. I only utilize it and go to the doctors when needed. There must be a better way to handle this instead of claiming you must work to receive healthcare in the state of Ohio. ... Please consider healthcare for people like myself as this is our only hope. [It's] our lives and [I] have children ... who need me to be around for them [not] dead from lack of healthcare and medications, treatments.
- My being able to qualify for Medicaid without the arduous task of having to prove my invisible disability has meant less financial burden on my family and less stress on myself personally. I cannot work or engage in any mandatory "community activity" requirements due to a disabling medical condition I have had for many years. If I was able to work or



volunteer, I would already be doing so without any requirement from the state. However, since I do not have a disability determination from the state (SSI), which is a long stressful process I was hoping to avoid thanks to Medicaid expansion, I will probably be considered "able bodied" and I am deeply concerned about what I will have to do to prove my illness and disability. My illness is an invisible one and one that is poorly understood and under funded by the medical profession and thus difficult to get a disability determination for (Chronic Fatigue Syndrome, also know as ME/CFS or Myalgic Encephalomyelitis). The stress of having to prove my disability which is so poorly understood, make appointments, prove that I am "worthy" of Medicaid just because I cannot work due to illness. I am very concerned about how work requirements will affect people such as myself who cannot work due to health issues but we do not have the protection of legal disability determination.

- I just finished graduate school and had to move home in order to care for my mom, who was diagnosed with early onset dementia, and for my brother who had schizophrenia. Medicaid is the only thing keeping me from going off the deep end while I try to find a job that pays enough to care for me and my family. I am considered too educated for lots of jobs, and jobs that I am qualified for don't get back to me. My own health is impacted as a caregiver. I need Medicaid while ALL of my time has to go to my family. My student loan debt is accruing. And if I had to add medical bills to that financial stress, I could never get out from under it. I would not be able to take care of my mom with dementia or help my brother with schizophrenia to the extent that I do. ... To add in a mandatory work requirement or volunteer requirement would only hamper the intensive job search I am already engaged in. I HAVE A MASTERS DEGREE from a top tier school, and I have to now find a job that will allow me to pay back my own debt and life expenses as well as hire care helpers for my mom. This would totally impede EVERYTHING I am tasked with juggling right now. This is one more barrier I will have to take precious energy to navigate. One more hurdle. Please try to impart to the powers that be that these changes are barriers. Medicaid services are not one size fits all. I never thought I would finish graduate school to find myself on Medicaid. Adding these requirements is an additional burden.
- I think these requirements will make it harder to continue to be covered by Medicaid for Healthcare. [I was] able to afford flu shot so that I can get it and help prevent spreading the flu to family members who are unable to receive the vaccine. All part time work has incredibly volatile working hours. I wouldn't be sure if I could meet the work requirements.
- My son's high blood pressure & diabetes are being treated. He has been unable to find a job since his conviction 8 years ago. No one will hire him.