COALITION ON HUMAN NEEDS
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August 17, 2018

Re: "Kentucky Helping to Engage and Achieve Long Term Health (KY HEALTH)" and its component parts, including the Kentucky HEALTH program, Application and CMS Special Terms and Conditions

To the Centers for Medicare and Medicaid Services:

On behalf of Coalition on Human Needs (CHN) I am commenting on Kentucky's demonstration project "Kentucky Helping to Engage and Achieve Long Term Health (KY HEALTH)" and its component parts, including the Kentucky HEALTH program. We agree with the federal district court's decision in Stewart v. Azar, No. 18-152 (D.D.C. June 29, 2018) to overturn CMS's approval of Kentucky's Section 1115 waiver request, since the proposal is directly contrary to the basic purpose of Medicaid, which is to provide health coverage to low-income people.

The Coalition on Human Needs has long been concerned with the need to expand access to health care by low-income people. CHN is an alliance of more than 100 national organizations, including human service providers, faith groups, policy experts, labor, civil rights, and other organizations that for nearly 40 years has focused on improving federal services for low-income and vulnerable people. Our member organizations include experts on health care and many other anti-poverty services. We have also strongly supported effective routes to employment for low-income people. The proposal advanced by the Commonwealth of Kentucky will not make stable employment more likely for its current Medicaid enrollees; in fact, the loss of Medicaid coverage will stand in the way of steady work.

These comments provide evidence for the following points: (1) The Federal District Court decision is correct in finding that HHS did not adequately consider how Kentucky's proposals would affect Medicaid's core purpose; (2) Medicaid helps people maintain employment; (3) The basic premise of the work requirement – that it will be an incentive to increase work participation – is largely incorrect; (4) Many adults enrolled in Medicaid do work, but are not able to sustain 20 hours each week; (5) The Kentucky waiver request does not provide the supports needed to help people find and keep stable jobs, but other approaches can increase stable work; (6) If people are working, or find new employment, they are unlikely to be in jobs that provide affordable health insurance; (7) The monthly documentation requirements will be very difficult for Medicaid enrollees to satisfy, causing even eligible people to lose assistance; and (8) Requiring payment of premiums, and terminating assistance if they are not paid, will result in people losing Medicaid even if they are working or exempt from work.

(1) The Federal District Court decision is correct in finding that HHS did not adequately consider how Kentucky's proposals would affect Medicaid's core purpose. In reviewing the approval by HHS, Judge Boasberg noted that the "Secretary never adequately considered whether Kentucky HEALTH would in fact help the state furnish medical assistance to its citizens, a central objective of Medicaid." The Commonwealth of Kentucky's Medicaid waiver proposal estimates that 95,000 enrollees will lose Medicaid services in a typical month by its fifth year of operation. Evidence cited

below makes it clear that the vast majority of people losing Medicaid will go uninsured, which is the opposite of Medicaid's objectives.

Kentucky's Medicaid expansion has been consistent with the objective of furnishing medical care to its low-income people. Its uninsured rate in 2013, before implementation of its Medicaid expansion, was 20.4 percent, and dropped to 7.8 percent in 2016, according to a Gallup poll. This 12.6 percentage point drop was the highest in the nation during this period, an achievement that the Commonwealth should look upon with pride, and should not reverse by onerous restrictions.

(2) Medicaid helps people maintain employment. Kentucky and the Trump Administration justify the work requirements to be imposed as a means of encouraging work. We strongly favor effective means of making it possible for people to increase and stabilize their work hours and to increase their pay. In fact, about 60 percent of Medicaid enrollees who might be subject to the work requirements do work, although not all of them are able to work 20 hours per week consistently. Studies show that Medicaid itself makes it easier for people to sustain work. A survey in Ohio found that more than half (52.1 percent) of enrollees from that state's expansion of Medicaid reported that their new coverage made it easier to "secure and maintain employment," as described by the Georgetown Center for Children and Families. Nearly three-quarters of those unemployed at the time of the survey expected their health coverage to help them get and keep work.

Because a large proportion of adults enrolled in Medicaid have chronic conditions such as diabetes, heart disease, or depression (69 percent of expansion enrollees in Michigan, for example), the continued treatment provided through Medicaid makes it possible for people to work.

(3) The basic premise of the work requirement – that it will be an incentive to increase work participation – is largely incorrect. Large numbers of adults without disabilities do work. Many would work longer hours if their employers offered them. The low-wage labor market is volatile, and many workers do not receive predictable hours from their employers. Many businesses require their workers to be on call, ready to accept employment with little notice, making it impossible for them to take a second job. Only about one-quarter of low-income workers get paid sick days (27 percent), meaning that ill-health can lead to loss of a job. According to the Economic Policy Institute, one in 10 workers earning $10 or less moves in and out of work each month. These factors mean there are relatively few individuals who are in a position to increase their work effort. Some may be able to get more stable employment if (1) they can overcome health problems; (2) they can increase their education or training; or (3) if they have access to reliable child care and transportation. Work requirements, because they can lead to loss of health care, can result in health problems worsening. There is no funding for expanded education or training, and no additional support for child care or travel to work. Under these constraints, people faced with loss of benefits will not be able to increase work hours at will. They will simply lose benefits. The work requirements in a set of TANF demonstration programs increased work effort by less than one percentage point in the fifth year of operation.

(4) Many adults enrolled in Medicaid do work, but are not able to sustain 20 hours each week. Both the large numbers of Medicaid enrollees with chronic health conditions and the erratic nature of low-wage work mean that many workers will be able to work 20 hours a week every week. An

analysis by the Center on Budget and Policy Priorities found that among 19-64 year olds not receiving disability assistance and with incomes low enough to qualify for Medicaid, 46 percent worked fewer than 80 hours in at least one month. Even among those who averaged 80 hours a month over the course of a year, one-quarter did not reach 80 hours in at least one month. Such fluctuations in low-wage employment are common, and would leave many thousands in Kentucky without health coverage. In a further analysis utilizing Kaiser Family Foundation and Urban Institute research, the Center on Budget and Policy Priorities estimates that Kentucky's work requirements and the monthly reporting requirements would result in between **45,000 and 103,000 people** in Kentucky losing Medicaid assistance, with the losses beginning well before the fifth year.

(5) The Kentucky waiver request does not provide the supports needed to help people find and keep stable jobs, but other approaches can increase stable work. For those required to work who have young children, it is clear that compliance for parents will only be possible if child care is available. Similar requirements in the Temporary Assistance for Needy Families (TANF) program were accompanied by child care funding. The Kentucky waiver request does not include any increase in child care funding. In fact, CMS' Medicaid work requirements guidance document indicates that federal Medicaid funds may not be used for child care, employment services, transportation, or other supports: "However, this demonstration opportunity will not provide states with the authority to use Medicaid funding to finance these services for individuals."

The Kentucky approach, which penalizes people with loss of Medicaid if they do not comply with work and reporting requirements, and which offers no supports to make work possible, will not appreciably increase work participation, and will not open doors to better jobs with affordable health insurance. CMS should consider recommending that Kentucky take the approach of Montana, which accompanied its Medicaid expansion with a voluntary work supports program, which, according to an economic impact study, increased labor force participation among 18-64 year olds by 6-9 percentage points, an increase that did not occur in comparable populations in other states, or among higher-income Montanans.

It is also worth noting that the Trump Administration's Council of Economic Advisers, in responding to criticisms of its report, Expanding Work Requirements in Non-Cash Welfare Programs, acknowledges that providing "pro-work activities like job training or provision of childcare would increase their work effort even further and mitigate the risk of leaving some people worse off." As noted above, the Kentucky and other waivers considered by CMS do not mitigate this risk, and many will be left worse off by losing their health care. (The report claims that work requirements would increase "self-sufficiency and work effort," but the evidence cited in these comments is illustrative of a body of evidence that disputes this claim.) In addition, the CEA response cites the earlier TANF work requirements and the incentive provided by the Earned Income Tax Credit to increase employment, reduce "welfare dependency" and reduce poverty. We agree that the Earned Income Tax Credit is an effective work incentive, and the Census Bureau's Supplemental Poverty Measure provides annual evidence that it reduces poverty. The EITC is wholly different from work requirements, which deny assistance when requirements are not met, often for reasons difficult for the individual to control.

(6) If people are working, or find new employment, they are unlikely to be in jobs that provide affordable health insurance. Only 37 percent of full-time workers with family incomes below the poverty line are offered health insurance through their employers. If workers with family incomes below the poverty line are only working part-time, only 13 percent of them would be offered health insurance through work, according to a Kaiser Family Foundation analysis.

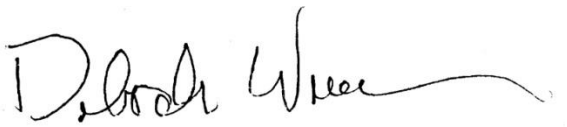
If Kentucky's work requirement increases work by the same average increase in a set of TANF research demonstration programs, and 37 percent of those newly employed are offered and sign up for health insurance through their employers (a typical percentage for low-wage workplaces), an analysis shows that fewer than 2,000 people would gain employer coverage. That is over-optimistic, because many low-income workers cannot afford their share of the premium for their employer's health insurance. In any case, it is drastically less than the 45,000-103,000 who will lose Medicaid.

(7) The monthly documentation requirements will be very difficult for Medicaid enrollees to satisfy, causing even eligible people to lose assistance. Whenever reporting requirements for benefits are increased, people lose assistance. The Kentucky proposal's requirement of monthly reporting is sure to result in thousands of people being terminated from Medicaid, even if they are working the required hours. The earlier cited estimated range of 45,000 – 103,000 losing assistance, based on research by the Urban Institute and the Kaiser Family Foundation, combines people who don't work enough hours per month or who don't manage to comply with the paperwork requirements, even if they are working 80 hours per month. A ***New York Times*** piece about the impact of more frequent documentation requirements described a Washington State decision to require Medicaid enrollees to document their eligibility twice a year as opposed to the previous annual requirement. That plus more paperwork resulted in a reduction in the Medicaid caseload of more than 40,000 children. Another study of adults in the Medicaid program before the Affordable Care Act found that 29 percent of those who remained eligible nevertheless lost coverage because of the paperwork burdens at the time of the annually required redeterminations of eligibility. Clearly, monthly reporting will be extremely burdensome for people struggling to work, manage health problems or other crises, and care for their children, all without adequate income, subject to frequent moves and lacking transportation and other resources. If people lose Medicaid for these reasons, it is fairly certain that they will not be in a position to replace Medicaid with employer-sponsored or ACA marketplace health insurance.

(8) Requiring payment of premiums, and terminating assistance if they are not paid, will result in people losing Medicaid even if they are working or exempt from work. The Kentucky waiver request does not just introduce work requirements. It also imposes premiums for people whose incomes are very low. The Kaiser Family Foundation reviewed outcomes in a number of states with Medicaid or CHIP premiums and found that premiums led to loss of Medicaid and reduced access to medical care. They found "…several studies suggest that these negative effects on health care are largest among individuals with greater health care needs." Another study found that a $10 premium in Wisconsin makes Medicaid enrollees 12-15 percentage points more likely to leave the program. For low-income families, even a small premium may be a roadblock to continuing assistance. For some, the combination of making regular payments and the general burden of responding to multiple requirements results in loss of medical care. This is no incentive to seek employment, and no route to other forms of health coverage – it is only another roadblock to health care.

We strongly urge CMS to reject the Kentucky waiver request. While work is certainly beneficial in many respects, the majority of non-exempt enrollees are working, and this proposal offers no resources or supports to make it possible for them to increase their pay or hours. The many barriers to continued coverage in this proposal will not lead to replacing Medicaid with other forms of health insurance in the vast majority of cases. The termination of health care for at least tens of thousands of people is directly contrary to Medicaid's objectives, and will reverse significant progress made through Kentucky's Medicaid expansion.

Sincerely yours,



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