



COALITION ON HUMAN NEEDS

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June 27, 2020

Hon. Alex Azar
Secretary, U.S. Department of Health and Human Services
Washington, DC

Re: Medicaid 1115 Waiver Request, Oklahoma SoonerCare 2.0 Demonstration

Dear Secretary Azar:

Thank you for the opportunity to comment on the request submitted by the Governor of the state of Oklahoma for approval of changes to their Medicaid program. I am writing on behalf of the Coalition on Human Needs, a non-profit independent organization made up of national scope organizations representing people of faith, human service providers, policy experts, and labor, civil rights, and other advocacy groups concerned with protecting and improving the capacity of federal programs to meet the needs of low-income and vulnerable people. We have long focused on the Medicaid program as one of the nation's most important and effective means of assisting low-income people. We have submitted comments in opposition to waiver requests related to imposing work requirements in Kentucky and Mississippi, which are attached. Our opposition to work requirements and to other proposals in the Oklahoma request are stronger than ever now, and urge you to disapprove this request.

It is disappointing to have to submit comments now, because federal courts have repeatedly ruled against work requirements in Medicaid. You are well aware of this, and should not entertain any requests to implement work requirements. Federal district and appellate rulings against work requirements are based firmly on Medicaid law. As the February 14, 2020 U.S. Court of Appeals for the District of Columbia Circuit ruling in *Gresham v. Azar* noted:

“The primary purpose is to furnish (1) 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, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care. 42 U.S.C. § 1396-1.

“Importantly, the Secretary disregarded this statutory purpose in his analysis. While we have held that it is not arbitrary or capricious to prioritize one statutorily identified objective over another, it is an entirely different matter to prioritize non-statutory objectives to the exclusion of the statutory purpose.”

There have been similar rulings stopping work requirements in Kentucky, New Hampshire and Michigan, as well as this ruling regarding Arkansas. The court took into account precipitous decline in Medicaid enrollment which took place in Arkansas, noting in its opinion “In Arkansas, more than 18,000 people (about 25% of those subject to the work requirement) lost coverage as a result of the project in just five

months.” Based on this experience, courts (and in some cases state administrations) were mindful of the likely outcome in other states. In New Hampshire nearly 17,000 people — about 40 percent of those subject to the rules — were on track to lose their coverage before policymakers suspended the program. And in Michigan, more than 80,000 people — about a third of those subject to the rules — were in danger of losing coverage before a federal judge suspended the state’s policy.

The courts held that the decision to allow work requirements in the Medicaid program was arbitrary and capricious because it did not take into account voluminous findings that such requirements would result in many people who were actually eligible losing Medicaid, that the loss of Medicaid would make it harder for people to secure and maintain employment, and that there was no evidence that people would be able to replace Medicaid with employer-based health insurance.

All that evidence remains true. It was true when unemployment rates were generally low, because of the particular health and resource problems of people who qualify for Medicaid. But it is so much more true today, as the nation struggles with a pandemic and unprecedented economic downturn.

You will have received comments detailing the evidence showing the unjust hardships inflicted by work requirements, and our attached comments related to [Kentucky](#) and [Mississippi](#) include some of that evidence as well. We want to add to that record by pointing out the conditions in Oklahoma now, as documented in the U.S. Census Bureau’s [Household Pulse Survey](#), which is providing weekly data about need during the time of the pandemic. The most recent data is from the week of June 11-16.

Oklahomans are struggling, as is the rest of the nation. For the most recent week, more than 40 percent reported that they delayed getting medical care because of the pandemic. That was true for more than half of those who had been a loss of household earnings (50.9 percent); it was true for nearly 43 percent of households with children. There were big disparities by race/ethnicity. More than two-thirds of Hispanics had to delay getting medical care (67.5 percent), as did nearly 64 percent of Blacks. For whites, it was 35 percent.

Nearly half of Oklahoma’s Hispanic population was uninsured (49 percent). For households that had experienced a loss in earnings since March 13, nearly 25 percent were uninsured.

The economic impact on people in Oklahoma is severe. For the week of June 11-16, more than 40 percent reported that someone in their household had lost earnings since March 13. For those whose earnings were under \$25,000, nearly 58 percent had lost household income from work, as had 47 percent of households with children.

The loss of income has caused alarming levels of hardship, in Oklahoma and the nation. For households with children in which someone had lost earnings, more than one in four (27 percent) reported that in the previous 7 days they sometimes or often did not have enough to eat. For people who were sick or disabled (not with COVID-19), fully 68 percent said that they sometimes or often did not have enough to eat in the previous week.

Before the pandemic, it was convincingly demonstrated that work requirements would lead to the loss of Medicaid by many thousands of people not able to sustain work and not able to replace needed medical care while ineligible for Medicaid. And during the pandemic? It would be simply unconscionable for you to consider such a proposal.

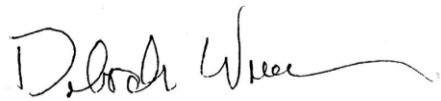
The Oklahoma proposal includes other elements that will deny health benefits to people who need them. It would require monthly premium payments for those newly eligible through their new Medicaid expansion, and any missed payments would end their coverage. This would lead many low-income people to lose coverage even in better times. The data cited above show how many people have lost income from work, causing so much hardship that they are forced to go without enough food. COVID-19 cases are spiking in Oklahoma. This is the time to make sure they get Medicaid coverage, not to deny it to them when they are most in need.

The SoonerCare plan would also eliminate hospital presumptive eligibility, which lets hospitals and other health providers enroll people in Medicaid coverage. Oklahoma should be embracing this approach as a means of expediting help in a health emergency, and HHS should not allow states to eliminate this sensible way of enrolling people who need medical care. In addition, HHS should not allow Oklahoma to eliminate non-emergency medical transportation, since such help makes it possible for the lowest-income people to maintain regular care such as dialysis or preventive treatment.

Finally, Oklahoma's willingness to shift to a per capita cap funding structure in its Medicaid program is in our view state administrative malpractice at any time. It would place the state – and its people – at absolutely unacceptable risk during a pandemic. More people will get sick from COVID-19. Medical costs will rise as a result. The current Medicaid funding structure is intended to protect people across the nation if states face such health crises. Approving such a limit, which will only result in the state restricting Medicaid eligibility or benefits, or adding more onerous cost-sharing as it now seeks, is certainly contrary to the Medicaid statute's purpose.

We strongly urge you to reject the Oklahoma SoonerCare 2.0 Demonstration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Deborah Weinstein", with a long, sweeping horizontal line extending to the right.

Deborah Weinstein
Executive Director