

United States Senate

WASHINGTON, DC 20510

January 17, 2018

The Honorable Eric D. Hargan
Acting Secretary and Deputy Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Acting Secretary Hargan,

We write to express our concern in response to recent actions and statements from the Centers for Medicare and Medicaid Services (CMS) regarding the agency's intent to embrace Section 1115 demonstrations that could undermine access to health care that contradict the plain text and purpose of Title XIX of the Social Security Act and Congress's longstanding intent for the Medicaid program. Demonstrations that adopt restrictive conditions on eligibility like work requirements, lock-out periods, time limits, mandatory drug testing and onerous premiums and cost sharing threaten to impede access to care for the neediest Americans, a consequence that contravenes Congress's clear intent in creating the Medicaid program. We urge you to faithfully administer the Medicaid Act and to reject Section 1115 demonstration requests that jeopardize the health and financial security of Medicaid beneficiaries.

Congress enacted Title XIX in 1965 with the unambiguous statutory objective to provide (1) "medical assistance [to eligible 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."¹ Millions of children, seniors, individuals with disabilities, pregnant women, and low-income adults have since benefited from comprehensive, affordable health care through Medicaid, which today covers over 70 million Americans.² As the primary payer of long-term care in the nation, Medicaid plays a particularly crucial role for seniors, children, and other adults with disabilities

¹ 42 U.S.C. § 1396-1.

² HHS, CMS, Office of Enterprise Data and Analytics, 2016 CMS Statistics (Mar. 2017), https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/CMS-Statistics-Reference-Booklet/Downloads/2016_CMS_Stats.pdf.

who rely on the program for home and community-based services, or care in nursing facilities where Medicaid helps pick up the tab for two out of three individuals.³ Since the passage of the Affordable Care Act, low-income adults, including the working poor, have also had the opportunity to access care through Medicaid in states that took up the Medicaid expansion. Today, thirty-two states and the District of Columbia cover over 11 million adults through the Medicaid expansion.⁴

Medicaid plays an essential role in ensuring that millions of low-income Americans can access affordable and comprehensive health care. Yet, CMS continues to make statements and take actions demonstrating the agency's intent to approve state Section 1115 demonstration waivers that we believe would bar eligible individuals from Medicaid through restrictive and onerous eligibility conditions.⁵ For example, on January 11th, CMS issued a State Medicaid Director Letter that advertised the agency's intent to approve 1115 waivers that would condition an otherwise eligible individual's medical assistance on unprecedented work requirements.⁶ Most recently, on January 12th, CMS approved an amendment to Kentucky's ongoing Section 1115 demonstration tying the receipt of medical assistance for otherwise eligible individuals to meeting burdensome work and other requirements.⁷ In the Medicaid program's history, this is the first time CMS has approved a state request to condition access to health care on work and related activities.

Section 1115 of the Social Security Act permits states to waive certain federal Medicaid requirements to conduct an "experimental, pilot, or demonstration project" that achieves the goals of the Medicaid program.⁸ Over thirty states across the country have taken advantage of this flexibility by conducting demonstrations that improve health care access, coverage, or delivery, including by expanding mental health and substance use disorder services, transitioning individuals to community-based care, and integrating primary and behavioral health care in hospitals.⁹ These projects fundamentally advance Medicaid by improving the care beneficiaries receive and helping them access the services they need.

³ Kaiser Family Foundation, "Medicaid and Long-Term Services and Supports: A Primer," (Dec. 2015), <http://kff.org/medicaid/report/medicaid-and-long-term-services-and-supports-a-primer>.

⁴ HHS, CMS Statistics, *supra* note 2.

⁵ *See, e.g.*, CMS, Speech: Remarks by Administrator Seema Verma at the National Association of Medicaid Directors (NAMD) 2017 Fall Conference (Nov. 7, 2017), <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-11-07.html> (announcing an "expanded vision of what types of projects can achieve Medicaid's objectives"); CMS, About Section 1115 Demonstrations (Nov. 2017), <https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html> (publishing new criteria for the objectives of the Medicaid program).

⁶ Letter from Brian Neale, Director for the Center for Medicaid and CHIP Services, to State Medicaid Directors (Jan. 11, 2018), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf> ("Letter to State Medicaid Directors").

⁷ Letter from Brian Neale, Director for the Center for Medicaid and CHIP Services, to Adam Meier, Deputy Chief of Staff, Office of Governor Matthew Bevin (Jan. 12, 2018), <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/kv/ky-health-ca.pdf>.

⁸ 42 U.S.C. § 1315.

⁹ Kaiser Family Foundation, "Section 1115 Medicaid Demonstration Waivers: The Current Landscape of Approved and Pending Waivers," (Dec. 13 2017), <https://www.kff.org/medicaid/issue-brief/section-1115-medicaid->

In contrast to these demonstrations, harmful ideological policies such as work requirements, mandatory drug testing, time limits, onerous cost-sharing and the like undercut and exceed the statutory authority provided to the Secretary under Section 1115 and contravene longstanding Congressional intent. Imposing such policies on Medicaid families, who are generally living on a budget of roughly less than \$15,000 per year, is not only punitive but also counterproductive. At their core, policies such as work requirements assume that individuals should work in order to have health, when the opposite is plainly true: health is essential for successful employment. Even CMS's own guidance acknowledges that while Medicaid has a history of assisting individuals, particularly those with disabilities, in obtaining independence through policies that maximize their integration into the community – the true, original, and longstanding intent of Medicaid's independence objective – receipt of these services, including employment supports, has never been a condition of eligibility or coverage.¹⁰ Requiring poor families to jump through punitive administrative hurdles or pay more than they can afford makes it harder for them to access the care they need and are entitled to under Title XIX. Ultimately, this leads to poorer health and more frequent use of the emergency room, all of which ends up costing the system and taxpayers more in the long run. Such harmful proposals clearly undermine the purpose of the Medicaid Act, prioritizing ideology over health.

While we share your philosophy that states should have the tools to shape policies that address the diverse needs of their communities, innovation and flexibility should not come at the expense of our nation's most vulnerable, and need not risk the health and financial security of millions of people who depend on Medicaid to receive essential care. For these reasons, we urge you to reject and reconsider proposed demonstrations that will obstruct access to health care in violation of statutory limits and longstanding Congressional intent that have governed the Medicaid program for more than fifty years.

Sincerely,

[demonstration-waivers-the-current-landscape-of-approved-and-pending-waivers/](#); Center on Budget and Policy Priorities, "States Are Using Flexibility to Create Successful, Innovative Medicaid Programs" (Jun. 13, 2016), <https://www.cbpp.org/research/health/states-are-using-flexibility-to-create-successful-innovative-medicaid-programs>.

¹⁰ Letter to State Medicaid Directors, *supra* note 6 ("These activities have been historically focused on service and programs for individuals with disabilities and receipt of these supports is not a condition of eligibility or coverage.").

Ron Wyden

Ron Wyden
United States Senator

Sherrod Brown

Sherrod Brown
United States Senator

Bob Casey, Jr.

Robert P. Casey Jr.
United States Senator

Edward J. Markey

Edward J. Markey
United States Senator

Kirsten Gillibrand

Kirsten Gillibrand
United States Senator

Chris Van Hollen

Chris Van Hollen
United States Senator

Tom Carper

Tom Carper
United States Senator

Kamala D. Harris

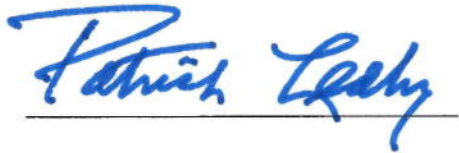
Kamala D. Harris
United States Senator

Elizabeth Warren

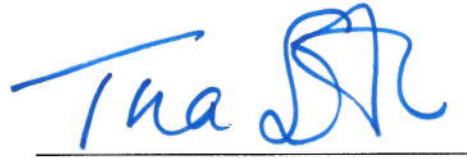
Elizabeth Warren
United States Senator

Richard J. Durbin

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United States Senator



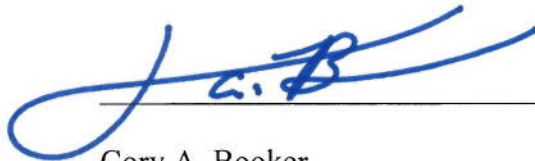
Patrick Leahy
United States Senator



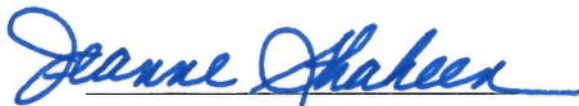
Tina Smith
United States Senator



Richard Blumenthal
United States Senator



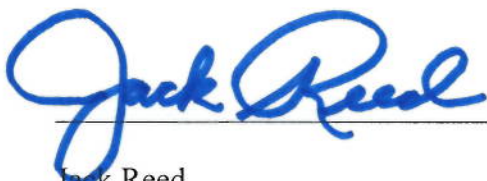
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United States Senator



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United States Senator



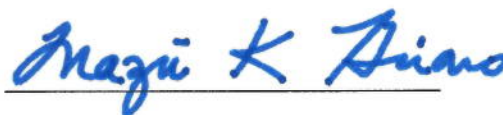
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Christopher A. Coons
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Jeffrey A Merkley
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Mazie K. Hirono
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cc: Brian Neal
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