

**Congress of the United States**  
Washington, DC 20510

August 22, 2018

The Honorable Alex M. Azar  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Azar:

As Ranking Members of the U.S. House Committee on Energy and Commerce and the Senate Committee on Finance with jurisdiction over Medicaid and the Children's Health Insurance Program (CHIP), we have the responsibility and privilege of protecting the rights of the millions of Americans who receive health coverage under Medicaid. We are also entrusted with ensuring faithful administration of the statute by the federal government for the Medicaid and CHIP programs.

After the recent judicial decision in *Stewart v. Azar*,<sup>1</sup> the Centers for Medicare & Medicaid Services (CMS) have reopened the comment period to assess the state of the Kentucky HEALTH demonstration project, "Kentucky Helping to Engage and Achieve Long Term Health," which among other harmful provisions would tie Medicaid eligibility to hours worked as a condition of coverage. We write to state once again<sup>2</sup> that such actions clearly undermine access to health care, contradicting the plain text and purpose of Title XIX of the Social Security Act and Congress's longstanding intent for the Medicaid program. We urge you to reconsider these actions, which are outside the boundaries of the statutory authority provided to you under the Medicaid Act.

Congress enacted Title XIX in 1965 with a clear statutory objective to provide (1) "medical assistance [to eligible individuals] whose income and resources are insufficient to

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<sup>1</sup>*Stewart v. Azar*, Civil Action No. 18-152 (JEB) (D.D.C. Apr. 10, 2018) ([https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2018cv0152-74](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv0152-74)).

<sup>2</sup> Letter from Sen. Ron Wyden, Ranking Member, Senate Committee on Finance and Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, to Sec. Tom Price (March 15, 2017); Letter from Sen. Ron Wyden, Ranking Member, Senate Committee on Finance and Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, to Administrator Seema Verma (Nov. 11, 2017); Letter from Sen. Ron Wyden, Ranking Member, Senate Committee on Finance et al., to Acting Sec. Eric D. Hargan (Jan. 17, 2018); Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce et al., to Sec. Alex M. Azar (Feb. 14, 2018).

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.”<sup>3</sup> To the extent Medicaid’s objectives mention “independence,” that is explicitly in the context of helping low-income individuals, particularly those with disabilities, obtain medical assistance to maximize their integration in their communities.

Section 1115 of the Social Security Act permits states to waive certain federal Medicaid requirements to conduct an “experimental, pilot, or demonstration project” that, notably, achieves the statutorily articulated goals of the Medicaid program.<sup>4</sup> As such, in the past, states requested approval of waivers under Section 1115 to undertake innovative delivery system reform initiatives; for instance, instituting broad-scale delivery system quality reforms or better integrating primary and behavioral health care.<sup>5</sup> These types of waiver proposals indisputably advance access to medical assistance and care for low-income individuals, in line with the text and purpose of the law, by increasing access to coverage and improving the care and quality of services beneficiaries receive.

In contrast to these demonstrations, waivers with ideologically driven policies like those proposed by the Kentucky HEALTH demonstration exceed the statutory authority provided to you under Section 1115 and contravene longstanding Congressional intent. The proposals in the Kentucky HEALTH waiver will make it difficult for families struggling to make ends meet to access the care they need and are entitled to under Title XIX. Ultimately, this leads to poorer health for individuals and difficulty in maintaining successful employment, costing the system more in the long run and negatively impacting the overall health of our communities—the exact opposite of the statutory mandate provided to you in carrying forward Title XIX.

Such actions imposing burdensome requirements to access essential coverage and care including onerous premiums and cost-sharing, arduous reporting requirements, and arbitrary work requirements are motivated purely on the basis of ideology and mistaken assumptions about what Medicaid is and who it covers. More than 70 million seniors, individuals with disabilities, pregnant women, low-income adults, and children depend on the program to help provide them with comprehensive health care and peace of mind and financial security to move their families out of poverty. CMS’s recent actions when it comes to imposing burdensome requirements on low-income adults and families ignore a fundamental truth: most of those who can work, are working, but will fall through the cracks and lose their coverage due to harsh and inflexible implementation of ideologically-driven policies.

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<sup>3</sup> 42 U.S.C. § 1396-1.

<sup>4</sup> 42 U.S.C. § 1315.

<sup>5</sup> Kaiser Family Foundation, *Section 1115 Medicaid Demonstration Waivers: The Current Landscape of Approved and Pending Waivers*, (Mar. 08 2018), (<https://www.kff.org/medicaid/issue-brief/section-1115-medicaid-demonstration-waivers-the-current-landscape-of-approved-and-pending-waivers/>).

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Medicaid 1115 waiver demonstrations that adopt restrictive conditions on eligibility like those contained in the Kentucky HEALTH demonstration threaten to impede access to critical care for millions of Americans,<sup>6</sup> a consequence that contravenes the statute and Congress's longstanding intent in creating the Medicaid program. We urge you once again to faithfully administer the Medicaid program and to reject this and other Section 1115 demonstration requests that jeopardize the health and financial security of millions of low-income Americans.

Sincerely,



Frank Pallone, Jr.  
Ranking Member  
House Committee on Energy  
and Commerce



Ron Wyden  
Ranking Member  
Senate Committee on Finance

Cc: Tim Hill  
CMS Deputy Administrator and Director for the Center for Medicaid and CHIP Services  
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<sup>6</sup> Kaiser Family Foundation, *Implications of a Medicaid Work Requirement: National Estimates of Potential Coverage Losses*, (Jun. 27, 2018), (<https://www.kff.org/medicaid/issue-brief/implications-of-a-medicaid-work-requirement-national-estimates-of-potential-coverage-losses/>).