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August 17, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Via Electronic Submission

Dear Administrator Verma:

AARP welcomes the opportunity to submit additional comments on the proposed Kentucky HEALTH 1115 Demonstration Waiver modifications. AARP, with its nearly 38 million members in all 50 States, the District of Columbia, and the U.S. territories, is a nonpartisan, nonprofit, nationwide organization that helps empower people to choose how they live as they age, strengthens communities, and fights for the issues that matter most to families, such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

AARP has strong concerns and questions about the 1115 Demonstration Waiver being sought by Kentucky. AARP has commented previously at both the state and federal levels on Kentucky's initial waiver application and appreciates the opportunity to comment again on this waiver request.

Work and Community Engagement Requirements

The Kentucky HEALTH (KY HEALTH) 1115 demonstration waiver request would condition eligibility for able-bodied adults without dependents on a community engagement and employment requirement. Beneficiaries who are subject to the requirement must participate in approved community engagement and employment activities for up to 20 hours a week to continue to receive Medicaid benefits. AARP believes that the proposed waiver provision seeking to impose a work requirement is not authorized by Section 1115 of the Social Security Act because it is not "likely to assist in promoting the objectives" of the Medicaid Act. 42 U.S.C. § 1315(a). Specifically, this provision is not likely to assist in promoting the objective of enabling the state of Utah "to furnish medical assistance [to individuals and families] whose

income and resources are insufficient to meet the costs of necessary medical services and 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(1). It would also present an unnecessary barrier to health coverage for a sector of Utah’s population that is most in need of coverage. This includes the many individuals who have recurring periods of illness due to chronic and behavioral health conditions who may not be exempt from the work or job search/training requirements. Moreover, the recent court ruling in the *Stewart v. Azar* case reaffirmed these concerns, stating that work requirements would not help to furnish medical coverage consistent with Medicaid program objectives.

AARP has strong concerns that this requirement would lead to the loss of coverage for many current KY HEALTH beneficiaries. As noted in the state’s 1115 waiver proposal, thousands of individuals currently enrolled in the KY HEALTH program will be removed during the five year demonstration proposed in this waiver request.

First, we are concerned that those who face challenges in obtaining employment will lose their KY HEALTH coverage. Older Americans over the age of 55 often spend longer seeking employment and experience long-term unemployment at rates higher than their younger counterparts.¹ AARP is concerned that those individuals would see their KY HEALTH coverage terminated as a result of this waiver proposal.

Second, we are concerned that loss of KY HEALTH coverage could promote poor health outcomes for older Americans. Strong association exists between unemployment and poor health outcomes, thus making coverage during periods of unemployment crucial.² Under the waiver proposal, however, unemployed adults would lose coverage, leaving them even more vulnerable to poor health outcomes.

These two concerns have a synergistic effect. If an older adult were to lose KY HEALTH coverage due to a period of long-term unemployment, their health could be placed at significant risk due to both a lack of a job and a lack of health coverage.

In addition, current KY HEALTH beneficiaries will likely experience difficulty in applying for the exemptions from the community engagement and employment initiative, which will inevitably lead to loss of coverage for some individuals. While the state proposes to include exemptions for the community and employment requirements, those beneficiaries may have difficulty understanding and obtaining those exemptions, which could lead to inappropriate removal from the KY HEALTH program. Evaluations of similar requirements in the Temporary Assistance for Needy Families (TANF) program found that beneficiaries with disabilities and poor health are more likely to lose benefits due to an inability to navigate the system.³

¹ <https://www.bls.gov/web/empsit/cpseea36.htm>

² <https://www.kff.org/medicaid/issue-brief/the-relationship-between-work-and-health-findings-from-a-literature-review/>

³ Yeheskel Hasenfeld, et al., Social Service Review, *The Logic of Sanctioning Welfare Recipients: An Empirical Assessment* 304, 306–07 (June 2004), available at https://repository.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1028&context=spp_papers.

Moreover, while the state proposes to exempt medically frail individuals, it does not provide sufficient detail on how medically frail will be defined and what documentation a patient will need in order to prove that they qualify for such an exemption. It is also unclear how an individual who is caring for a non-dependent relative or other person with a chronic, disabling health condition, which the state proposes to count towards the completion of the community engagement and employment requirements, will document that they are providing that care. Additionally, the state's waiver proposal lacks details on what conditions will meet the definition of "chronic, disabling health condition". Moreover, AARP believes that the caregiver exemption should be broadened so that all beneficiaries who are family caregivers – including all who are caring for adults or children – would qualify for an exemption.

AARP also has serious concerns with the proposal to terminate Medicaid eligibility (subject to a few good cause exceptions) for failure to comply with the community engagement and employment requirements. Again, we believe that this policy runs contrary to the clear objectives of the Medicaid statute. In light of this, we are seeking clarity on whether loss of eligibility for noncompliance only applies to the remainder of the annual eligibility period, or indefinitely until the requirements are met and the individual reapplies for benefits.

Any long-term lock-out would likely adversely affect the health of beneficiaries and increase overall health care costs. This is especially the case for beneficiaries who are undergoing lifesaving treatments or are being actively treated for chronic conditions, such as diabetes or high blood pressure. We believe that lock-out periods for low-income beneficiaries with serious health needs would have particularly harsh consequences. For example, a beneficiary with a chronic health condition may lose access to necessary medication. The coverage gaps created by these lock-out periods will invariably lead to added uncompensated care costs for providers, inability to manage care over time, and poorer health outcomes for beneficiaries resulting in health conditions that will be more expensive to treat later.

In the event a proposal that includes work participation/job search requirements as a condition of participation for KY HEALTH coverage is permitted, it will be critical to maintain an individual's due process rights and all existing Medicaid protections. Furthermore, we seek assurances that disputes will be fairly and expeditiously resolved; that individuals will continue to receive adequate notice of state agency actions and a meaningful opportunity to have unfavorable administrative decisions reviewed with reasonable promptness; that coverage of care will continue pending resolution of an appeal; and that Medicaid applicants and beneficiaries will retain their right to request a fair hearing on eligibility determinations and coverage issues, offers of proof, and to request a new assessment if their situation changes. In addition, AARP believes that any work requirement must include clear exemptions for family caregivers beyond those proposed by the state. We strongly urge CMS to ensure that beneficiaries who are family caregivers, providing critical care for their loved ones with chronic, disabling or serious health conditions, will be provided an exemption.

Lockout Periods

As detailed in AARP's comment letters on the original Kentucky waiver application, AARP remains concerned that a six month coverage suspension of Kentucky HEALTH participants would have harsh consequences for low-income members, especially those with serious health needs. Now not only would individuals be disenrolled for failure to pay premiums or failure to complete their redetermination paperwork, the waiver modifications would implement a six month lockout for failure to report a change in circumstance, such as changes in member income and employment that could affect eligibility. Of great concern is the lack of any details on how an income change would be reported, verified, tracked, and enforced. While we remain strongly opposed to a lockout, if a lockout is ultimately adopted, these details will need to be addressed and there will need to be far greater protections included.

Unfortunately, any long term lockout could adversely affect Kentucky HEALTH member health and increase overall healthcare costs. For example, a member with behavioral health needs may lose access to medication. The coverage gaps created by suspending enrollment will invariably lead to added uncompensated care costs for providers, inability of health plans to manage care over time, and poorer health outcomes for members resulting in health conditions that will be more expensive to treat later.

Retroactive Eligibility

In 1973, Congress enacted section 1396a(a)(34) of Title 42 of United States Code, which requires a state Medicaid program to provide coverage for up to three months prior to the application month, as long as the person met eligibility requirements during those months. KY HEALTH's waiver proposal seeks federal approval to eliminate retroactive eligibility and instead provide new beneficiaries with coverage only after the member's initial premium payment is made. AARP believes this should be reconsidered and that Kentucky should retain retroactive coverage as set forth under current Medicaid law.

Without retroactive coverage, future low-income enrollees could incur crippling medical debt which would be exacerbated by their inability to take advantage of the more favorable provider reimbursement rates paid by Medicaid. In addition, limitations on retroactive coverage would increase the burden of uncompensated care on providers, and could cause future enrollees to forego needed care, resulting in higher medical costs than would otherwise have been the case once they are covered. For example, providers may be reluctant to provide care if there is not retroactive eligibility. In this case, an individual's conditions may deteriorate, forcing them to rely on more expensive emergency room care, increasing uncompensated care costs.

Presumptive Eligibility

Lastly, we are disappointed that the state has reversed its intended expansion of presumptive eligibility sites with the implementation of Kentucky HEALTH. Presumptive eligibility is an important policy that helps to ensure timely access to care while a final

eligibility determination is being made. Indeed, presumptive eligibility may be even more important if eligibility determinations take longer due to more restrictive eligibility criteria.

Conclusion

We strongly urge CMS and the state to work together to address the concerns we have raised and carefully reconsider these provisions that will adversely affect many Kentuckians, health care providers, and Kentucky taxpayers.

Thank you for the opportunity to comment on the proposed Kentucky HEALTH 1115 demonstration waiver application. If you have any questions, please contact me or Amy Kelbick on AARP's Government Affairs staff at akelbick@aarp.org.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner
Legislative Counsel & Legislative Policy Director
Government Affairs