



601 E Street, NW | Washington, DC 20049
202-434-2277 | 1-888-OUR-AARP | 1-888-687-2277 | TTY: 1-877-434-7598
www.aarp.org | twitter: @aarp | facebook.com/aarp | youtube.com/aarp

August 3, 2018

The Honorable Seema Verma
Administrator
Center for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Utah's 1115 Primary Care Network (PCN) Demonstration Waiver Amendment #15

Dear Administrator Verma:

AARP appreciates the opportunity to comment on Utah's 1115 Primary Care Network (PCN) Demonstration Waiver Amendment #15. 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 is concerned that the following aspects of Amendment #15, detailed below, have the potential to worsen health outcomes, create significant financial hardship for many Utah Medicaid beneficiaries in need of coverage, increase administrative costs to the state, and result in increased uncompensated care costs for Utah's health providers.

Income Eligibility Limit

AARP appreciates Utah's attempt to address a portion of the state's significant coverage gap of residents without access to affordable health coverage. Current estimates indicate that there are about 80,000 Utahns whose annual incomes are too high to qualify for Medicaid at existing eligibility levels, but not high enough to qualify for advance premium tax credits through the federal health insurance marketplace. However, the proposal in Amendment #15 to only partially expand Medicaid—by covering adults ages 19-64 with a household income of up to 95 percent of the federal poverty level (FPL)—while still seeking an increased federal medical assistance

percentage (FMAP) for this population (under ACA expansion rules), puts this amendment on extremely perilous legal footing.¹

AARP has continually advocated for the state of Utah to adopt a full Medicaid expansion as allowed under the ACA and believes that efforts— such as this attempt at partial expansion—divert the state’s attention away from pursuing a lasting solution to the state’s coverage gap.

Enrollment Limit

Also of concern to AARP is the proposal to limit the number of individuals who can receive coverage under the partial expansion program to allow the state to stay within its appropriated budget. Historically, Medicaid has served as a vital safety net, guaranteeing adequate and affordable health coverage to all who qualify. AARP believes that all people in the coverage gap who qualify should receive the coverage they are entitled to, notwithstanding state budget concerns.

Capping enrollment would leave many individuals without coverage for preventive and chronic care services, potentially resulting in deteriorating conditions that require costly, uncompensated emergency room use, inpatient hospitalizations, and extremely expensive institutional placements. Many who will be left uninsured under Utah’s proposal will be unable to shoulder these higher medical costs themselves, resulting in more personal bankruptcies, more uncompensated care for Utah providers and more cost-shifting to other taxpayers.

In addition, setting a hard limit on Medicaid enrollment would leave the state ill-equipped to deal with public health emergencies such as the opioid epidemic, infectious disease outbreaks, or future economic downturns when finding gainful employment that offers health coverage becomes even more difficult. An enrollment cap that potentially leaves hundreds of thousands of Utah residents without health insurance simply means that the state will have one less tool in its public health tool belt when that tool is needed the most.

Work Requirements

Amendment #15 also includes a work participation/job search requirement for certain adult beneficiaries (with some exemptions) as a condition of eligibility. Beneficiaries who are subject to the requirement must participate in online job search/training for three consecutive months at the beginning of every 12-month period 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

¹ See 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) setting the income eligibility for the Medicaid expansion population at 133 percent of FPL. See also Centers for Medicare & Medicaid Services, *Frequently Asked Questions on Exchanges, Market Reforms and Medicaid* (December 10, 2012), stating that “Congress directed that the enhanced matching rate be used to expand coverage to 133% FPL. The law does not provide for a phased in or partial expansion.”

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.

Despite our overall opposition to the work participation/job search requirements, AARP welcomes the inclusion of a list of qualifying exemptions, including categories based on age, physical and mental ability, status as a parent, providing care to an incapacitated person, status as a student, participation in substance abuse treatment and other categories. We believe that additional clarity is needed regarding the definitions of these exemptions and how they will be determined, in particular the exemptions of those “physically or mentally unable to work” and those “responsible for the care of an incapacitated person.” AARP also 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 work participation/job search 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 Utah Medicaid benefits 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.

Conclusion

AARP appreciates the attempt to address some of the state's significant coverage gap for hardworking Utahns who lack access to affordable health insurance coverage. However, we want to re-emphasize that we believe that receipt of enhanced FMAP under the state's limited eligibility proposal in Amendment #15, as well as the proposal to condition eligibility on completion of engagement requirements, are on questionable legal footing. Amendment #15 includes harmful provisions that will adversely affect many Utahns, healthcare providers, and taxpayers. We believe that the state would be better served by pursuing a lasting solution to the coverage gap through full Medicaid expansion.

Thank you for the opportunity to express our concerns about this proposal. We look forward to discussing them with you. If you have any questions, please contact me or Amy Kelbick on AARP's Government Affairs staff at akelbick@aarp.org or 202-434-2648.

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