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September 26, 2018

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

RE: South Dakota Medicaid 1115 Waiver Demonstration-Career Connector Public Comment

Dear Administrator Verma:

AARP welcomes the opportunity to submit comments on the proposed South Dakota 1115 Demonstration Waiver Proposal. 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.

As a non-Medicaid expansion state, South Dakota's Medicaid proposal will apply to an estimated 1,300 "parents and caretaker relatives eligibility group" who have very low incomes, up to 57 percent of the Federal Poverty Level (FPL). As such, many of the changes proposed in South Dakota's 1115 waiver proposal would adversely impact a significant number of Medicaid enrollees. If approved and implemented, this would be an unprecedented step by a non-Medicaid expansion state and the waiver would likely worsen health outcomes; create significant financial hardship for many South Dakota Medicaid members in need of health coverage; increase administrative costs to the state; and result in increased uncompensated care costs for South Dakota health providers.

Work Requirement

South Dakota's proposal includes a work participation or job training requirement for adult Medicaid beneficiaries who reside in Minnehaha or Pennington Counties, with certain exemptions. Beneficiaries subject to this requirement would be required to participate in the Career Connector Program "employment and training plan" such as employment, soft skills training, searching for a job, volunteer work, or certain education-related activities. Parents and other caretaker relatives would be required to participate in work or job training activities for 80 hours or more per month, or achieve "monthly milestones in their individualized plan", to maintain their Medicaid coverage.

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 South Dakota "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 South Dakota'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.

Furthermore, we are concerned that those who face challenges in obtaining employment will lose their Medicaid 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 Medicaid coverage terminated as a result of this waiver proposal.

We are also concerned that loss of Medicaid 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.

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/>

These two concerns have a synergistic effect. If an older adult were to lose Medicaid 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.

Also of significant concern is the lack of detail and clarity on the process for determining how a Medicaid beneficiary will be assessed eligible for an exemption. For example, the state proposes to exempt individuals who are medically frail, but it is unclear which illnesses or ongoing courses of treatment would qualify for this exemption. It is also unclear how an individual will document that they have met the work requirements. Any new reporting system and process will impose new administrative costs on the state, including new staffing needs, to develop or expand the reporting system, verify the accuracy of member reporting, and conduct fact finding hearings. We believe that these costs will ultimately divert resources away from other pressing state priorities.

While we appreciate the inclusion of qualifying exemptions for certain beneficiaries, such as for individuals age 60 and older and for individuals with a disability or who are medically frail, we are concerned about imposing a work requirement upon parents and caregivers of children over the age of one. In addition, AARP believes that any work requirement must include clear exemptions for family caregivers beyond those proposed by the state. We strongly urge the state to ensure that beneficiaries who are family caregivers -- providing critical care for their loved ones of any age with chronic, disabling or serious health conditions -- regardless of the caregiver living in the same residence of their loved one -- are exempted from these work requirements. Further, we are concerned about the lack of additional information on what criteria the state will use to determine these exemptions, how a Medicaid beneficiary will be assessed for an exemption, and the lack of details about the process by which beneficiary hours will be verified.

In the event these proposed work and training requirements are permitted to be imposed as a condition of participation for South Dakota Medicaid benefits, 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 request a new assessment if their situation changes.

Support Services

The application also mentions referrals to “support services” for certain Career Connector enrollees. The waiver proposal states that these support services will include an “integrated resource team to facilitate referrals to community and support services.” While assistance with child care costs is identified as a support service, no similar assistance appears to be offered for family caregivers taking care of a loved one. The additional burden that will be placed on family caregivers as a result of the Career Connector program requirements will force families to make agonizing decisions about the care and safety of their loved one. We believe, in the event work requirements are imposed, that support services should be provided for all family caregivers regardless of their enrollment in the Career Connector Program. Referrals, at a minimum, should include home care assistance and respite services.

Transitional Medicaid Benefits

AARP appreciates the state’s attempt to address some of the coverage gaps that may result from Career Connector participants potentially earning incomes that will preclude them from qualifying for the Medicaid program. The state proposes to extend Medicaid benefits to these individuals for one year through Transitional Medicaid Benefits and one year of premium assistance for recipients who no longer meet the Medicaid income level. The extended benefits may temporarily help some, however, if it is the state’s goal to ensure that people continue to have health care coverage and want to encourage the development of healthy habits, we strongly encourage the state to expand Medicaid coverage to the approximately 13,000 South Dakotans whose annual incomes are too high to qualify for Medicaid at existing eligibility levels.

Lock-out

AARP has serious concerns with the proposal’s imposition of a 90-day lock-out period for members who do not meet Department of Labor and Regulation compliance requirements within a 30-day grace period. We believe that lock-out periods for low-income members with serious health needs would have particularly harsh consequences. For example, a Medicaid beneficiary with behavioral health needs may lose access to the critical medication needed to stabilize his/her condition. The coverage gaps created by terminating enrollment will 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.

Inconsistent or interrupted healthcare coverage is likely to lead to increased use of more costly alternatives like emergency department visits, in-patient hospitalizations, and, in

some cases, institutional placements. This is especially true for those who need substance abuse or mental health treatment.

While the state proposes a 90 day lock-out period for non-compliance, there are no further details on the process by which a termination may be lifted, how the termination may be appealed, or if the termination will be delayed pending an appeal. AARP is also greatly concerned about the undefined “suspend eligibility” language for recipients who continue to be non-compliant of the Career Connector program requirements. Again, no details are provided on if a continued non-compliant Medicaid recipient can eventually re-enroll in the Medicaid program.

Conclusion

We thank you for the opportunity to express our thoughts and concerns with this proposal, and we look forward to working with you to make improvements to this waiver request. If you have any questions, please contact me or have your staff contact 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