

United States Senate

WASHINGTON, DC 20510

April 12, 2019

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma:

I write to call to your attention critical shortcomings and risks in the waiver that the Centers for Medicare and Medicaid Services (CMS) recently approved for New Hampshire's Medicaid program and to request information on how your agency plans to monitor the impact of the Medicaid "work requirement" waiver on Medicaid enrollment and access to care for Granite Staters. I support the goal of helping Medicaid beneficiaries find gainful employment in instances where they are able to work. However, I am concerned that many Granite Staters who need Medicaid coverage, including individuals who are already working or are recovering from substance use disorder, may lose coverage as a result of burdensome compliance paperwork associated with the work requirement. I am also concerned with CMS allowing the implementation of the work requirement despite recent rulings by federal courts to strike down similar Medicaid work requirements in other states.

Several vulnerable New Hampshire patients who have gained coverage through the Medicaid expansion have filed class action litigation challenging the legality of the New Hampshire waiver's work requirement under the Social Security Act. As you know, the United States District Court for the District of Columbia recently struck down similar Medicaid work requirement waivers in Arkansas and Kentucky. In light of pending New Hampshire litigation and recent decisions in the Kentucky and Arkansas cases, the continued implementation of the New Hampshire waiver during the course of the New Hampshire litigation could create unnecessary uncertainty for thousands of Granite Staters.

In November 2019, CMS approved a waiver which allows New Hampshire's Granite Advantage program to rescind Medicaid expansion coverage from low-income adults who cannot demonstrate participation in employment and work-related activities. Under the work requirement waiver, a Medicaid expansion enrollee will need to work or participate in employment activities for at least 100 hours per month in order to retain Medicaid coverage. These work requirements could harm many low-income seniors, as the waiver fails to provide exemptions for people age 50 and older, even though this population is more likely to face serious health challenges and therefore is less likely to be working. The waiver also fails to exempt parents from the requirement unless their children are under the age of six, jeopardizing the financial security of low-income

families and the health and welfare of their children. Critically, the waiver also fails to allow for self-employment to count toward the 100 hours per month compliance threshold.

Perhaps most troubling, I am concerned that New Hampshire's new work requirement policy will undermine the progress that the state has made in battling the opioid epidemic. Medicaid expansion has played an instrumental role in significantly increasing health coverage and access to treatment for people with substance use disorders, especially in states like New Hampshire that have been hardest-hit by the opioid epidemic. Although the New Hampshire waiver calls for an exemption for Medicaid beneficiaries in substance use disorder treatment, the work requirement rules impose significant and burdensome paperwork submission obligations that people struggling with substance use disorder must meet in order to qualify for the exemption. Losing your health care coverage for failing to provide the necessary paperwork will make it extremely difficult for Granite Staters dealing with addiction to address their illness and progress toward long-term recovery.

Studies have shown that these types of paperwork requirements and burdensome red tape have been shown to reduce enrollment in Medicaid. In fact, an analysis from the Kaiser Family Foundation recently projected that a nationwide Medicaid work requirement would cause coverage losses ranging from 1.4 million individuals to 4 million people among the 23.5 million adult Medicaid beneficiaries who are under age 65 and are not receiving Supplemental Security Income based on disability. The analysis demonstrates that between 62 percent and 91 percent of those Medicaid beneficiaries who lose coverage would be people who are already working, are already engaged in work-related activities or should be exempt.¹

We also know from experience that the onerous paperwork submission requirements can cause coverage losses for Medicaid beneficiaries who should be exempt from the work requirement. Since implementation of Arkansas' work requirement in June 2018, one in five Arkansans have lost their Medicaid coverage, amounting to nearly 22 percent of all beneficiaries subject to the new policy.² News accounts confirm that the policy is having severe unintended consequences — including situations in which employed individuals fail to meet complex reporting requirements, lose their Medicaid coverage as a result, miss days of work after being unable to obtain treatment for chronic conditions and then ultimately lose their jobs due to those work absences.³

The terms of New Hampshire's waiver require the state to submit an implementation plan to CMS for review and approval no later than 90 days after approval of the waiver. In light of these

¹ Rachel Garfield, Robin Rudowitz, and MaryBeth Musumeci, "Implications of a Medicaid Work Requirement: National Estimates of Potential Coverage Losses," Kaiser Family Foundation, June 27, 2018, <https://www.kff.org/medicaid/issue-brief/implications-of-a-medicaid-work-requirement-national-estimates-of-potential-coverage-losses/>.

² Arkansas Department of Human Services, "Arkansas Works Monthly Report," December 2018, https://humanservices.arkansas.gov/images/uploads/011519_AWReport.pdf.

³ Catherine Rampell, "Arkansas' Medicaid experiment has proved disastrous," *Washington Post*, November 19, 2018, https://www.washingtonpost.com/opinions/arkansas-says-it-wants-to-help-the-poor-its-hurting-them-instead/2018/11/19/8e61f0a2-ec3c-11e8-96d4-0d23f2aaad09_story.html?utm_term=.3fe47ea4487a; and PBS News Hour, "With new work requirement, thousands lose Medicaid coverage in Arkansas," November 19, 2018, <https://www.pbs.org/newshour/show/with-new-work-requirement-thousands-lose-medicaid-coverage-in-arkansas>.

concerns, I ask that you and your staff ensure that New Hampshire's implementation plan is reviewed quickly and that the issues raised in this letter, to the extent possible, are addressed to ensure that beneficiaries eligible for Medicaid coverage are able to maintain it. I also request that CMS ensure that New Hampshire provides the necessary information regarding its ability to conduct data matching activities for beneficiaries who also participate in the Supplemental Nutrition Assistance Program (SNAP) and the Temporary Assistance for Needy Families (TANF) programs, so that the state can perform automatic exemptions where applicable, consistent with CMS' guidance on this issue. Finally, I request that CMS work to ensure that New Hampshire is providing regular updates on enrollment data for the Granite Advantage program, so that CMS and stakeholders can monitor and evaluate any loss in coverage stemming from the work requirement.

In situations where Medicaid enrollees are able to work, federal and state policymakers should support job training and related efforts to help them secure employment opportunities that can help lift them out of poverty. However, I have grave concerns that New Hampshire's Medicaid work requirement waiver will spur health care coverage losses that will undermine patients' access to care and impede ongoing progress in combating the opioid epidemic. At the very minimum, we should work to ensure that people who should be exempt from the work requirement do not fall through the cracks and lose coverage due to complexities inherent in the paperwork submission process. CMS has an important oversight role to play in ensuring that data matching is taking place to automatically exempt applicable SNAP and TANF beneficiaries, while also making certain that data are available to track coverage losses and effectively evaluate the impact of the Medicaid work requirement. I hope that you will work with me and my staff to address these concerns.

Sincerely,



Jeanne Shaheen
United States Senator