January 25, 2021

Secretary-designate Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Re: Request for Immediate Action to Rescind and Unwind Section 1115 Medicaid Work Requirements Demonstrations

Dear Secretary-designate Becerra:

The 116 undersigned organizations, which represent Medicaid advocates, patient groups, and provider organizations, are writing to request that you take immediate action to protect those who rely on Medicaid for their health insurance and who live in states with proposed or approved section 1115 work and community engagement requirements demonstration projects. These harmful and illegal requirements threaten health coverage for people with low incomes, especially those with chronic health conditions and people with disabilities, and would disproportionately harm Black people, especially Black women. Because the Supreme Court has agreed to hear the Trump Administration's appeal of court decisions vacating approval of these requirements, it is imperative that the incoming Biden Administration immediately take action.[1]

As you know, section 1115 demonstration approvals fall under the discretion of the Secretary of Health and Human Services (HHS), and must promote the objectives of the Medicaid program. Under the Obama administration, requests to condition Medicaid eligibility on meeting mandatory work requirements were explicitly denied.[2] The Trump Administration, in a sharp departure, has promoted this policy. Following the State Medicaid Director letter (SMD) issued by the Centers for Medicare & Medicaid Services (CMS) on January 11, 2018, 19 states have submitted applications to impose mandatory work requirements on certain Medicaid populations as a condition of eligibility – 12 of which were approved. These approvals, and pending requests, create barriers to care and risk the coverage of millions of low-income beneficiaries. We urge you to take *all of* the following steps quickly to rescind and unwind Medicaid work requirements to prevent further and future harm to beneficiaries.

First, HHS should rescind the January 2018 SMD, "Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries." The SMD encourages states to pursue restrictions on Medicaid eligibility for low-income adults through section 1115 demonstrations. This

[1] On December 4, 2020, the Supreme Court granted the Department of Justice (DOJ) and Arkansas' petitions for *cert.* to reverse federal court decisions vacating work requirement approvals in AR and NH. The opening brief from the government is due January 19, 2020, with oral arguments scheduled on the March calendar.
[2] Center for Medicare and Medicaid Services, "Arizona Health Care Cost Containment System (AHCCCS) Demonstration Approval," September 30, 2016, https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/az/Health-Care-Cost-Containment-System/az-hccc-demo-ext-09302016.pdf; Letter from CMS Director Vikki Wachino to New Hampshire Department of Health and Human Services Commissioner Jeffery Meyers, https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/nh/health-protection-program/nh-health-protection-program-premium-assistance-cms-response-110116.pdf.

guidance is counter to the principal objective of Medicaid, which is to provide health insurance to vulnerable populations, and should be rescinded immediately.

Second, we urge you to deny all pending proposals to impose punitive work requirements on adults with very low incomes. The states with pending work requirement proposals are Alabama, Idaho, Mississippi, Montana, Oklahoma, South Dakota, and Tennessee, and Arizona is seeking to renew its approved work requirement policy. As a result of litigation, federal courts have vacated the approval of work requirements in Arkansas, Michigan, and New Hampshire.[3] HHS has not reissued a determination in these states and thus, the original demonstration requests remain pending with CMS.

Many of these pending proposals exclusively target very poor parents, who are mostly women and disproportionately people of color. For example, in Mississippi, 71 percent of the parents who would be at risk of losing health insurance are Black and 91 percent are mothers.[4] Similarly, in Alabama 58 percent of parents affected are Black, while 85 percent are women.[5] These numbers are particularly stark when compared to the percentage of the states' populations that are Black – 37 percent and 26.5 percent respectively. Swift action should be taken to ensure these proposals are rejected, especially in light of the ongoing pandemic, the economic recession, and ongoing and historic impacts of structural racism.

Finally, to avoid further coverage losses and continued barriers to care, it is imperative that you withdraw approvals for all states with approved work requirement policies (Arizona, Georgia, Indiana, Nebraska, Ohio, South Carolina, Utah, and Wisconsin). Under the approved terms and conditions of the demonstrations, the Secretary can withdraw section 1115 waiver and expenditure authorities at any time if the continuation of those authorities is "no longer in the public interest or promotes the objectives" of Medicaid.

Imposing work requirements in Arkansas resulted in more than 18,000 people – nearly 1 in 4 of those subject to the requirements – losing coverage in just a seven month period.[6] Other states faced similar scenarios if work requirements had been allowed to continue. Data suggested approximately 17,000 people could lose coverage in just one month from New Hampshire's work requirement before the policy had been put on hold, and nearly 80,000 beneficiaries in Michigan were at risk of having their coverage terminated if implementation had not been stopped by federal courts.[7]

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[3] Kentucky's work requirement approval was also vacated, but Governor Beshear withdrew the waiver in December 2019.

[4] Joan Alker et al, "How Mississippi's Proposed Medicaid Work Requirement Would Affect Low-Income Families with Children," Georgetown University Center for Children and Families, August 2018, https://ccf.georgetown.edu/wp-content/uploads/2018/10/MS-work-requirements-update-rev-10-5.pdf.

[5] Joan Alker et al, "The Impact of Alabama's Proposed Medicaid Work Requirement on Low-Income Families with Children," Georgetown University Center for Children and Families, August 2018, https://ccf.georgetown.edu/wp-content/uploads/2018/03/AL-Work-Requirements-update-8-18.pdf.

[6] Arkansas Department of Health and Human Services, "Arkansas Works Program," December 2018, https://humanservices.arkansas.gov/images/uploads/011519_AWReport.pdf.

[7] Jennifer Wagner and Jessica Schubel, "States' Experiences Confirm Harmful Effects of Medicaid Work Requirements," Center on Budget and Policy Priorities, November 18, 2020, https://www.cbpp.org/health/states-experiences-confirm-harmful-effects-of-medicaid-work-requirements.

Moreover, Harvard researchers found that Arkansas' work requirement policy not only increased uninsured rates, but also increased financial hardship and reduced access to care. [8]

The loss of health coverage is inconsistent with the objectives of Medicaid, as federal courts have ruled.[9] Work and community engagement requirements have no place in the Medicaid program, and should be disallowed from continuing any longer.

The incoming administration needs to take *immediate* action to nullify this harmful work requirement policy. We urge you to act quickly to put an end to this policy – restoring Medicaid's purpose and preserving and protecting health coverage for millions of persons.

If you need additional information, please contact Judith Solomon, Center on Budget and Policy Priorities (solomon@cbpp.org) or Joan Alker, Georgetown University Center for Children and Families (jca25@georgetown.edu).

Respectfully,

Aging Life Care Association
AIDS Alliance for Women, Infants, Children, Youth, & Families
Alliance for Retired Americans
Allies for Independence
American Academy of HIV Medicine
American Academy of Pediatrics
American Academy of Physical Medicine and Rehabilitation
American Association on Health and Disability
American Association on Intellectual and Developmental Disabilities (AAIDD)
American College of Obstetricians and Gynecologists
American College of Physicians
American Council of the Blind
American Lung Association
American Medical Student Association
American Physical Therapy Association
American Psychological Association
American Public Health Association
Asian & Pacific Islander American Health Forum
Association for Clinical Oncology
Association of Asian Pacific Community Health Organizations (AAPCHO)
Association of People Supporting Employment First (APSE)
Association of University Centers on Disabilities
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law

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[8] Benjamin Sommers *et al.,* "Medicaid Work Requirements — Results from the First Year in Arkansas," *New England Journal of Medicine,* June 2019, https://www.nejm.org/doi/full/10.1056/NEJMsr1901772; Benjamin Sommers *et al.,* "Medicaid Work Requirements in Arkansas: Two-Year Impacts on Coverage, Employment, and Affordability of Care," *Health Affairs*, September 2020, https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00538.

[9] *Gresham v. Azar*, United States Court of Appeals for the District of Columbia Court, No. 19-5094, February 14, 2020.

Brain Injury Association of America
Catholic Health Association of the United States
Center for American Progress
Center for Health Law and Policy Innovation, Harvard Law School
Center for Law and Social Policy
Center for Medicare Advocacy
Center for Public Representation
Center for the Study of Social Policy
Center on Budget and Policy Priorities
CenterLink: The Community of LGBT Centers
Child Welfare League of America
Children's Defense Fund
Chronic Disease Coalition
Community Catalyst
Community Education Group
Community Oriented Correctional Health Services
Corporation for Supportive Housing (CSH)
Cystic Fibrosis Foundation
Disability Rights Education and Defense Fund (DREDF)
Epilepsy Foundation
Families USA
Family Equality
Family Voices
First Focus on Children
Georgetown University Center for Children and Families
Guttmacher Institute
Hemophilia Federation of America
Hispanic Federation
HIV + Hepatitis Policy Institute
HIV Medicine Association
Justice in Aging
LeadingAge
Lutheran Services in America
March of Dimes
Medicare Rights Center
Mental Health America
MomsRising
NARAL Pro-Choice America
NASTAD
National Academy of Elder Law Attorneys
National Adult Day Services Association (NADSA)
National Alliance on Mental Illness
National Asian Pacific American Women's Forum (NAPAWF)
National Association for Children's Behavioral Health
National Association of Community Health Centers
National Association of Councils on Developmental Disabilities
National Association of Pediatric Nurse Practitioners
National Association of Social Workers

National Association of State Head Injury Administrators
National Association of State Long Term Care Ombudsman Programs
National Center for Lesbian Rights
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Council of Jewish Women
National Council on Independent Living
National Disability Rights Network (NDRN)
National Employment Law Project
National Family Planning & Reproductive Health Association
National Health Care for the Homeless Council
National Immigration Law Center
National League for Nursing
National Multiple Sclerosis Society
National Organization for Women
National Partnership for Women & Families
National Respite Coalition
National WIC Association
National Women's Health Network
NETWORK Lobby for Catholic Social Justice
People's Parity Project
Physicians for Reproductive Health
Planned Parenthood Federation of America
Positive Women's Network-USA
Power to Decide
Prevent Blindness
Pride Community Services Organization
Primary Care Development Corporation (PCDC)
Public Citizen
Raising Women's Voices for the Health Care We Need
Spina Bifida Association
SPLC Action Fund
The AIDS Institute
The Arc of the United States
The Jewish Federations of North America
The Leukemia & Lymphoma Society
The Partnership for Inclusive Disaster Strategies
Treatment Action Group
UnidosUS
Union for Reform Judaism
United Cerebral Palsy
United Spinal Association
United Way Worldwide
Voices for Progress
Whitman-Walker Institute

Cc: Susan Rice, Director, Domestic Policy Council
Cc: Christen Linke-Young, Deputy Director, Domestic Policy Council for Health and Veterans Affairs
Cc: Dr. Marcella Nunez-Smith, Chair of COVID-19 Health Equity Task Force