



2301 21st Ave. South, Suite 355, Nashville, TN 37212 | t: 615.915.2417 | info@abetterbalance.org | abetterbalance.org

Dr. Wendy Long, Director
Division of TennCare
310 Great Circle Road
Nashville, TN 37243

via email to: public.notice.tennCare@tn.gov

RE: TennCare Waiver Amendment 38

Dear Dr. Long,

A Better Balance writes in response to the public notice inviting public comments on proposed Waiver Amendment 38. A Better Balance (ABB) is a legal advocacy organization with an office in Nashville dedicated to promoting fairness in the workplace. Our mission is to promote equality and expand choices for men and women at all income levels so they may care for themselves and their families without sacrificing their economic security. We employ a range of legal strategies to promote flexible workplace policies, end discrimination against caregivers and value the work of caring for families. Our free and confidential legal helpline receives calls from low-wage workers across the state, who often rely on Medicaid for healthcare.

Our organization is unequivocally opposed to this proposal, which would take health coverage away from people who do not work a set number of hours per month. Imposing work requirements on Medicaid recipients would jeopardize health coverage for thousands of Tennesseans and would cause immense harm to their health and economic security. ABB is particularly concerned about the impact that new work requirements would have on people with children or other caregiving responsibilities, as well as those with chronic health conditions, who

make up a significant portion of our client population, as the vast majority of TennCare recipients are children, parents or other caretaker relatives, seniors, and people with disabilities.¹

This waiver would require “all able-bodied working age adult enrollees without dependent children under the age of six” to fulfill “reasonable work and community engagement requirements.”² The majority of Medicaid recipients in Tennessee are already working either full-time or part-time, and 77% are in a family with a working adult.³ Of Medicaid recipients in the state who do not work, 41% are ill or disabled, 27% are caring for a child or family member and 17% are going to school.⁴ This leaves less than 7% of the total population of Tennessee Medicaid recipients not working, which includes those who are unable to find work. While some of these non-working adults will be exempted under the new requirements, exactly which groups will be exempt remains unclear, and bill sponsors have been inconsistent on this topic.

Furthermore, it is important to note that those with the most serious mental and physical health conditions, for whom access to medical care is a matter of life and death, are the most likely to have difficulty *actually obtaining* an exemption, because of the burdensome requirements and significant barriers. Exemptions simply are not sufficient to protect those who are unable to work from the substantial negative effects of these requirements. The unnecessary hurdles that these work requirements would place between Tennesseans and their healthcare will hurt the very people that Medicaid was explicitly designed to help. Individuals who are eligible for an exemption will still need to verify their status, and practical barriers are very likely to lead to “exempted” beneficiaries losing coverage, not because they are ineligible, but because they are unable to provide the necessary documentation. People with physical and mental health

¹ R. Garfield, R. Rudowitz, and A. Damico, Appendix, “Understanding the Intersection of Medicaid and Work,” Kaiser Family Foundation (Dec. 7, 2017), <https://www.kff.org/report-section/understanding-the-intersection-of-medicare-and-work-appendix/>

² 2018 Tennessee Laws Pub. Ch. 869 (H.B. 1551).

³ Garfield, *supra* n. 1

⁴ *Id.*

conditions that may interfere with their ability to work but who are not considered severe enough to qualify them for an exemption are also likely to face coverage loss.

Although these work requirements would, in theory, only affect coverage for those who are not exempt and do not fulfill the 20-hour requirement, in practice, many Tennesseans who can and do work are also at risk of losing coverage. Low-wage workers are more likely to be underemployed and to face unpredictable work schedules over which they often have no control.⁵ Lack of fair and flexible scheduling is just one of the challenges that many of our clients and others like them already face in balancing work and their responsibilities in caring for children and other family members. Rather than doing anything to alleviate these problems and enable these people to work to their full potential, these work requirements will add an unnecessary burden to the lives of working families and are likely to leave many such families without essential health coverage.

The implementation of Medicaid work requirements in Arkansas clearly demonstrates the pitfalls associated with such a policy. Since these requirements went into effect in September 2018, over nearly 8,500 Medicaid beneficiaries in the state have lost their coverage, and another 4,841 are at risk of losing coverage in the next month.⁶ Of the 73,266 people subject to the new policy, 23% were not exempt and failed to meet the 80-hour monthly work requirement in September, and the majority of those reported no hours at all.⁷ *Only 2%* of enrollees actually successfully reported meeting the 80-hour requirement.⁸ Analysis shows that many of the enrollees who failed to fulfill the requirements are slipping through the cracks because they are unaware that they are subject

⁵ A Better Balance, Fact Sheet: The Need for Fair Schedules (December 14, 2016), <https://www.abetterbalance.org/resources/fair-schedules-factsheet/>

⁶ R. Rudowitz and M. Musumeci, “A Look at State Data for Medicaid Work Requirements in Arkansas” (Oct. 16, 2018), <https://www.kff.org/medicaid/issue-brief/a-look-at-state-data-for-medicaid-work-requirements-in-arkansas/>

⁷ *Id.*

⁸ *Id.*

to them. Low literacy and English proficiency, inaccurate contact information, and limited internet access make outreach and education difficult and costly, particularly in rural areas and among vulnerable populations.⁹ Many of these structural barriers, particularly lack of internet access and computer literacy, combined with complex reporting procedures, present compliance problems for enrollees even when they are aware of the requirements.¹⁰ Lack of transportation and limited jobs for workers with low educational attainment also present significant barriers to enrollees seeking work or other means of fulfilling the requirements.¹¹ Tennessee should learn from this example and avoid these unnecessary coverage losses by declining to pursue a similar waiver.

The Centers for Medicaid and Medicare (CMS) have attempted to justify allowing these waivers by citing data indicating that people with jobs have better health outcomes than those without jobs. This is disingenuous, as it assumes that working makes people healthier, when in fact those who are healthy are more likely to be able to work. In fact, a study cited by CMS in its new guidance on work requirements stated that “interventions which simply force claimants off benefits are more likely to harm their health and well-being.”¹² Many Medicaid recipients with chronic health conditions state that Medicaid coverage is essential in supporting their ability to work, and an analysis of Medicaid expansions in Ohio and Michigan found that most expansion enrollees who were unemployed but looking for work reported that Medicaid enrollment made it

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² G. Waddell and A. Burton, *Is Work Good For Your Health and Well-Being?*, at 30 (2006) (quoted in Statement of Review by LaDonna Pavetti, January 11, 2018), <http://www.healthlaw.org/publications/browse-all-publications/nhelp-letter-to-cms-regarding-workrequirements#.WlfE2TdG201>)



2301 21st Ave. South, Suite 355, Nashville, TN 37212 | t: 615.915.2417 | info@abetterbalance.org | abetterbalance.org

easier to seek employment.¹³ Additionally, most working Medicaid enrollees said it made it easier for them to work and be better at their jobs.¹⁴

The coverage losses that would result from implementing work requirements will be extremely harmful to Tennesseans, particularly to those with chronic health conditions (who are likely to make up a large fraction of those affected), for whom gaps in access to treatment and medications can be catastrophic. These losses will also lead to people delaying or foregoing care, particularly essential preventive care, and relying on emergency rooms for care.¹⁵ This leads not only to worse health outcomes, but also to increased uncompensated care costs for providers.¹⁶

This waiver is inherently and fundamentally flawed and should be rejected in its entirety. It is completely inconsistent with the goals and purposes of the Medicaid program, which is intended to serve as a vital safety net for vulnerable low-income citizens. Undermining this safety net would be contrary to the best interests of all Tennesseans. We therefore respectfully urge you not to move forward with this proposal.

Sincerely,

A Better Balance

¹³ R. Garfield, R. Rudowitz, and A. Damico, “Understanding the Intersection of Medicaid and Work,” Kaiser Family Foundation (Dec. 7, 2017), <https://www.kff.org/report-section/understanding-the-intersection-of-medicaid-and-work-appendix/>

¹⁴ H. Katch, J. Wagner and A. Aron-Dine, “Taking Medicaid Coverage Away From People Not Meeting Work Requirements Will Reduce Low-Income Families’ Access to Care and Worsen Health Outcomes,” Ctr. on Budget and Policy Priorities (Aug. 13, 2018), <https://www.cbpp.org/research/health/taking-medicaid-coverage-away-from-people-not-meeting-work-requirements-will-reduce>

¹⁵ *Id.*

¹⁶ A. Inzerro, “Medicaid Work Rules to Increase Uncompensated Care Costs for Hospitals, Report Says,” AJMC (May 23, 2018), <https://www.ajmc.com/newsroom/medicaid-work-rules-to-increase-uncompensated-care-costs-for-hospitals-report-says>