

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

November 26, 2019

Department of Health and Human Services  
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## **Re: Section 1115 Heritage Health Adult Plan Expansion Demonstration**

Justice in Aging appreciates the opportunity to comment on the Department of Health and Human Services (DHHS) proposed Section 1115 Heritage Health Adult Plan Expansion Demonstration. For the reasons discussed below, we oppose the proposals to create a tiered benefit system that requires individuals to meet work reporting requirements in order to be eligible for dental, vision, and over-the-counter medication coverage and the proposal to eliminate retroactive coverage.

Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older Nebraskans and older adults nationwide. We use the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources, particularly populations that have traditionally lacked legal protection such as women, people of color, LGBTQ individuals, and people with limited English proficiency. We have decades of experience with Medicare and Medicaid and have worked extensively with advocates who represent low-income older Nebraskans. Justice in Aging conducts trainings and engages in advocacy regarding Medicare and Medicaid, provides technical assistance to attorneys in Nebraska and across the country on how to address problems that arise under these programs, and advocates for strong consumer protections at both the state and federal level.

## **Work Requirements Will Limit Coverage for Many Older Adults, People with Serious Health Conditions & Family Caregivers**

DHHS is proposing to implement a tiered benefit system that will withhold dental, vision, and over the counter drug coverage from an estimated one-third of Nebraskans eligible for Medicaid expansion. In order to receive these benefits, Heritage Health enrollees under age 60 would have to qualify for Prime coverage by meeting nine requirements including reporting 80 hours of work. Withholding important benefits from people who fail to meet work reporting requirements will be particularly harmful to older adults, persons with serious health conditions and functional limitations, and family caregivers

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because they face additional challenges in meeting such requirements and the health consequences of losing or being denied access to full Medicaid coverage are likely to be especially severe.

Although Medicaid eligibility rules classify a person as “disabled” or “aged”, disability and health challenges that accompany age are a continuum. A Heritage Health enrollee may not be “disabled” under Medicaid law or over age 65, but nonetheless face significant health-related challenges. Data from the National Center for Health Statistics shows that approximately 40% of working-age Medicaid beneficiaries “have broadly defined disabilities, most of whom are not readily identified as such through administrative records.”<sup>1</sup> Similarly, data from the March 2017 Current Population Survey (reflecting 2016 health insurance coverage) show that, among Nebraska’s non-elderly Medicaid population not receiving Supplemental Security Income due to disability, 40% cited being ill or disabled as the reason for not being employed.<sup>2</sup> Moreover, prevalence of chronic conditions, including both physical and mental health conditions, increases significantly with age. For example, a study by AARP analyzed data for the age 50–64 population, finding that 72.5% have at least one chronic condition, and almost 20% suffer from a mental illness.<sup>3</sup>

All these data demonstrate how older low-income Nebraskans who qualify for Medicaid—along with younger low-income beneficiaries with chronic conditions or functional limitations —are at risk of not being eligible for the full scope of coverage under the proposal. Although DHHS proposes to exempt individuals from the work requirements who are 60 and older, medically frail, or who have a serious mental illness or chronic substance use disorder, these exemptions will certainly not reach all individuals with health-related challenges and functional limitations that limit their ability to work and comply with reporting requirements. Moreover, people eligible for health-related exemptions may not know they are exempt to begin with.

Furthermore, these individuals’ health will be seriously compromised by lack of coverage for the benefits that would be withheld from enrollees who do not meet the reporting or exemption requirements. For example, as of 2015, 13% of nonelderly adults in Nebraska reported poor condition of mouth/teeth.<sup>4</sup> In 2017, nationwide over 1 in 4 Medicare beneficiaries with disabilities under age 65 went without needed dental care due to costs.<sup>5</sup> Without access to oral health care, these individuals’ health and the health of many other low-income Nebraskans who do not currently have poor oral

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<sup>1</sup> H. Stephen Kaye, Community Living Policy Ctr., How Do Disability and Poor Health Impact Proposed Medicaid Work Requirements? 2 (Feb. 2018),

<https://clpc.ucsf.edu/sites/clpc.ucsf.edu/files/reports/Disability%20%26%20Medicaid%20Work%20Requirements.pdf>.

<sup>2</sup> Rachel Garfield, *et al.*, Kaiser Family Foundation, Understanding the Intersection of Medicaid and Work 10 (Appendix Table 2) (Jan. 2018), <http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work>.

<sup>3</sup> AARP Public Policy Institute, Chronic Care: A Call to Action for Health Reform 11–12, 16 (March 2009), [www.aarp.org/health/medicare-insurance/info-03-2009/beyond\\_50\\_hcr.html](http://www.aarp.org/health/medicare-insurance/info-03-2009/beyond_50_hcr.html).

<sup>4</sup> Elizabeth Hinton & Julia Paradise, Kaiser Family Foundation, Access to Dental Care in Medicaid: Spotlight on Nonelderly Adults (Mar. 2016), <http://files.kff.org/attachment/issue-brief-access-to-dental-care-in-medicare-spotlight-on-nonelderly-adults>.

<sup>5</sup> Meredith Freed *et al.*, Kaiser Family Foundation, Drilling Down on Dental Coverage and Costs for Medicare Beneficiaries (Mar. 2019), <http://files.kff.org/attachment/Issue-Brief-Drilling-Down-on-Dental-Coverage-and-Costs-for-Medicare-Beneficiaries>.

health will be harmed as they age because of compounding effects. According to the CDC, over 13% of Nebraska seniors age 65+ have lost all of their natural teeth due to decay or gum disease. Providing access to routine oral health care to all non-elderly adults on Medicaid holds the potential to greatly decrease this statistic by preventing and treating decay and gum disease.<sup>6</sup>

Work reporting requirements would also jeopardize the health of many Medicaid beneficiaries who care for family members or other individuals who cannot live independently. Many family caregivers leave the workforce or reduce their hours to provide informal care to seniors and others who need it. Therefore, these caregivers are likely to be Medicaid eligible because they are low-income and unlikely to have access to health insurance through a job or spouse. Nationwide, 30% of non-elderly Medicaid enrollees not receiving SSI cite caretaking as their reason for not engaging in the type of work activities the state is proposing to require of them.<sup>7</sup>

While Nebraska proposes to credit hours spent caregiving for “an elderly or disabled relative” or “a dependent child,” many types of caregiving responsibilities don’t fall neatly into those categories. Importantly, this approach provides no flexibility for caring for people who are not “relatives” nor shared caregiving responsibilities. Frequently, caregiving is round-the-clock and so necessitate shared responsibility.<sup>8</sup> Shared caregiving is also often necessary for individuals who do not have family to care for them.<sup>9</sup> Finally, imposing a work requirement puts an enormous and unnecessary burden on family caregivers to track their hours, maintain documentation, and understand and comply with reporting requirements in the midst of their caregiving and other responsibilities.<sup>10</sup> Given these realities, many family caregivers who qualify for Medicaid would be forced to compromise their own health because they would not be eligible for Prime coverage.<sup>11</sup>

Finally, this policy would also be counterproductive, as limiting coverage to low-income Nebraskans for not reporting work could cause their health to deteriorate, which in turn will make it harder for them to become or remain employed.<sup>12</sup> In addition, nearly 30% of adults eligible for Medicaid expansion

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<sup>6</sup>CDC, Oral Health Data by Topic,

[https://nccd.cdc.gov/oralhealthdata/rdPage.aspx?rdReport=DOH\\_DATA.ExploreByTopic&isYear=2016&isTopic=ADT&go=GO](https://nccd.cdc.gov/oralhealthdata/rdPage.aspx?rdReport=DOH_DATA.ExploreByTopic&isYear=2016&isTopic=ADT&go=GO).

<sup>7</sup> Rachel Garfield, *et al.*, Kaiser Family Foundation, Understanding the Intersection of Medicaid and Work 10 (Appendix Table 2) (Jan. 2018), <http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work>.

<sup>8</sup> Justice in Aging, Medicaid Work Requirements: The Impact on Family Caregivers and Older Adults (Nov. 2018), *available at* <http://www.justiceinaging.org/wp-content/uploads/2018/11/JusticeInAging-Medicaid-IssueBrief-November19-11am-2018.pdf>.

<sup>9</sup> *See id.*; *see also* AARP New Hampshire, Testimony on SB 313 (Feb. 20, 2018), *available at* <https://states.aarp.org/aarp-testifies-new-hampshire-granite-advantage-program/>.

<sup>10</sup> Paperwork requirements have been shown to reduce Medicaid enrollment across populations. *See* Margot Sanger-Katz, “Hate Paperwork? Medicaid Recipients Will Be Drowning in It,” *The New York Times*, January 18, 2018, [www.nytimes.com/2018/01/18/upshot/medicaid-enrollment-obstacles-kentucky-work-requirement.html](http://www.nytimes.com/2018/01/18/upshot/medicaid-enrollment-obstacles-kentucky-work-requirement.html).

<sup>11</sup> *See* Justice in Aging, *supra* note 7.

<sup>12</sup> Coverage interruptions could lead to increased emergency room visits and hospitalizations, admissions to mental health facilities, and health care costs, research has shown. Leighton Ku & Erika Steinmetz, Assn. for Community Affiliated Plans, “Bridging the Gap: Continuity and Quality of Coverage in Medicaid,” (Sept. 10, 2013), *available at* [www.communityplans.net/Portals/0/Policy/Medicaid/GW%20Continuity%20Report%209-10-13.pdf](http://www.communityplans.net/Portals/0/Policy/Medicaid/GW%20Continuity%20Report%209-10-13.pdf).

report that the appearance of their mouth and teeth affects their ability to interview for a job.<sup>13</sup> These issues are even more profound for older adults in a volatile job market<sup>14</sup> who also face employment discrimination based on their age.<sup>15</sup> Take for example a 55-year old woman living in rural Nebraska who is caring for an aging friend who lives several miles away. As her caregiving obligations grew, she was laid off her paid job because she could not work the consistent hours her employer asked her to. She is not yet eligible for Medicare and will have a difficult time finding employment given her age and constraints on her time. She is at risk of being denied full Medicaid coverage if work requirements are implemented.

### **Eliminating Retroactive Coverage Will Deprive Low-Income Nebraskans of Needed Coverage.**

We oppose DHHS’s proposal to limit retroactive coverage to the first day of the month of application for all Medicaid populations except pregnant women, children under 18, beneficiaries dually eligible for Medicare and beneficiaries residing in nursing facilities. In many instances, a person who needs health care cannot be expected to apply for Medicaid coverage at the exact moment they become eligible: they may be hospitalized after an accident or unforeseen medical emergency; they may be struggling to cope with the shock of a diagnosis or sudden decline in functional ability; they may also be unfamiliar with Medicaid, or unsure about when their declining financial resources might fall within the Medicaid eligibility threshold.

Medicaid’s three-month retroactivity window is a rational and humane response to these concerns. We emphasize that retroactive eligibility is only available to persons who would have met the Medicaid eligibility standards for the month[s] in question had they applied sooner.<sup>16</sup> This vital protection not only enables access to necessary care and treatment by giving providers assurance that Medicaid will reimburse them, it can be the difference between financial ruin and being able to recover from an unexpected health emergency. Under DHHS’s proposal, however, a person could be hit by an uninsured driver on the evening of November 29 and be liable for thousands of dollars of hospital expenses due to the “failure” to file a Medicaid application within 36 hours, when November becomes December. This is a bad policy not only because it can prevent access to necessary care and exposes people who, by definition, cannot afford and are not eligible for other health coverage to crushing debt, but also because it is costlier for providers and the state.<sup>17</sup> Eliminating retroactive coverage

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<sup>13</sup> American Dental Association, Oral Health and Well-Being in the United States (2015), <https://www.ada.org/~media/ADA/Science%20and%20Research/HPI/OralHealthWell-Being-StateFacts/US-Oral-Health-Well-Being.pdf?la=en>; see also Austin Frakt, New York Times, How Dental Inequality Hurts Americans (Feb. 19, 2018), <https://www.nytimes.com/2018/02/19/upshot/how-dental-inequality-hurts-americans.html>.

<sup>14</sup> See Brynne Keith-Jennings, Center on Budget & Policy Priorities, Policy Brief: Labor Market Facing SNAP and Medicaid Participants Offers Low-Paying, Volatile Jobs (July 24, 2018), available at <https://www.cbpp.org/research/poverty-and-inequality/policy-brief-labor-market-facing-snap-and-medicaid-participants>.

<sup>15</sup> See Julia Angwin, “Dozens of Companies Are Using Facebook to Exclude Older Workers from Job Ads,” (Dec. 20, 2017), [www.propublica.org/article/facebook-ads-age-discrimination-targeting](http://www.propublica.org/article/facebook-ads-age-discrimination-targeting).

<sup>16</sup> 42 U.S.C. § 1396a(a)(34).

<sup>17</sup> Justice in Aging, Medicaid Retroactive Coverage: What’s at Stake for Older Adults When States Eliminate this Protection? (Sept. 2019), <https://www.justiceinaging.org/wp-content/uploads/2019/09/Medicaid-Retroactive-Coverage-Issue-Brief.pdf?eType=EmailBlastContent&eld=a7bb9cdd-1ce1-4012-b154-7981533a4875>.

increases uncompensated care, jeopardizing the ability of providers, especially rural hospitals, to continue to serve their communities.<sup>18</sup> In turn, this decreases access to care for all Medicaid enrollees and, in the case of medically underserved areas, all Nebraskans, leading to poorer health and necessitating costlier care.

DHHS's stated reason for eliminating retroactive coverage is "To allow for consistency with the commercial market and federal Marketplace policies." However, this rationale makes little sense, given the substantial differences between Medicaid and commercial insurance. A principal difference is the fact that commercial insurance relies on premium payments, while Medicaid coverage is based upon a determination that a person has limited financial resources and thus cannot afford private coverage. Retroactive coverage is not allowed in commercial insurance because the program's financing relies on premium payments in advance, before a person knows the medical services that they may require in any particular month. The same is not true in Medicaid. This rationale is even less applicable to people eligible for home- and community-based services (HCBS) because commercial health insurance does not cover HCBS. Additionally, an individual is only eligible for Medicaid HCBS if they meet the functional eligibility criteria, which generally means they require an institutional level of care. In other words, it is impossible to enroll in Medicaid HCBS coverage before needing it. Thus, denying retroactive coverage to people eligible for HCBS is effectively cutting the HCBS benefit.

Thank you for consideration of our comments. We urge DHHS to withdraw this proposal and fully expand Medicaid without barriers to coverage. If any questions arise concerning this submission, please contact Natalie Kean, Senior Staff Attorney, at [nkean@justiceinaging.org](mailto:nkean@justiceinaging.org).

Sincerely,



Jennifer Goldberg  
Deputy Director

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<sup>18</sup> *Id.*