

Medicaid Work Requirements

What are work requirements and what are their impact?



West Virginians for Affordable Health Care

1. Do West Virginians who are enrolled in Medicaid and are able to work do so now?

Yes. Facts do not support the common perception of Medicaid enrollees as “lazy” or “taking advantage of the system.”

According to the West Virginia Department of Health and Human Resources (DHHR), 66% of adult and child Medicaid enrollees in WV are in families with a worker. They are servers in restaurants, home care workers, retail workers, child-care workers and others. Some enrolled in the Medicaid expansion don't work for wages but take care of elderly parents or children. Others are in school or looking for work or they are in-between jobs. Still others have chronic health problems, a mental illness or substance abuse disorder that makes it difficult to work. Many of these workers have seasonal jobs or other types of employment with fluctuating hours and/or temporary lay-offs.

2. Have work requirements in other programs in West Virginia increased employment?

No. Rather, a work requirement knocks people off programs and reduces federal dollars coming into West Virginia.

A DHHR memo on impact of a pilot work requirements for SNAP recipients in nine West Virginia Counties found the program did not have a significant impact on employment but did cause 5,417 West Virginians to lose their benefits and the state lost \$17.8 million in federal SNAP dollars.¹

3. Will a Medicaid work requirement increase employment and decrease poverty among Medicaid enrollees?

No. Research shows that a work requirement has the opposite effect and can be a barrier to work and upward economic mobility.

A scan of peer-reviewed evaluation literature on work requirements in social service programs shows that work requirements do not result in increased employment rates over time.² A study of the work requirements in the Temporary Assistance for Needy Families (TANF) cash assistance program found that work requirements had little or no effect in increasing work or cutting poverty. In fact, some people subjected to the work requirement become poorer.³ TANF enrollees who did work in low wage jobs remained poor despite being employed.⁴

Work requirements can create a barrier to coverage and to access to health care, causing some eligible individuals to forego applying for coverage, and making it *more* difficult for some eligible individuals to find or keep a job.⁵ Kentucky, which has received a 1115 waiver with a Medicaid work requirement, estimates that enrollment would decline significantly by 100,000 or more.⁶

Medicaid is a critical support that keeps many West Virginians working. An analysis of Ohio's Medicaid expansion found that over half of enrollees who are working (without being required to do so) reported that having Medicaid made it easier for them to continue to work. This is particularly true for West Virginians employed in low-wage jobs that involve walking, standing, lifting and other physical labor who can experience physical injuries. The Ohio analysis also found that expansion enrollees who were unemployed but looking for work reported that having Medicaid made it easier for them to seek employment.⁷

4. Will a Medicaid work requirement hurt Medicaid enrollees already employed?

Yes. Burdensome paperwork creates a barrier to continued enrollment, access to health services, and can lead to job loss.

Documenting legitimate reasons for an exemption to a work requirement creates a real paperwork burden month after month – and the net that is cast by a work requirement will fall far beyond the intended target enrollees. Some of the enrollment declines will be among West Virginians who do work or are looking for work. Documenting their employment or job search efforts over and over will create a paperwork barrier to sustaining enrollment – especially among low-wage workers struggling already to balance work and family responsibilities. Low-income workers experience fluctuation in their hours, seasonal employment, and frequent lay-offs and may meet a work requirement one month and fail to do so the next month resulting in gaps in Medicaid coverage and in the very care, prescription drugs, and treatment that allows them to be healthy and work.

In fact, Medicaid coverage is strongly associated with improved financial health and security for West Virginia families. Medicaid enrollees report less financial stress, less depression, and greater financial security than the uninsured. Studies comparing low-income residents in Medicaid expansion and non-expansion states show that Medicaid coverage is associated with lower rates of borrowing, unpaid bills, credit card debt, debt sent to collectors, and medical bankruptcy.⁸ With this improved financial stability, Medicaid enrollees had more opportunities to seek out education and training to improve their financial status and get ahead of the cycle of poverty.

5. Will a Medicaid Work Requirement Impact Health Care Costs in West Virginia?

Yes. By increasing the number of uninsured in our state, everyone will have higher health care costs.

Nearly all West Virginians who would lose Medicaid coverage would not have any other source of affordable health insurance. In turn, without insurance, these West Virginians would experience untreated health problems and declining health. Untreated health problems make it difficult for West Virginians to look for or maintain employment. Medicaid coverage for adults is associated with improved access to primary care, better medication adherence, increased screening for and detection of diabetes, more regular treatment of chronic conditions, and improved self-reported health.⁹ Creating barriers to Medicaid through a work requirement reinforces a cycle of poor health and poverty rather than providing a hand up to those struggling to make ends meet and be able to work.

And by increasing the ranks of the uninsured, a work requirement will increase health care costs for West Virginia health providers. West Virginians without insurance will still get sick and seek care – but often will delay care and be more likely to be hospitalized for avoidable and more expensive health problems. And they will not be able to pay for all the care they receive and the unpaid costs will be passed on to all consumers as well as state and local government.¹⁰

6. Will a Medicaid work requirement impact West Virginia’s efforts to address opioid addiction and the state’s recently approved federal waiver to expand opioid addiction and other substance use disorder treatment covered by Medicaid?

Yes. A Medicaid work requirement will undermine efforts to detect and intervene early in addiction among at-risk. It will create barriers to necessary care and services for those already addicted who are trying to recover.

The State Health Reform Assistance Network has called Medicaid “the states’ most powerful tool to combat the opioid crisis” and found that a conservative estimate of 1.2 million people with substance use disorders have gained access to treatment.¹¹ Medicaid is the most significant source of coverage and funding for substance use prevention and treatment in West Virginia and the nation.

The West Virginia Department of Health and Human Resources (DHHR) was a leader state recently when it won approval of its first Medicaid 1115 Waiver from the federal government to improve care and health outcomes by expanding Medicaid service for those with addiction. The waiver will allow West Virginia to cover methadone, naloxone, peer recovery support, withdrawal management and short-term residential services to all Medicaid enrollees.

When the waiver was approved by the federal Centers for Medicare and Medicaid Services, Governor Justice stated, “West Virginia is number one across the nation in overdose deaths. Since this waiver is funded more than 80 percent by the federal government, it's critical to protect our Medicaid budget so

our state can meet its federal obligation for these vital services. We need to help our people get the care they need to get their lives back on track and stop these senseless overdose deaths."

Drug addiction research shows that poverty and lack of economic opportunities is a significant factor in younger people turning to drugs. Yet any barrier to Medicaid eligibility will increase poverty and economic stress for young people who have no other way to afford health care.¹² If West Virginians at risk for drug abuse lose the chance to enter the health system, it will mean providers will lose the chance to identify risk factors and intervene early. To save lives in the drug addiction fight, adults at risk or already caught in the grip of drug addiction must have access to health care services. For one-third of our state population, access to health care services is through Medicaid.

A Medicaid work requirement exemption for adults in drug treatment programs is not sufficient to ameliorate the harm the requirement will do to our state response to the opioid addiction crisis. It will leave our most at-risk adults out of the health care system without any chance of early detection and intervention. Recovering addicts will face barriers to finding work yet may not formerly be considered in medical drug treatment. Further, the lines of when treatment for addiction ends are not clear. Many addiction specialists recognize that longer-term supports are critical and that support is part of what Medicaid provides - if eligibility is not interrupted.

9. Must Medicaid work requirements be statewide?

No. The federal guidance (called a State Medicaid Directors Letter) for states who choose to establish a Medicaid work requirement specifically recognizes that states will need flexibility to respond to local employment markets and economic conditions and can suspend a work requirement as necessary statewide or in regions with limited employment opportunities or facing economic stress.¹³

8. Are Medicaid work requirements legal under the federal Medicaid statute?

Unclear. Legal experts believe that a work requirement violates the purposes of the federal Medicaid statute and can be seriously and successfully challenged in the courts.¹⁴

A lawsuit has already been filed to block the first state, Kentucky, who received permission from the federal Centers for Medicare and Medicaid Services to use a Medicaid waiver to create work requirement and other barriers to enrollment.¹⁵

Legal experts argue that Medicaid is fundamentally different from other programs that help people struggling financially. Medicaid is a health insurance program, not a cash benefit program. Further, it does not pay enrollees, it pays providers who treat enrollees. Thus legal action against West Virginia and CMS could be advanced by both consumer advocates and providers who rely on Medicaid across our state's rural communities.

The basic premise of an 1115 Medicaid waiver is that only certain parts of the statute can be waived by CMS, and then only to promote the objectives of the Medicaid statute, Title XIX of the Social Security

Act. The statute is clear that CMS cannot create new Medicaid eligibility criteria without Congressional action. And the core objective of the Medicaid statute is to assist low-income people to get medical services. A requirement that leads to the loss of health coverage in a misguided attempt to promote work is antithetical to this core objective.

9. Will Medicaid work requirements create new administrative costs to implement?

Yes. A work requirement will add significant administrative complexity and costs to the Medicaid program.

At a minimum, a program would need to track enrollee's work status, process any exemptions for family caregivers, people with serious illness, students and others. A state would need to spend time and resources to track enrollee's time spent looking for work, enroll, disenroll, and re-enroll individuals at different points as they look for work and their health and family situation changes. Whether these administrative burdens are on Medicaid managed care plans or another state contractor or done "in-house," they add significant administrative costs.

The evidence from the Temporary Assistance for Needy Families (TANF) demonstrates the monitoring work requirements is expensive.¹⁶ Consideration needs to be given to the costs of developing new systems, adapting technology, training staff, and supporting an ongoing increased workload associated with new or expanded work requirements. TANF caseworkers often spend considerable time monitoring and enforcing work requirements.¹⁷

10. What is the process and timeline for creating Medicaid work requirements in West Virginia?

Until 2012, the waiver review and approval process at the state and federal levels often took place behind closed doors. This changed when the Affordable Care Act included a requirement for public input and comment in the waiver process. The rules were published in April 2012 by the federal Centers for Medicaid and Medicare Services (CMS). <https://www.gpo.gov/fdsys/pkg/FR-2012-02-27/html/2012-4354.htm>

First, the rules require that West Virginia provides opportunities for public comment before submitting an 1115 waiver to CMS, and the state must show that they took into consideration any comments received in their 1115 waiver submission. Second, there is another opportunity for public comment after the application is filed with CMS.

The basic timeline and requirements under the rules are:

- There must be a 30-day state comment period before the state submits an 1115 waiver. During this time there must be a written proposal with details available for public review. If significant changes are made after submission, CMS may ask the state to open another period of public comment.

- West Virginia must hold at least two public hearings in two different locations 20 days before submitting its application to CMS.
These hearings must be accessible statewide (to meet this requirement, telephone or internet access to the hearing can be offered).
- West Virginia must post up-to-date and detailed information about the waiver and the hearings on the internet, including the waiver proposal. The rules spell out elements of what must be in the proposal. This website must provide an easy way for the public to submit comment by internet and mail. And a notice of the proposal and hearings must be published in the Charleston Gazette/Mail or other state-wide paper with large circulation, and West Virginians must be given a way to easily sign up for email updates.
- In the CMS waiver submission, West Virginia must respond to all comments received and explain how the proposed waiver addresses these comments.
- Once CMS receives the waiver, CMS has 15 days to request more information. CMS then must hold another 30-day comment period. So CMS cannot make a final decision earlier than 45 days from the date the application was submitted.
- The 1115 waiver application and all supporting documents must be posted on Medicaid.gov and CMS must post updates on any steps in the waiver approval process.
- Once the 1115 waiver is approved, West Virginia must hold a public forum within six months after the start of the implementation of the waiver.

11. Are there unanswered questions about how a Medicaid work requirement would work in West Virginia?

Yes. DHHR has not provided any details about a Medicaid work requirement but has stated that a draft would be available the 2nd quarter of 2018.

Important details that are not yet available include:

- What age groups will be covered by the work requirement? Other states, including Kentucky' approved waiver, apply the work requirement to the age group 19-49.
- Who will be exempt from the work requirement? For example, a work requirement waiver can exempt medically frail enrollees, enrollees caring for a child or incapacitated adult, pregnant enrollees, any enrollee who lives with a child under age 17, enrollees in school or job/vocational training, enrollees who have short-term physical or mental conditions that incapacitates them, enrollees in a treatment program for alcoholism or drug addiction, and enrollees collecting unemployment. Other exemptions are allowed. The different exemptions can have different demonstration requirements and be in effect for different periods of time.
- How will exempted individuals apply for and be granted an exemption? How often will they need to do so?
- How is work defined? How many hours per week or month? What activities will count as work? How will fluctuations in work hours, temporary lay-offs, or other disruptions common to lower-

wage employment be handled? Activities that count as work can include some combination of enrollment in an educational program, on-the-job training, vocational training, volunteering, participation in job search, participation in job search training, participation in a class on health insurance, using the health system, or healthy behaviors, or participation in any workforce services program.

- How many hours per week or per month or other period will an enrollee need to show that they participated in activities that count as work?
- How will a Medicaid applicant or current enrollee demonstrate they are meeting a work requirement? What paperwork and proof will be required? Will the enrollee need to inform his/her employer that they receive Medicaid and then ask them to certify employment? How often?
- Will one failure to demonstrate requirements terminate eligibility or will some grace period be granted? What kinds of notice and due process will occur before termination?
- For what period of time will an enrollee who is terminated be locked out from eligibility and health care?
- What must a person who is terminated do to restore eligibility and continue health care? How will the state address enrollees with chronic or serious health conditions that require continued health management such as diabetes, heart disease, etc.? Will they be exempt from the work requirement? Or will they be allowed to continue necessary health treatment during a lapse in work so that they can remain healthy and able to return to work?

¹ West Virginia Department of Health and Human Resources Memo dated, 3/2/2017 on file.

² <https://www.cbpp.org/sites/default/files/atoms/files/6-6-16pov3.pdf>.

³ <https://www.cbpp.org/sites/default/files/atoms/files/6-6-16pov3.pdf>.

⁴ <https://www.kff.org/medicaid/issue-brief/medicaid-enrollees-and-work-requirements-lessons-from-the-tanf-experience/>

⁵ <http://www.cbpp.org/research/health/medicaid-work-requirement-would-limit-health-care-access-without-significantly>.

⁶

http://familiesusa.org/sites/default/files/comments/comments_Kentucky_1115_waiver_modification_request_0817.pdf

For all adults, over the 5 year demonstration program members months under the initial program request were projected to be 13.4 percent below the program without the waiver;

with the modification, the decline is projected to increase to 14.8 percent. Families USA calculation based on Kentucky Health enrollment projection in the waive modification application.

⁷ <http://medicaid.ohio.gov/Portals/0/Resources/Reports/Annual/Group-VIII-Assessment.pdf> The Ohio Medicaid Group VIII Assessment project was conducted by a partnership of the Ohio Colleges of Medicine Government Resource Center, The Ohio State University College of Public Health, Ohio University, and RTI International for submission to the Director of the Ohio Department of Medicaid.

⁸ <http://www.commonwealthfund.org/publications/issue-briefs/2015/jun/does-medicaid-make-a-difference>; <http://www.nber.org/papers/w21836>. See also <https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-september-2017/>

⁹ <https://www.ncbi.nlm.nih.gov/pubmed/27532694>; See also <http://www.commonwealthfund.org/publications/issue-briefs/2015/jun/does-medicaid-make-a-difference>

¹⁰ <https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>

¹¹ <https://www.statenetwork.org/wp-content/uploads/2016/07/State-Network-Manatt-Medicaid-States-Most-Powerful-Tool-to-Combat-the-Opioid-Crisis-July-2016.pdf>

¹² <https://www.macpac.gov/wp-content/uploads/2017/06/Medicaid-and-the-Opioid-Epidemic.pdf>

¹³ <https://www.medicare.gov/federal-policy-guidance/downloads/smd18002.pdf>

¹⁴ <http://www.healthlaw.org/issues/medicaid/waivers/medicaid-work-requirements-legally-suspect#.WIEkCHKWyK8>

¹⁵ <http://www.healthlaw.org/publications/browse-all-publications/stewart-v-hargan-lawsuit-challenging-kentucky-medicaid-waiver-project#.WmocYHKWyK8>

¹⁶ <https://www.cbpp.org/research/family-income-support/changes-in-tanf-work-requirements-could-make-them-more-effective-in>

¹⁷ <https://www.urban.org/sites/default/files/publication/95566/work-requirements-in-social-safety-net-programs.pdf>