



NONPROFITS: POLITICAL ISSUES

Adios to Mandatory Volunteerism

08.12.21 | Linda J. Rosenthal, JD

A large, bold, black graphic of the word 'ADIOS' in a serif font, enclosed within a thick black rectangular border. The background of the graphic is a dark olive green.

Well before White House staff change out the draperies and bring in the family photos of a new president, the incoming administration from a different political party has likely been hard at work on its wish list of policies and regulations for the chopping block.

That's what happened in the weeks before 44 relinquished the keys to 45.

And, shortly after Inauguration Day 2017, the new Health and Human Services team put an official bulls-eye on a long-time top target of the GOP: the Medicaid program. Indeed, one of the first actions in mid-March 2017 of Seema Verma, the just-confirmed Administrator of the Centers for Medicare and Medicaid, was “sending letters to the nation’s governors, urging them” to tighten Medicaid eligibility rules including addition of a “work and community engagement” requirement. By early 2018, this push had intensified from “urging” to “actively encouraging” states to impose these onerous conditions to qualify for benefits.

This 180-degree policy turnaround went counter not only to the Obama Administration’s vision of increased access to health coverage, but also to the entire 50-year history of the Medicaid program and the express language of the authorizing statute. And it was a terrible idea, based on the “flawed” and “totally contorted” premise that shoving people needing health services into the workforce (or equivalent) would make them “healthier.”

We first wrote about this development in *Mandatory Volunteerism: A Bad Idea All Around* (March 15, 2018). While the nonprofit community is attuned to any and all developments that tend to create more poor and sick people needing charitable assistance, this story includes a more *direct* element of concern for our sector.



The Administration's prodding of states to seek permission ("waivers") to institute "work and community engagement" requirements meant that large numbers of reluctant "helpers" could be knocking on the doors of local 501(c)(3)s. The phrase "community engagement" in these waiver requests includes volunteering at a charity.

Organized philanthropy vigorously opposed this move "to condition receipt of government-provided benefits on requirements that individuals volunteer at nonprofit organizations, a policy known as 'mandatory volunteerism,' that impose increased costs, burdens, and liabilities on nonprofits by an influx of coerced individuals." See, for example, the National Council of Nonprofits' [2018 Public Policy Agenda](#).

Nevertheless, it was full steam ahead for this war against Medicaid and its beneficiaries. See [How Medicaid became the most important battleground in American health care](#) (November 10, 2017) Dylan Scott, [vox.com](#) and [The Trump administration's plan for Medicaid work requirements, explained](#) (January 12, 2018) Dylan Scott, [vox.com](#).

As expected, almost as soon as CMS gave the go-ahead to the first of the "red" states to jump at this option, the court challenges began. And also, unsurprisingly, a federal judge halted these new policies on grounds they were not only unauthorized by law but "arbitrary" and "capricious" as well. See our discussion at [New Medicaid Work/Volunteer Court Ruling](#) (April 10, 2019).

Since then, there have been major developments.

In early 2020, a federal appeals court affirmed the trial court's "arbitrary" and "capricious" conclusion. It applied specifically only to a few states, but the ripple effect was a pause in the Administration's relentless attempts and progress at shrinking the size of the nation's Medicaid rolls. See [Federal Appeals Court Strikes Down Arkansas Medicaid Work Requirements](#) (February 25, 2020) David Tassa, Esq., King & Spaulding. That lawsuit is now pending in the United States Supreme Court.

Of course, through the remainder of 2020, the COVID-19 crisis wreaked havoc on the nation's economy and healthcare system, throwing millions more Americans into the ranks of the sick and unemployed.

But the most significant event in this Medicaid saga was the arrival once again at 1600 Pennsylvania Avenue of the moving team with the furnishings and personal mementos of No. 46. And almost immediately, the new president and his team signaled they were eager and ready to toss out the former Administration's problematic policy.

Conclusion

It's not as simple or fast, though, as waving a magic wand. And it involves dealing with each state individually. See, for instance, articles and media reports including:

- [Biden administration begins throwing out Medicaid work rules](#) (March 17, 2021) Rachel Roubein, *Politico*



- *HHS Revokes Arkansas and New Hampshire Medicaid Work Requirements*(March 26,2021)
Ahsin Azim, Esq., King & Spaulding
- *Biden administration pulls plug on Medicaid work requirements in Michigan* (April 7, 2021)
Todd Spangler, Detroit Free Press
- *HHS Revokes Medicaid Work Requirements in Arizona, Indiana* (June 25, 2021) Christopher
Brown, *Bloomberg Law*

This revocation process continues to play out. The Supreme Court and the Administration are working out how best to remove the now-moot case from the high-court docket.

It seems safe, though, at this point to say “adios” to mandatory volunteerism (at least in connection with the nation’s massive Medicaid program). Sadly, it keeps popping up as part of state and local efforts to curtail other benefits programs.

— *Linda J. Rosenthal, J.D., FPLG Information & Research Director*