

## New Medicaid Work/Volunteer Court Ruling

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There's so much governmental action – (or inaction, when action is necessary) directly or indirectly affecting the nonprofit sector and charitable beneficiaries, it's hard to keep up with it all.

One issue that's been flying somewhat under the radar is the assault against Medicaid expansion and eligibility promoted by many "red" states and aided by actions of the current administration in Washington. Short of a full rollback of the Medicaid program, these states have pushed hard to impose work or equivalent requirements on Medicaid recipients. In this case, the "equivalent" is going to school or what is commonly referred to as "mandatory volunteering" with a charitable organization.

Shutting down Medicaid has been on the GOP wish list for some years and, in early 2017, with a new federal government taking over, there was a jump in interest and action. Through 2018, some ten states had submitted waiver proposals; those from Kentucky, Indiana, and Arkansas were approved.

There was blowback from many opponents including the charitable sector. In Mandatory Volunteerism: A Bad Idea All Around (March 2018), we explained why the nonprofit community has consistently taken a strong stance against these initiatives to make getting Medicaid as hard as possible.

There are two key downsides of this policy for the charitable sector. First, there is the crushing administrative burden on 501(c)(3) organizations in accepting and managing an influx of "volunteers" who are not committed to the cause or even minimally motivated beyond the "stick" of having their much-needed health benefits yanked. Second, if Medicaid beneficiaries are denied coverage, the slack will be picked up, at least in part, by the already-overburdened social services agencies in each community.

Activists in Kentucky opposing the waiver on more broad-based grounds filed a lawsuit early in 2018 as soon as the federal waiver was granted permitting that state to go forward and institute

work/school/volunteer requirements for Medicaid eligibility.

There's been an important development recently; in March 2019, an appellate court upheld a federal district court's fall 2018 ruling striking down this waiver.

## *The Medicaid Waiver Rulings*

The federal government and the states jointly fund the Medicaid program. The states are the administrators. Under long-established law, eligibility is income-based. States are permitted to impose work requirements by asking for, and receiving, a "waiver" from the federal government. While the Obama Administration had denied these requests, the federal Centers for Medicare and Medicaid Services (CMS) has actively promoted this policy and encouraged states to ask for this permission.

In Kentucky, which was the first state to receive federal approval, opponents filed a lawsuit as soon as the waiver was granted in early 2018. A federal court blocked the waiver, ruling for the plaintiff-opponents, on the grounds that "federal officials had not adequately considered how the requirements, including mandatory volunteerism, impacted the primary purpose of the program"; that is, granting access to individuals for medical services.

How did the government respond? Instead of appealing this adverse ruling, the Administration responded by "reopening Kentucky's proposal for public comment." As expected, in November, HHS announced it "had determined the requirements under the plan 'are likely to promote the objectives of Medicaid'" and, for the second time, approved Kentucky's waiver request.

The plaintiffs in the Kentucky lawsuit amended their pleadings and challenged the latest government "findings." In March 2019, the same federal district judge ruled against the government and in favor of the opponents to this Medicaid "waiver." He also ruled that same day that the waiver approval of Arkansas must also be blocked.

Specifically, in these twin rulings, U.S. District Court Judge James Boasberg ruled that "the federal government failed to justify that adding employment conditions and other changes to Medicaid in Arkansas and Kentucky advanced Medicaid's basic purpose of providing health coverage."

## *The Federal Response*

The federal government wasted no time at all in brushing off the appellate ruling as if it were a fly at a summer picnic. "Less than 48 hours after a federal judge struck down Medicaid work requirements, the Centers for Medicare & Medicaid Services on Friday gave Utah permission to use those mandates." In her approval letter for the Utah waiver, CMS Administrator Seema Verma wrote that requiring Medicaid enrollees to work was allowed because it helps make them healthier."

Yes, really; that's the government's position.

There have been devastating real-world results for policymakers and lawmakers to study and consider. After Arkansas implemented its new Medicaid eligibility rules, thousands of Medicaid recipients were thrown off the rolls, and additional rounds of disqualification followed. Critics also

point out that the Arkansas government seems to have gone out of its way to make qualification as difficult as possible. In the state that has the lowest access to the internet, officials created an online-only reporting system for individuals to prove compliance with the new work/volunteer/education requirements.

A March 27th article in the Washington Post – [A job-scarce town struggles with Arkansas’s first-in-nation Medicaid work rules](#) – poignantly shows the devastating results of this draconian policy particularly in areas hard-hit by economic downturns.

## *Conclusion*

The philanthropic community must continue its efforts to loudly oppose harsh new Medicaid-eligibility requirements and – particularly – the misguided and harmful “mandatory volunteerism” aspect of these waiver applications.

Last year, in an [official policy statement](#), the National Council of Nonprofits minced no words: “Mandatory volunteerism is harmful because the policy imposes increased costs, burdens, and liabilities on nonprofits by an influx of coerced individuals” who will view this requirement as “doing time rather than doing good.”

The November election results have also thrown a twist into this debate. Generally, voters demonstrated that GOP efforts at cutting back on health services and insurance coverage have been unpopular. The voters in several states – in Maine, for example – approved ballot measures to reverse these policies and mandate expand Medicaid coverage.

While the November 2018 elections around the nation have put a halt in some of this momentum in states with newly “blue” governors and legislatures, it’s still alive and well in certain parts of the United States. The Commonwealth Fund has posted a [map of the status of Medicaid expansion efforts](#) in various states as of March 15, 2019, and presumably will update that graphic from time to time.

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