

Judge Vows To Rule On Medicaid Work Requirements By End Of March

The federal judge who shot down a Medicaid work requirement plan last June remained deeply skeptical Thursday of the Trump administration's renewed strategy to force enrollees to work.

U.S. District Judge James Boasberg, who last year blocked Kentucky's work requirement, heard testimony on a revised federal approval. He also had a hearing on Arkansas' Medicaid work requirement – which took effect last July and has led to 18,000 Medicaid enrollees losing coverage.

After the court hearings in Washington, Boasberg said he would rule on both states' programs by April 1, which is when the next round of Arkansas enrollees could be kicked off the program. Kentucky plans to implement its work requirement this summer.

A ruling against a work requirement would have vast repercussions in more than a dozen other states that have been approved for new work requirements in Medicaid, the federal-state health program, or are seeking them from the Trump administration.

Throughout the two-hour-long hearings, Boasberg questioned Justice Department lawyer James Burnham on whether the work requirement plans approved by the Trump administration were helping to achieve Medicaid's goal of promoting health coverage.

When Burnham argued that work requirements would give people incentives to find work and improve their lives, Boasberg interjected: "That is not the purpose of Medicaid."

On Capitol Hill, Democrats grilled Health and Human Services Secretary Alex Azar about the work requirements. Azar testified this week before three separate committees, two in the House and one in the Senate, on the administration's budget request for the department.

Addressing the Senate Finance Committee on Thursday, Azar disputed the idea that everyone who lost Medicaid in Arkansas was now uninsured. "Only 1,000 of those 18,000 people appealed" their loss of Medicaid, he said. "Only 1,452 of those 18,000 even reapplied for Medicaid when open enrollment came again." Azar said that "seems a fairly strong indication" that the rest of those cut from the program "got a job and insurance elsewhere."

Top health officials for the Trump administration have said getting people on Medicaid into jobs will make them healthier – which they call a key goal of the program.

States can implement work requirements since Congress has given the HHS secretary permission to approve their experiments with the Medicaid program, the administration asserts.

But advocates for the poor say an experiment that leaves thousands of people without coverage runs counter to Medicaid's aim to improve access to health care.

In his ruling last year, Boasberg, who was appointed by President Barack Obama, said Azar's approval of Kentucky's plan failed to consider whether the strategy would "help the state furnish medical assistance to its citizens, a

central objective of Medicaid.” He said promoting health generally or helping someone get a job was not the point of the state-federal program created in 1965.

Kentucky last year became the first state to win federal approval for its proposal requiring that certain Medicaid recipients work, go to school or fulfill community service. After Boasberg’s ruling last June, the state filed a new waiver application seeking to meet the judge’s requirements, and the Trump administration approved it.

Federal officials have approved work requirement proposals in seven states – Arizona, Arkansas, Indiana, Kentucky, Michigan, New Hampshire and Wisconsin. In each of those states, the requirements would apply only to people who gained Medicaid coverage under the expansion promoted by the Affordable Care Act. Ten other states – Alabama, Kansas, Mississippi, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah and Virginia – also have requested approval. Some of those states have not expanded Medicaid and are seeking to add work requirements to their regular programs.

Kentucky Gov. Matt Bevin, a Republican, has threatened to scrap the Medicaid expansion unless his state is allowed to proceed with the new rules, a move that would cause the more than 400,000 new enrollees to lose their coverage. He said the work requirement will help move some adults off the program so the state has enough money to help others on the program.

Boasberg questioned whether the state has proven its case to the federal government that it needs work requirements to keep its Medicaid program financially sustainable. “At the end of the day, isn’t the centerpiece of your case the fiscal sustainability argument?” Boasberg asked the Trump administration’s lawyer.

Burnham argued neither Kentucky nor Arkansas was kicking people off their programs and causing them to lose benefits. He said people were just choosing to not comply with the state’s new reporting requirements to show they were working, doing volunteer work or meeting one of the states’ exceptions.

Ian Gershengorn, a lawyer representing the National Health Law Program and other plaintiffs trying to overturn the work requirements, said Kentucky’s financial sustainability argument “seems absurd” because the federal government this year is paying 94 percent of the costs for the Medicaid expansion population.

He said HHS should not be approving Kentucky’s waiver based on the governor threatening to kill the entire Medicaid expansion if he doesn’t get work requirement authority.

Gershengorn said Azar cannot argue in approving Kentucky’s waiver that he has no idea how many people would lose coverage since the Arkansas experience already shows thousands lost Medicaid coverage.

The Kaiser Family Foundation has estimated that 1.4 million to 4 million Americans could lose their coverage if work requirements were imposed nationwide. Most of the coverage losses would result from enrollees failing to report their compliance to the state, not because they were failing to fulfill the work or job search criteria. (Kaiser Health News is an editorially independent program of the foundation.)

The Justice Department attorney tried to show the difference between the first Kentucky approval in January 2018 and the second one made last November was that the HHS secretary analyzed what effect the experiment would have on health coverage. He said keeping the Kentucky program would ensure the

expansion stayed in place as well as give adult enrollees access to vision and dental coverage.

But Gershengorn argued the difference between the two approvals is that the state and the federal government now know the implications work requirements can have on enrollees.

“There is massive harm,” Gershengorn said. “It is not speculative.”

KHN chief Washington correspondent Julie Rovner contributed to this report. Kaiser Health News (KHN) is a national health policy news service. It is an editorially independent program of the Henry J. Kaiser Family Foundation which is not affiliated with Kaiser Permanente.