

In March 2018, Arkansas became the third state to receive approval from the U.S. Department of Health and Human Services (HHS) to implement a work requirement for Medicaid adults, following the department's approval of work requirements submitted by Kentucky and Indiana. The approval preceded agency action on similar requests from other states—including Arizona, Maine, New Hampshire, Utah, and Wisconsin—and represents a stark shift in federal policy regarding the objectives of the Medicaid program. State officials expect Arkansas to be the first state to implement work requirements, with a June 1, 2018, effective date for Arkansas Works enrollees. This fact sheet provides an overview of legislation leading to the work requirement and other new Arkansas Works program features, and it describes the exemptions and reporting obligations for the work requirement with a focus on the most significant change to the program: requiring work as a condition for eligibility.

### OVERVIEW

Legislative amendments to Arkansas Works, authorized under Act 6 during the 91st General Assembly's First Extraordinary Session of 2017, were signed into law by Gov. Asa Hutchinson on May 4, 2017. Act 6 called for Arkansas Medicaid to seek a state plan amendment or waiver changes to cap income eligibility at 100 percent of the federal poverty level (FPL) and establish work requirements for Arkansas Works enrollees.<sup>1</sup> On June 30, 2017, the state submitted to HHS an amendment to the Section 1115 Arkansas Works waiver outlining changes intended "to test innovative approaches to promoting personal responsibility and work, encouraging movement up the economic ladder, and facilitating transitions from Arkansas Works to employer-sponsored insurance and Marketplace coverage."<sup>2</sup> The waiver amendment also included a request to reconsider elimination of retroactive eligibility for Arkansas Works enrollees, which was legislatively approved by the 90th General Assembly in Act 1 of the Second Extraordinary Session of 2016. The Obama Administration had previously required the state to have an approved hospital presumptive eligibility plan in place before granting this request.

After months of negotiation, Gov. Hutchinson and Centers for Medicare & Medicaid Services (CMS) Administrator, Seema Verma announced approval of the waiver amendment in a press conference on March 5, 2018, the first time CMS hand-delivered a waiver approval to a state. While HHS did not approve the income eligibility cap at 100 percent of the FPL, all other aspects of the waiver were approved (see Table 1).<sup>3</sup>

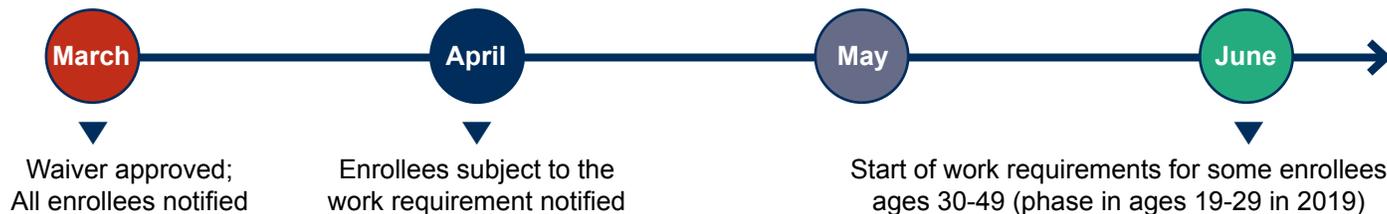
**Table 1: Status of Requested Arkansas Works Waiver Amendments<sup>3</sup>**

Requested Arkansas Works Waiver Amendments	Status
▶ Work requirement for enrollees between ages 19 to 49, with certain exemptions	Approved March 5
▶ Income eligibility cap at 100 percent FPL	Not Approved
▶ Removing the requirement to have an approved hospital presumptive eligibility state plan amendment as a condition of waiving the 90-day retroactive eligibility	Approved March 5
▶ Waiving the 90-day retroactive eligibility requirement to 30 days prior to the date of application	Approved March 5

### WORK REQUIREMENT IMPLEMENTATION

Arkansas Medicaid and Marketplace insurers have anticipated challenges and set up a considerable administrative overlay to track, report, and facilitate communication with enrollees about the work requirement. Building upon existing work requirements for Supplemental Nutritional Assistance Program (SNAP) beneficiaries, they have developed a communications plan to engage enrollees and providers to educate them about the work requirement and necessary actions to meet the requirement to retain coverage. Communications include correspondence through direct mail, email, social media, and other print and collateral materials. Enrollees subject to the work requirement will be notified in April 2018, with reporting requirements to begin in June 2018 (see Figure 1).

**Figure 1: Anticipated 2018 Work Requirement Timeline for Arkansas Works Enrollees**



Arkansas Medicaid has also invested in the development of an online portal for enrollee reporting of exemptions and work certification that is linked from the eligibility website. The portal for reporting will be different than two other online portals that applicants use for plan enrollment and access to resources to meet the work requirement. Notably, Arkansas Medicaid will require applicants to either have or obtain an email address as part of the eligibility process. The email address will be used for access to the reporting portal and for communication, including receipt of required notices from Arkansas Medicaid or Marketplace insurers.

Arkansas Works enrollees aged 19 to 49 will be subject to the work requirement, while those 50 and older will not. The state plans to phase in the work requirement, beginning with 30- to 49-year-olds in 2018, adding 19- to 29-year-olds in 2019. Approximately 100,000 enrollees at or below 100 percent of the FPL will be subject to the work requirement in 2018. If Medicaid officials decide to apply work requirements to individuals above 100 percent of the FPL—which the waiver terms and conditions allow—then another approximately 20,000 beneficiaries will be affected.

## WORK REQUIREMENT EXEMPTIONS

Not all enrollees will be required to report work activities. Roughly 60 percent of enrollees are expected to be exempt. These include beneficiaries who are exempt from the work requirement for SNAP and those receiving Transitional Employment Assistance (TEA), both of which can be verified by the state every 30 days using its own data. The exemptions listed in Table 2 also qualify and are determined at application, renewal, or attestation through the portal.

**Table 2: Work Requirement Exemptions**

- |  |   |
|--|---|
| ▶ Medical frailty  | ▶ Short-term physical or mental incapacitation          |
| ▶ Living in the home with a dependent minor                | ▶ Participation in an alcohol or drug treatment program |
| ▶ Pregnancy (valid until the end of post-partum care)      | ▶ Enrollment in full-time education                     |
| ▶ Caring for a physically or mentally incapacitated person | ▶ Receipt of unemployment benefits                      |

## WORK REQUIREMENT ACTIVITIES AND REPORTING

For Arkansas Works enrollees who do not meet an exemption, they must be employed, with a gross income that is greater than \$736.78 per month (the Arkansas minimum wage of \$8.50 per hour multiplied by 20 hours per week at 4.334 weeks per month), or have a combination of work activities, which may include employment hours, totaling 80 hours per month. Table 3 lists approved work activities that require demonstration of compliance.

**Table 3: Work Requirement Activities and Reporting**

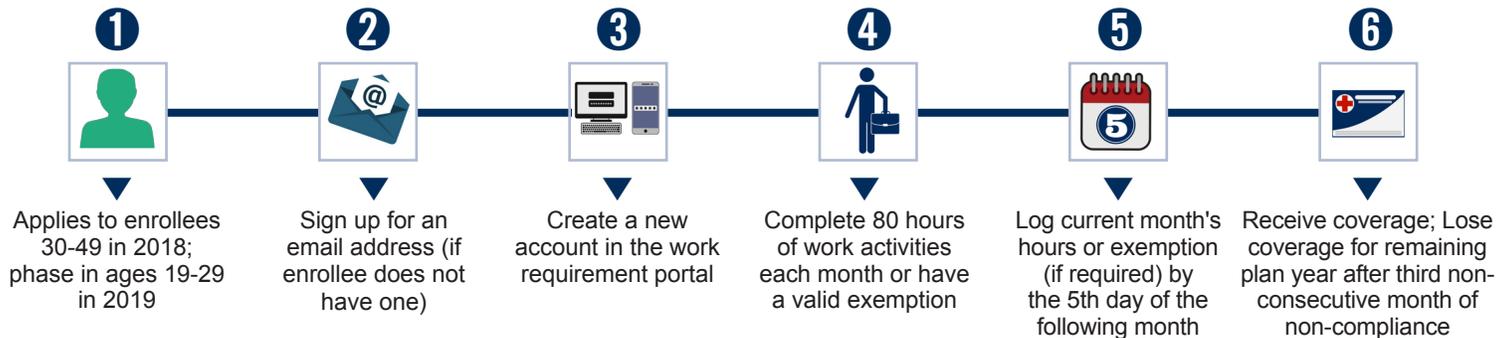
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|--|--|
| ▶ Employment of at least 80 hours per month                            | ▶ Participation in classes on health insurance, use of the healthcare system, or healthy living (maximum of 20 hours per year) |
| ▶ Education (less than full time)                                      | ▶ Fulfillment of SNAP or Transitional Employment Assistance work requirement   |
| ▶ Job or vocational training   | ▶ Job assistance activities or programs through the Arkansas Department of Workforce Services                                  |
| ▶ Volunteer work (must include agency name, address, and phone number) |  |
| ▶ Independent job search (up to 40 hours per month)                    |  |
| ▶ Job search training (up to 40 hours per month)                       |  |

Enrollees must report employment, exemptions, or other work activity for the current month by the fifth day of the following month. Failure to report results in the loss of coverage at the end of the third non-consecutive month of

non-compliance. Those losing coverage as a result of non-compliance will be locked out of coverage for the remainder of the plan year, even if they meet an exemption in the latter part of the year in which they lose coverage. However, they are not barred from reapplying for coverage for the subsequent calendar year. Enrollees demonstrating good cause (e.g., experiencing hospitalization or serious illness, birth or death of a family member, severe inclement weather, etc.) may be considered as exempt from work-activity reporting on a case-by-case basis.

For work-activity and exemption reporting based on enrollee attestation, the state will seek to verify the reporting of a sample of enrollees. If the state discovers falsifications, Arkansas Medicaid will refer the enrollee's information to the appropriate investigative authorities.

**Figure 2: Simplified Work Requirement Process for Arkansas Works Enrollees**



## LITIGATION

Litigation has the potential to stall implementation of work requirements in Arkansas and other states. A class action lawsuit seeking to halt implementation of Kentucky's approved work requirement was filed in January 2018 on behalf of 15 Kentucky Medicaid beneficiaries. The beneficiaries argue that by implementing the work requirement, the state has sought to "transform" Medicaid, which is a legislative power vested in Congress and not the executive branch; therefore, the work requirement approval by HHS is unlawful and unconstitutional. They also argue that the work requirement is an additional eligibility condition that is not explicitly allowed by the Medicaid statute. The beneficiaries also claim that the approved waiver allowing the work requirement does not have an experimental purpose and does not promote the objectives of Medicaid, as required by the statute. Finally, they argue the guidance issued by CMS announced a new Medicaid policy without following proper procedures.

## MEDICAID AS A TEST ENVIRONMENT

With federal approval to implement a work requirement, Arkansas will now test—as the waiver application states—"innovative approaches to promoting personal responsibility and work, encouraging movement up the economic ladder, and facilitating transitions between Arkansas Works, employer-sponsored insurance, and the Marketplace for Arkansas Works employees." These objectives in isolation are certainly laudable, but there remains a question about whether social goals such as employment enhancement can be operationalized within what has traditionally been restricted to a healthcare financing system for low-income populations. As multiple states are approved to implement work requirements, opportunities exist to learn from those strategies that are successful and those that fall short of expectations. Regular compliance monitoring and more rigorous state and federal evaluations should carefully assess results against stated objectives.

## REFERENCES

1. AR Act 6, 2017, 91st General Assembly 1st Special.
2. State of Arkansas Governor's Office. (2017, June 30). [Letter]. Retrieved from <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ar/ar-works-pa2.pdf>
3. U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services. (2018, March 5). Demonstration approval [Letter]. Retrieved from <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ar/ar-works-ca.pdf>