

# DHS Responses to Public Comments Regarding Rule 228 – OPPORTUNITIES FOR SUCCESS INITIATIVE – 2<sup>nd</sup> Notice of Rule Making

Trevor Hawkins for

Legal Aid of Arkansas

**Comment:** Legal Aid of Arkansas (“Legal Aid”) is a nonprofit law firm representing low-income Arkansans in civil legal matters. In doing so, Legal Aid helps clients with issues pertaining to Medicaid and other issues relating to access to healthcare. Legal Aid’s mission is to improve the lives of low-income Arkansans by championing equal access to justice for all, regardless of economic or social circumstances. Through many years of healthcare-related advocacy for our clients, we have gained valuable insight into how policies such as the current proposal can affect low-income beneficiaries in Arkansas. We believe that the proposed amendment runs counter to the purpose of the Medicaid Program and only serves to burden both the State and Medicaid beneficiaries. As a result, we offer these comments to help the Department of Health and Human Services understand how the proposed ARHome Amendment can adversely affect Medicaid beneficiaries in Arkansas.

The new ARHome Opportunities for Success Amendment contradicts the Medicaid program’s purpose of furnishing medical assistance. While the proposed Amendment avoids it by name, the new Opportunities for Success Amendment seeks to return harmful work requirements to the ARHome Medicaid program. The State’s 2018 implementation of work requirements in Medicaid became the first concrete example of how such a policy negatively affects access to medical assistance for beneficiaries. The 2018 work requirements led to over 18,000 low-income Arkansans losing coverage in just a few months.

1 See Benjamin D. Sommers et al., *Medicaid Work Requirements—Results from the First Year in Arkansas* (2019), <https://www.nejm.org/doi/full/10.1056/NEJMSr1901772>.

2 Benjamin D. Sommers, et al., *Medicaid Work Requirements In Arkansas: Two-Year Impacts On Coverage, Employment, And Affordability Of Care* (2020), <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2020.00538>; Madeline Guth, et al., Kaiser Family Foundation, *Understanding the Intersection of Medicaid & Work: A Look at What the Data Say* (2023), <https://www.kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-work-a-look-at-what-the-data-sa>

**Response:**

**Comment:** 1 In addition to the work requirements-related terminations, many more lost healthcare coverage due to ancillary administrative burdens placed on them by the Agency’s system. And, critically, the work requirements did not actually increase employment for beneficiaries.<sup>2</sup>At its core, the newly proposed Opportunities for Success Amendment shares a great deal in common with the previous work requirement program and, as such, will undoubtedly lead to similar outcomes for Legal Aid’s clients.

To start, the Amendment centers on the assignment of a “Success Coach” for beneficiaries flagged for intervention. The activities of the proposed Success Coach are not directly connected to furnishing medical assistance. In the proposal, the Success Coach’s role is to develop an “action plan” for those “who could benefit from more formal coaching and support.” Pg. 9. The Action Plan is supposed to “focus on feasible paths to engagement” and lists “job opportunities and outcomes” and “volunteer activities and outcomes” as the first two “activities” for the plan to address. Pg. 9. Progress is mandatory for these activities, as emphasized by the inclusion of “outcomes”, and Success Coaches will inquire into the progress of an individual on a monthly basis. Pg. 9. Such a process is focused on making progress on an Action Plan a requisite for access to healthcare. The invocation of “care coordination” does not state that any sort of additional medical assistance will be provided or specify what that medical assistance might be. At most, the care coordination process offers non-medical screening and referrals, emphasizing being “on track” and becoming economically independent. By its terms, the Amendment simply restyles work requirements in a new outfit.

Although the Amendment does not threaten termination for non-compliance, it nonetheless penalizes beneficiaries in a way that burdens health care access and frustrates the furnishing of medical assistance. After just three months of a recipient’s non-compliance with an “Action Plan,” it would deny the person access to Qualified Health Plans (“QHPs”) for the remainder of the calendar year. Pg. 10. While the beneficiary does remain eligible for Medicaid, they still experience a notable change in benefits that would be considered an adverse action. The change from a QHP plan to Fee for Service (“FFS”) Medicaid involves a significant change in provider networks, prescription formularies, and benefit limits, thereby disrupting a person’s healthcare by preventing them from seeing the same doctors getting the same medications and receiving the same treatment they had before the change. These differences between QHP and FFS underscore that the proposal is fundamentally punitive, giving something less valuable to people who do not comply with the new mandates.

This is not a hypothetical harm. Over several years, Legal Aid has assisted many clients who suddenly switched from a QHP to FFS Medicaid, either because they were newly determined Medically Frail or were terminated from Medicaid and then reinstated with FFS prior to being assigned to a QHP.

*1 See Benjamin D. Sommers et al., Medicaid Work Requirements—Results from the First Year in Arkansas (2019), <https://www.nejm.org/doi/full/10.1056/NEJMSr1901772>.*

*2 Benjamin D. Sommers, et al., Medicaid Work Requirements In Arkansas: Two-Year Impacts On Coverage, Employment, And Affordability Of Care (2020), <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2020.00538>; Madeline Guth, et al., Kaiser Family Foundation, Understanding the Intersection of Medicaid & Work: A Look at What the Data Say (2023), <https://www.kff.org/medicaid/issue-brief/understanding-the-intersection-of-medicaid-work-a-look-at-what-the-data-say/>*

**Response:**

**Comment:** In one example, a client was erroneously terminated for non-compliance with work requirements, was reinstated to FFS after Legal Aid’s advocacy, and had to wait a month or two before

being enrolled in a QHP. On FFS, he was unable to afford the \$463 cost of medications (previously free or with low co-pays) he had been prescribed for several years for COPD and other chronic conditions. Other clients have been similarly unable to get necessary medications, have delayed surgeries, or have been denied mental health therapy. Such an interruption in care can lead to disparities that affect those who need care.

Because QHP coverage is easier to use and more expansive than FFS, the majority of ARHome beneficiaries are better served by QHP coverage than FFS. The Amendment's proposed penalty thus undermines Medicaid by restricting what medical assistance is otherwise available to them. These sorts of disruptions run completely counter to the proposed Amendment's purported goals of health and economic independence.

The Amendment contains several other elements that will serve to reduce access to medical assistance for beneficiaries. First, the newly proposed Amendment utilizes data matching and requests for information to determine when a beneficiary is subject to the work requirements Success Coach "intervention."

The utilization of data matching to determine compliance with the new work requirements is concerning, given the past experiences of Legal Aid's clients. Pg. 2. Under the original work requirements program, we saw our clients become inundated with requests for verification of information. Often, these verification requests would be based on inaccurate data or mailed to the wrong address. This led to a significant ramp-up of procedural terminations or "churn" and countless interruptions in access to healthcare for Legal Aid's clients. Local offices were often inundated with documentation to scan and process. Cases were often closed because the information was not timely processed for a beneficiary. The redeployment or expansion of this data-matching system will likely lead to the same procedural terminations or reductions in medical services.<sup>3</sup>

Next, for those subject to "intervention," the Amendment will require beneficiaries to make monthly reports to their "Success Coach" to maintain the same level of coverage. The ARHome Amendment does not explain how these Success Coach positions will be staffed across the state or how many beneficiaries will be assigned to each coach. Presumably, the Success Coach duties will just be added to existing case worker duties. Former proposals for this Opportunity for Success Initiative have indicated that 100 Success Coaches would be required to operate the program, with an estimated 10% of beneficiaries under 20% FPL needing "intervention".<sup>4</sup> Based on the Amendment's own 10% estimate, this would require 15,531 or more ARHome beneficiaries engage with Success Coaches to maintain their QHP coverage.<sup>5</sup> Based on this estimate, there would be 155 beneficiaries per Success Coach.

<sup>3</sup> See Dee Mahan, *Families USA, Red Tape Results in Thousands of Arkansas Losing Coverage* (2018), <https://familiesusa.org/resources/red-tape-results-in-thousands-of-arkansans-losing-coverage/>

<sup>4</sup> *Request to Amend the ARHOME Section 1115 Demonstration Project Project No. 11-W-00365/4, Attachment 1, P. 2-3.*

<sup>5</sup> *ARHome Health and Economic Outcomes Accountability Oversight Advisory Panel, Quarterly Report June 27, 2023*, <https://humanservices.arkansas.gov/wp-content/uploads/Quarterly-Report-6.27.23.pdf> (Reporting 323, 572 beneficiaries on ARHome with or waiting QHP coverage); *Arkansas Health & Opportunity for Me Annual Public Forum, June 27, 2023*, <https://humanservices.arkansas.gov/wp>

**Response:**

**Comment:** The understaffing of this position can quickly lead to a just as burdensome process as the original for Legal Aid’s clients. Many of Legal Aid's clients share a common experience of being unable to reach individuals at the Agency to get help with an issue regarding their benefits. They report long wait times on the provided helpline number or the phone system just hanging up on them altogether if they call the local office. Beneficiaries will likely experience the same difficulties and frustrations in getting in touch with a specific state employee who has been designated as their success coach. Low-income Arkansans will be required to spend precious time on an activity that does not directly involve medical assistance.

Each of these elements mirrors the key issues with the prior work requirements program, which led to a loss of coverage for so many. Given the commonalities between the past program and the present proposal, the studies of the past program carry significant weight in illustrating how ineffective work requirements are at furthering the purpose of Medicaid.<sup>6</sup> The discussion of whether work requirements are effective in Medicaid is no longer ambiguous. What work requirements are effective at creating are administrative barriers and interruptions in healthcare access for those who need it the most. These interruptions in medical treatment lead to worse health outcomes and actually hinder a person’s ability to find and maintain work. Legal Aid has seen work requirements-related issues directly lead to the loss of employment for clients.

The New Opportunities for Success Initiative will only Serve to Burden both the State Agency and Beneficiaries. Given that work requirements have been shown only to terminate Medicaid beneficiaries, it does not make sense to reimplement a program that burdens both the state agency and beneficiaries. Furthermore, the policy as a whole is based on the flawed premise that Medicaid beneficiaries are not already working or otherwise in a situation that would exempt them from the work requirements. The truth is that the vast majority are working, caring for a dependent or loved one, or dealing with a chronic condition that prevents them from working.<sup>7</sup> As such, there is no quantifiable benefit to justify the burden on both the Agency and the beneficiaries.

For beneficiaries, the proposed “Success Coaching” service appears to offer nothing of value. Individuals are often aware of what available jobs they are presently qualified for. As noted, most Medicaid beneficiaries already work. Instead of accepting such facts, the proposed Amendment invents a fantasy world untethered from the reality of life around the poverty line. Namely, low-wage jobs are often unstable, with people moving in and out of employment frequently.

*6 See Phil Galewitz, KFF Health News, Study: Arkansas Medicaid Work Requirement Hits Those Already Employed (2019), <https://kffhealthnews.org/news/study-arkansas-medicaid-work-requirements-hit-those-already-employed/>; Ian Hill & Emily Burroughs, Urban Institute, Lessons from Launching Medicaid Work Requirements in Arkansas (2019), [https://www.urban.org/sites/default/files/publication/101113/lessons\\_from\\_launching\\_medicaid\\_work\\_requirements\\_in\\_arkansas.pdf](https://www.urban.org/sites/default/files/publication/101113/lessons_from_launching_medicaid_work_requirements_in_arkansas.pdf); Jennifer Wagner & Jessica Schubel, Center on Budget and Policy Priorities, State’s Experiences confirm Harmful Effects of Medicaid Work Requirements (2020), <https://www.cbpp.org/research/health/states-experiences-confirm-harmful-effects-of-medicaid-work-requirements>;*

*7 See Sommers et al., Medicaid Work Requirements—Results from the First Year in Arkansas.*

**Response:**

**Comment:** 8 And, people face other barriers to stable employment, such as insufficient childcare, unreliable transportation, and inconsistent scheduling. Success Coaching does nothing to meaningfully expand job availability, improve a beneficiary’s qualifications, or address other employment barriers. To the extent that beneficiaries lack information about available jobs, the Success Coaching service is redundant. The QHPs are already required under state law to provide resources and information to their members to help connect them to health and economic opportunities. Moreover, the state has existing workforce assistance infrastructure through its Division of Workforce Services. The addition of Success Coaching simply implements a new set of bureaucratic requirements for meetings, communications, and plans that do not add anything of value and that threaten beneficiaries with a disruption in healthcare coverage. And, since the report of the Success Coach can determine the beneficiary’s future receipt of Medicaid, the relationship would be one that is inherently adversarial.

Even if Success Coaching offered something valuable, the proposed Amendment would establish a whole host of new agency obligations which it does not have the resources to adequately fulfill. The proposed Amendment fails to consider the staffing requirements to process all of the new information and serve those beneficiaries who are seeking help with the added administrative burdens created by the program. The Amendment does not discuss the number of Success Coaches needed, the expected training and resources provided to them, or their location with respect to the beneficiaries. With a beneficiary’s level of Medicaid coverage on the line, it would be critical that these services be sufficiently staffed and trained to prevent interruptions in coverage. Oftentimes, these programs disproportionately affect the many rural communities that struggle with higher unemployment and poverty rates. Legal Aid’s clients in the Arkansas Ozark and Delta regions will likely face many of the same challenges with maintaining coverage that they did during the previous work requirements program.

Work Requirements are not Supported by Federal Law for Medicaid Programs.

Finally, the implementation of work requirements—even when in the guise of engagement requirements or success coaching—for Medicaid is unsupported by federal law. Medicaid is a program designed to furnish medical assistance to eligible beneficiaries.<sup>9</sup> The requirement to furnish medical assistance cannot be waived, even under a Section 1115 waiver. The past implementation of work requirements has well established that it only serves to restrict access to medical assistance and is, therefore, an illegal condition of eligibility for Medicaid benefits. Moreover, the proposed amendment does not justify the complicated two-tiered system it posits, offering no explanation for why so-called “unengaged” beneficiaries would be better served on Arkansas’s FFS program rather than on a QHP. Simply, the proposed amendment would not further the purpose of Medicaid and would rather lead to a decrease in enrollment and restrictions in access to healthcare.

*8 See Marcela Escobari, et al., Realism about reskilling (2019), <https://www.brookings.edu/research/realism-about-reskilling/>*  
*9 See 42 U.S.C. § 1396-1; 42 U.S.C. § 1396d(a)*

**Response:**

**Comment:** Conclusion

The proposed waiver amendment adds nothing to further the program's purpose of providing healthcare. Instead, it is the latest attempt to condition Medicaid coverage on fulfillment of so-called work requirements. So doing, the amendment comes with a bloated infrastructure to monitor the lives of Medicaid beneficiaries, offers nothing of value, and threatens to disrupt the healthcare of hundreds of thousands of Arkansans. Such a program runs counter to the goals of the Medicaid program. There is no justification for implementing it.

**Response:**