Opinion

The Health Reformers' Dilemma

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EVER SINCE THE US SUPREME COURT RULED IN 2012 THAT the expansion of Medicaid as required by the Affordable Care Act (ACA) must be optional rather than mandatory for states, health care advocates have worked heart and soul to convince their state governments to adopt the expansion. For Virginians, the moment arrived in 2018 after years of frustration—with a catch. The only politically viable pathway to expansion included a detested provision, known as the “work requirement,” that obligates many new enrollees to work or else forfeit coverage. What to do?

I explored this dilemma with health justice advocates in Virginia, the first state to confront work requirements that had not previously expanded Medicaid. In November 2017, Virginia voters elected a respected new Democratic governor named Ralph Northam along with an eye-popping jump in the number of Democrats in the state's House of Delegates, leaving them just 2 votes shy of majorities in the House and Senate. In May 2018, solid bipartisan majorities formed to enact Medicaid expansion after years of discouraging defeats. The wrinkle was including a work requirement and imposing cost sharing on Medicaid beneficiaries.

By this time, several other Republican-dominated states that had previously expanded Medicaid had begun pursuing work requirements, including Kentucky, Arkansas, Ohio, New Hampshire, and others. As far back as 2012, the Obama administration had denied state requests for so-called 1115 Medicaid waivers to impose work requirements, swatting down each request as a violation of the core purpose of the Medicaid law. In 2017, the new Trump administration, under Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma, quickly declared its intention to approve such waivers.

The first states to move were Kentucky and Arkansas, Republican-controlled states that had expanded Medicaid under former Democratic governors. The subsequent elections of Republican governors

changed each state's political outlook. In Kentucky, Republican Matt Bevin ran for governor opposing the Medicaid expansion. Upon his election in 2015, he faced the political difficulty of repeal, but in 2017, when the Trump administration arrived, he proposed work requirements. In June 2018, a federal district court in Kentucky halted implementation pending further review and explanation to the court by the Trump and Bevin administrations.

Proponents of Medicaid work requirements say that work promotes better health and so work requirements will improve health among enrollees while weeding out “undeserving” persons from publicly financed benefits. Since the 2017 failure to repeal the ACA in Congress, this has become the most significant policy thrust by Republicans to weaken the ACA's universal coverage goals for low-income Americans.

Opponents argue that this requirement will result in substantial coverage losses among vulnerable populations—including many already working—because of unrealistic reporting requirements (many Medicaid enrollees, for example, have limited computer skills or inconsistent internet access, and Arkansas provides no other way to report work hours). Early evidence shows that more than 4,300 low-income enrollees lost coverage in the early months of implementation.¹ Some states also are seeking to impose lifetime limits on how long someone can stay enrolled and eliminating retroactive and presumptive eligibility. Compliance tracking requires substantial state spending to follow a small subset of Medicaid enrollees, while offering no support for enrollees seeking employment.

In Virginia, advocates from groups such as Virginia Organizing, The Commonwealth Institute for Fiscal Analysis, and the Virginia Poverty Law Center, are well aware of problems with Medicaid work requirements. After 6 years of unsuccessful organizing for Medicaid expansion, they finally won approval, though with a work requirement to obtain needed support from Republican legislators.

Brian Johns, executive director of Virginia Organizing, a statewide grassroots organization committed to economic justice, has been working on health care access since 2009. “We are absolutely against work requirements,” he said. “We celebrate the expansion (now scheduled to take effect on January 1, 2019), AND we make clear that work requirements will fall on the backs of people who are already working. This is not what most people want, but regrettably, for now, it was the best we

could do. We will keep working against the requirements as enrollment moves forward.”

Michael Cassidy, president of The Commonwealth Institute for Fiscal Analysis, notes that advocates successfully separated the expansion from the work provisions. “People will feel the expansion immediately in January,” Cassidy noted, through a “state plan amendment.” The work requirement will proceed separately on a section 1115 waiver track that will require more time and “enable advocates who oppose work requirements to fight another day as we learn from the lived experiences of enrollees in Arkansas and Kentucky.”

For Jill Hanken, a staff attorney at the Virginia Poverty Law Center, achieving the expansion was “a career capstone for me because getting it had been so hard and so purely political. Usually legislators will consider information from all sides on issues. But for over 5 years, opponents ignored all evidence of the benefits that expansion would bring to low-income Virginians, medical providers, and the state’s economy.”

At the end of the day, notes Cassidy, about 400,000 low-income Virginians will become eligible to enroll in Medicaid come January 1, 2019 (1.3 million Virginians receive Medicaid coverage under prior law). State estimates during the legislative debate projected about 23,000 of enrollees are likely to be impacted by the work requirements. From a utilitarian perspective (the greatest good for the greatest number), it was a no-brainer despite the deep ethical revulsion advocates feel toward work requirements.

Once the expansion is in place, it’s harder to go backwards even if work requirements are deemed illegal by federal courts or nullified by a future Democratic president as soon as 2021. Kentucky’s Governor Bevin learned this the hard way once he took office. While difficult, it is not impossible to roll coverage back, as was proven by former Tennessee Governor Phil Bredesen (now Democratic nominee for the US Senate) who ended that state’s path-breaking “TennCare” program in 2005, booting 200,000 low-income enrollees off coverage.

While national advocates worry about the future of Medicaid work requirements if allowed to take root, they agree with the choice made by Virginia advocates. Indeed, as Len Nichols, a former Clinton administration economist who worked on national health reform in Clinton and Obama periods and now a professor at George Mason University in Virginia, told the *Huffington Post*: “If work requirements are what it takes to get conservative states to expand coverage to

hundreds of thousands of people, then I'm inclined to say, 'Let's make it work.'"²

Still, there is no sign that accepting work requirements might loosen the dam of Republican opposition to Medicaid expansion. Indeed, only 3 states—out of 17 not expanding—are candidates for expansion and only because advocates have advanced 2018 state ballot initiatives in Idaho, Nebraska, and Utah. Indeed, states such as Mississippi and South Carolina are seeking work requirement on traditional Medicaid enrollees while still refusing the ACA expansion. Partisan shifts in governorships and state legislatures from the November 2018 elections may be the critical factor for future expansion, not changes in Republican lawmaker attitudes—even with work requirements.

We're in an ambiguous period in this Trump era, fighting retrenchment, and seeking scraps of opportunities to move forward. And a new landscape may be around the corner beginning in 2019.

References

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