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## Medicaid Work Requirements Don't Protect People With Disabilities Yet Another Way Requirements Are at Odds With Medicaid's Objectives

By Anna Bailey and Judith Solomon

Arkansas became the first state to take Medicaid coverage away from people who don't meet a work requirement when it implemented its 1115 demonstration project (or "waiver") in June.<sup>1</sup> Over 8,400 Arkansans lost Medicaid coverage in September and October and can't re-enroll for the rest of the year because they did not report at least 80 hours of work or work-related activities or an exemption for three months. More than 12,000 additional beneficiaries have at least one month of non-compliance and are at risk of losing coverage in the coming months.

It appears likely that people with disabilities who face barriers to work are among both those who have already lost coverage and those at risk of losing it. More Arkansans are losing Medicaid coverage than the presumed target group of people who are not working and do not qualify for an exemption. It's likely that many of them are already working or should be exempt, including people with disabilities who may have particular challenges navigating the additional bureaucracy to claim an exemption or report their work activities.<sup>2</sup>

Taking coverage away from people who don't meet a work requirement is at odds with Medicaid's "central objective" of providing affordable health coverage to people who wouldn't otherwise have

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<sup>1</sup> Arkansas Department of Human Services, Arkansas Works Program: September 2018 Report, October 15, 2018, [http://d31hzhk6di2h5.cloudfront.net/20181015/d9/50/39/04/d3b5bd23a6cef7ccec3e4716/101518\\_AWreport.pdf](http://d31hzhk6di2h5.cloudfront.net/20181015/d9/50/39/04/d3b5bd23a6cef7ccec3e4716/101518_AWreport.pdf); Arkansas Department of Human Services, Arkansas Works Program: August 2018 Report, September 15, 2018, [https://www.dropbox.com/sh/4urhnb1tpb8dxeb/AABhgIpm\\_4zCkYUzvjET9Ofpa?dl=0&preview=091218\\_AWReport\\_Final.pdf](https://www.dropbox.com/sh/4urhnb1tpb8dxeb/AABhgIpm_4zCkYUzvjET9Ofpa?dl=0&preview=091218_AWReport_Final.pdf).

<sup>2</sup> The term "disability" can have many different meanings in different contexts. For the purposes of this paper, disability refers to a broad range of conditions that impact people's daily functioning or the functioning of a major bodily function, consistent with the Americans with Disability Act definition of disability. See 42 U.S.C. § 12102.

it.<sup>3</sup> It's not surprising that a large share of Arkansas beneficiaries are losing coverage, because adding complexity to Medicaid enrollment and eligibility processes through additional paperwork and reporting requirements, such as those Arkansas has imposed, leads to sharp drops in coverage among eligible people.<sup>4</sup>

Medicaid is the largest payer of long-term services and supports and has long been a critical source of health coverage for many people with disabilities, helping them obtain the affordable, quality health care they need to work, pursue other life goals, and live independently.<sup>5</sup> While many people with disabilities qualify for Medicaid because they receive Supplemental Security Income (SSI), millions more are covered under the Affordable Care Act's Medicaid expansion, which made coverage available to people with disabilities regardless of whether they qualify for disability benefits.

People with disabilities often face dire consequences when they lose Medicaid. Losing coverage can lead to interruptions in treatment and contribute to worsening health and quality of life, erect barriers to employment, and cause financial hardship.<sup>6</sup> Moreover, some disabilities and health conditions, such as mental health and chronic physical health conditions, can make it harder for people to meet the new reporting or work requirements, putting people with disabilities at greater risk of losing coverage.

The Americans with Disabilities Act (ADA) protects people with disabilities from discrimination in public programs such as Medicaid and requires states to provide "reasonable modifications" (sometimes referred to as reasonable *accommodations*) to help people with disabilities overcome barriers within the program that prevent them from receiving benefits.<sup>7</sup> (See text box.) Although the ADA applies to Arkansas' work requirement waiver, the state has made little effort to ensure compliance with it.<sup>8</sup> Thus, people with disabilities are at heightened risk of losing their Medicaid coverage, even if they are working or qualify for an exemption from the work requirement.

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<sup>3</sup> Memorandum Opinion, *Steward v. Azar*, United States District Court for the District of Columbia, Civil Action No. 18-152 (JEB), June 29, 2018. Holding in part that providing affordable health coverage is "a central objective of Medicaid."

<sup>4</sup> Jennifer Wagner and Judith Solomon, "States' Complex Medicaid Waivers Will Create Costly Bureaucracy and Harm Eligible Beneficiaries," Center on Budget and Policy Priorities, May 23, 2018, [https://www.cbpp.org/research/health/states-complex-medicaid-waivers-will-create-costly-bureaucracy-and-harm-eligible#\\_ftnref30](https://www.cbpp.org/research/health/states-complex-medicaid-waivers-will-create-costly-bureaucracy-and-harm-eligible#_ftnref30).

<sup>5</sup> Steve Eiken *et al.*, "Medicaid Expenditures for Long-Term Services and Supports in FY 2016," Medicaid Innovative Accelerator Program, May 2018, <https://www.medicaid.gov/medicaid/ltss/downloads/reports-and-evaluations/ltss expenditures2016.pdf>

<sup>6</sup> Hannah Katch, Jennifer Wagner, and Aviva Aron-Dine, "Taking Medicaid Coverage Away From People Not Meeting Work Requirements Will Reduce Low-Income Families' Access to Care and Worsen Health Outcomes," Center on Budget and Policy Priorities, August 13, 2018, <https://www.cbpp.org/research/health/taking-medicaid-coverage-away-from-people-not-meeting-work-requirements-will-reduce>.

<sup>7</sup> 28 C.F.R. §§ 35.106 and 35.130(b)(7); See 42 U.S.C. § 12131(2). Section 504 of the Rehabilitation Act provides similar protections against discrimination on the basis of disability by organizations that receive federal funding. 29 U.S.C. § 794(a). Section 1557 of the Affordable Care Act also prohibits any programs that receives funding from the Department of Health and Human Services from discriminating against people on the basis of disability. 42 U.S.C. § 18116.

<sup>8</sup> Both CMS' guidance on work requirements and the terms and conditions of Arkansas' waiver acknowledge that the ADA applies to the work requirement. Centers for Medicare & Medicaid Services letter to state Medicaid directors (18-002), January 11, 2018, <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf>; Centers for Medicare & Medicaid Services, Special Terms and Conditions: Arkansas Works, March 5, 2018,

CMS has approved section 1115 waivers for Kentucky, Indiana, New Hampshire, and Wisconsin that would let those states also implement Medicaid work requirements.<sup>9</sup> Like Arkansas, these states' waivers acknowledge that the ADA applies to the work requirement and related reporting requirements, but they remain critically flawed. Arkansas' failure to adequately protect people with disabilities and their ADA rights is more evidence that work requirements are fundamentally at odds with the ADA's promise to protect people with disabilities from discrimination and unfair treatment as well as with Medicaid's objective of providing affordable coverage to people who wouldn't otherwise have it.

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## The Americans With Disabilities Act and Medicaid

Since its passage in 1990, the Americans with Disabilities Act (ADA) has been central to making significant progress in many areas of life for people with disabilities, and it remains a critical tool for advancing their well-being and dignity. The ADA prohibits discrimination on the basis of disability and requires government and many private businesses to make reasonable changes to how they operate (called making reasonable modifications) to ensure that people with disabilities have equal access, including in the workplace, schools, public programs such as Medicaid, and privately owned "public accommodations" such as hotels and restaurants.<sup>a</sup>

The ADA protects people with a broad range of disabilities and health conditions, extending rights to people who have conditions that affect at least one major life activity or major bodily function. Major life activities include: "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking standing, lifting, bending, speaking, breathing, learning reading, concentrating, thinking, communicating and working."<sup>b</sup> Major bodily functions include: "the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

Medicaid works in concert with the ADA to help people with disabilities pursue their goals and live with as much independence as possible. Under the landmark Supreme Court decision *Olmstead v L.C.*, the ADA requires states and localities to generally serve people with disabilities in the community rather than in institutions, such as nursing homes or mental health facilities, when community-based services can appropriately meet their needs. Medicaid is the main funding source for the long-term, home- and community-based services and supports that states rely on to serve people in the community, as the *Olmstead* decision requires.<sup>c</sup>

<sup>a</sup> 42 U.S.C. § 12101 et seq.

<sup>b</sup> 42 U.S.C. § 12102

<sup>c</sup> Jessica Schubel, "Medicaid is Key to Implementing *Olmstead's* Community Integration requirements for People with Disabilities," Center on Budget and Policy Priorities, June 22, 2018.

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<https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ar/ar-works-ca.pdf>

<sup>9</sup> While CMS approved Kentucky's waiver, a federal court has since vacated CMS' approval of the waiver because CMS failed to consider the proposal's impact on coverage. CMS then opened a new 30-day comment period on the proposal, and officials signaled their intent to again approve Kentucky's proposal even before the comment period ended on August 18. For more, see Judith Solomon, "Commentary: Administration Can't Justify Re-Approving Waiver Taking Coverage Away from Kentuckians," August 23, 2018, [https://www.cbpp.org/health/commentary-administration-cant-justify-re-approving-waiver-taking-coverage-away-from#\\_ftn1](https://www.cbpp.org/health/commentary-administration-cant-justify-re-approving-waiver-taking-coverage-away-from#_ftn1).



## Arkansas' Implementation of Work Requirements Falls Short of ADA Requirements

More people are losing Medicaid coverage than the presumed target group of people who are not working and do not qualify for an exemption, which suggests that some people with disabilities who face barriers to work are losing coverage. The target population for Arkansas' work requirement only includes about 4 percent of people who are subject to the work requirement in 2018 — adults between 30-49 whose Medicaid receipt isn't due to also receiving SSI — the Urban Institute estimates.<sup>10</sup> Yet 23 percent of these adults didn't fulfill the requirements in September alone, putting their benefits at risk.

Work requirements create numerous roadblocks that could cause eligible people with disabilities to lose Medicaid. In order to meet the requirement, those who aren't automatically exempted based on data the state already has available must use a personal email address to set up an online account and link that account to their health coverage using a multi-step process that advocates and providers have described as confusing.<sup>11</sup> Beneficiaries must then use the online portal to report their work activities each month or claim an exemption, both of which are multi-step processes; requirements about how frequently people need to report an exemptions varies depending on the type of exemption, complicating the process further. Those who have been informed that they will lose their coverage because they didn't complete the reporting requirements may request a good cause exemption, which is an online process separate from the portal people must use to report work activities or request an exemption.

- **People with disabilities who qualify for exemptions may not be able to obtain them.**

Arkansas requires people to report exemptions through an online portal, which typically involves completing more than ten separate steps online.<sup>12</sup> People must also periodically update their exemption status and be prepared months later for quality assurance checks in which Arkansas Department of Human Services personnel could demand documentation verifying they qualify for the exemption or risk retroactively losing their coverage, which could mean they could be charged for the cost of any care received during that period.<sup>13</sup> Some people's disabilities or health conditions may make it harder to complete those steps, such as mental health and cognitive conditions that make it harder to focus, follow complex

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<sup>10</sup> Anuj Gangopadhyaya *et al.*, "Medicaid Work Requirements in Arkansas: Who Could Be Affected, and What Do We Know about Them?" Urban Institute, May 2018, [https://www.urban.org/sites/default/files/publication/98483/2001846\\_2018.05.23\\_arkansas\\_medicaid\\_finalized.pdf](https://www.urban.org/sites/default/files/publication/98483/2001846_2018.05.23_arkansas_medicaid_finalized.pdf).

<sup>11</sup> MaryBeth Musumeci, Robin Rudowitz, and Cornelia Hall, "An Early Look at Implementation of Medicaid Work Requirements in Arkansas," Kaiser Family Foundation, October 2018, <http://files.kff.org/attachment/Issue-Brief-An-Early-Look-at-Implementation-of-Medicaid-Work-Requirements-in-Arkansas>.

<sup>12</sup> Musumeci, Rudowitz, and Hall.

<sup>13</sup> When someone's Medicaid coverage is terminated for failure to comply with the work requirement, their case is referred for investigation for potential overpayment. Centers for Medicare & Medicaid Services, "Eligibility and Enrollment Monitoring Plan: Arkansas Works – Work and Community Engagement Amendment," May 24, 2018, <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ar/Health-Care-Independence-Program-Private-Option/ar-works-community-engagement-05242018.pdf>.

instructions, or gather and keep track of documentation needed to verify that they qualify for an exemption.

- **Some people with disabilities that make it harder to meet the work requirement will still be at risk of losing coverage.** The “medically frail” exemption is narrow, excluding many people with serious, ADA-protected health conditions who will be subject to the work requirement.<sup>14</sup> Just 11 percent of Arkansas Medicaid beneficiaries who were subject to the work requirement in September qualified as medically frail.<sup>15</sup> Yet, among Arkansas beneficiaries who likely do not qualify for an exemption and are not working, nearly 30 percent report having one or more serious health limitations, and 17 percent report having two or more such limitations.<sup>16</sup> Similarly, exemptions for people with short-term or acute conditions might not be available for people with chronic conditions that limit their work activities but don’t qualify them for a medically frail exemption; less than 2 percent of people subject to the work requirement received an exemption for experiencing a “short-term incapacitat[ion]” in September.<sup>17</sup>
- **Some people with disabilities who are working or searching for work could still lose coverage.** Many people with disabilities can and do work, though some have conditions such as multiple sclerosis that can limit the number of hours they can work or require supportive services to help maintain their hours, or depression or anxiety that can make it harder to report their hours every month. In addition, people with disabilities face higher rates of unemployment, raising their risk of losing coverage because they face more barriers to finding a job.<sup>18</sup>

Preventing these and other roadblocks from causing people with disabilities to lose coverage would require a comprehensive and far more extensive strategy for identifying people in need of exemptions or other reasonable modifications than Arkansas’ efforts to date.

### **Inadequate Explanation of Rights and Procedures Under the ADA**

If people with disabilities do not understand their rights under the ADA, they won’t know that they may be entitled to reasonable modifications and won’t request them. Yet Arkansas has placed the burden on people with disabilities to know their rights under the ADA and to determine how to request accommodations. Arkansas’ efforts to inform Medicaid beneficiaries about the work requirements have not reached all beneficiaries, and advocates and providers have described the

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<sup>14</sup> Medicaid regulations define “medically frail” individuals as including at least “individuals with disabling mental disorders (including children with serious emotional disturbances and adults with serious mental illness), individuals with chronic substance use disorders, individuals with serious and complex medical conditions, individuals with a physical, intellectual or developmental disability that significantly impairs the ability to perform 1 or more activities of daily living, or individuals with a disability based on Social Security criteria.” 42 C.F.R. § 440.315(f).

<sup>15</sup> Arkansas Department of Human Services, Arkansas Works Program: September 2018 Report.

<sup>16</sup> Anuj Gangopadhyaya *et al.*

<sup>17</sup> Arkansas Department of Human Services, Arkansas Works Program: September 2018 Report.

<sup>18</sup> Bureau of Labor Statistics, Persons with Disability: Labor Force Characteristics Summary, July 21, 2018, <https://www.bls.gov/news.release/disabl.nr0.htm>.

state's written notices as confusing for beneficiaries.<sup>19</sup> Moreover, the notices give only a vague indication that some supports are available to help people with disabilities obtain notices in an accessible format, and they fail to fulfill the state's obligation of making information about the ADA available to beneficiaries in a way that is "necessary to apprise" them of their rights.<sup>20</sup>

Rather than providing plain-language explanations of people's rights under the ADA, Arkansas' numerous notices typically only provide a phone number to call "if you have questions regarding this notice, including if you need an accessible format for individuals with disabilities," offering no indication of reasonable modifications beyond getting accessible versions of the notice.<sup>21</sup> In addition, the Arkansas Works website that people generally must use to report their work activities or exemptions also lacks meaningful information about the ADA or the availability of reasonable modifications.

Arkansas' waiver requires the state to issue a "procedural desk guide" for its staff detailing the reasonable modification process, and to post the guide online. While the guide alone likely would not be enough to ensure that people understand their ADA rights, it's critical for staff implementing Medicaid and the work requirement to understand the reasonable modification process in order to help people obtain modifications. There is no evidence, however, that such a guide has been issued or posted online.

### **Arkansas Lacks a Comprehensive System for Providing Reasonable Modifications Needed to Protect People with Disabilities**

While the terms and conditions of Arkansas' waiver acknowledge that the state must "maintain a system that provides reasonable modifications related to meeting the community engagement requirement" for people with disabilities, Centers for Medicare and Medicaid Services (CMS) guidance provides little detail about what a system would look like.<sup>22</sup> The only practical way Arkansas can meet its responsibility is to screen or identify people who qualify for exemptions or need other reasonable modifications to meet the requirement, as some states have been required to do in their Temporary Assistance for Needy Families (TANF) programs.

Unlike Medicaid, states *must* require TANF recipients to engage in work activities and impose sanctions (by reducing or terminating benefits) if they don't meet the requirement, though states can decide which recipients must participate.<sup>23</sup> Complaints have raised serious questions about whether

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<sup>19</sup> Musumeci, Rudowitz, and Hall.

<sup>20</sup> 28 C.F.R. § 35.106. "A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the" ADA.

<sup>21</sup> See e.g., Arkansas Department of Human Services, Example – Non-Compliance First Month, August 10, 2018, [https://ardhs.sharepoint.com/ARWorks/Notice\\_Samples/6.%20Example%20%E2%80%93%20Non-Compliance%20First%20Month.pdf](https://ardhs.sharepoint.com/ARWorks/Notice_Samples/6.%20Example%20%E2%80%93%20Non-Compliance%20First%20Month.pdf).

<sup>22</sup> Centers for Medicare & Medicaid Services letter to state Medicaid directors.

<sup>23</sup> Center on Budget and Policy Priorities, "Policy Basics: An Introduction to TANF," August 15, 2018, <https://www.cbpp.org/research/policy-basics-an-introduction-to-tanf>. While states can set their own policies on who



several states were fulfilling their obligations to protect people’s ADA rights when implementing the work requirements. Many of the resulting compliance agreements that detail how states agree to meet their ADA obligations require the states (such as North Carolina, Oregon, and Wisconsin) to screen TANF applicants and participants to determine whether they had a disability that could be a barrier to meeting the work requirement, and to take people’s disabilities into account before imposing sanctions.<sup>24</sup>

However, it’s unclear how Arkansas could implement the work requirement in a way that upholds the ADA and ensures people with disabilities do not unnecessarily lose coverage. At the very least, doing so would require substantial increases in staff and infrastructure for beneficiary services. TANF programs require in-person interviews with beneficiaries, creating a natural point in the program’s existing infrastructure to build in more engagement and facilitate better serving people with disabilities than Medicaid. In contrast, Medicaid eligibility determinations largely lack in-person interaction; states are prohibited from requiring most Medicaid beneficiaries to complete what can be burdensome in-person interviews when renewing their coverage.<sup>25</sup> So identifying people who need exemptions or other reasonable modifications would require a substantial increase in outreach activities and more in-person strategies than the state has used to date without adding new requirements that people attend in-person meetings that can become barriers to coverage.

Yet Arkansas officials have made it clear that they are avoiding increasing staff to implement the work requirement, even though the waiver terms require the state to “make good faith efforts to screen, identify and connect... beneficiaries to existing community supports” to help people meet the work requirement, including people with disabilities.<sup>26</sup> Moreover, the state would need to fund the reasonable modifications for those who don’t qualify for exemptions, because CMS explicitly prohibits Medicaid reimbursement for reasonable modifications, such as supportive services.<sup>27</sup>

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must participate in work activities and what an individual must do as part of those activities, their decisions are heavily influenced by the federal TANF work participation rates, because failure to meet those rates results in fiscal penalties.

<sup>24</sup> U.S. Department of Health and Human Services, Voluntary Compliance Agreement Between the United States Department of Health and Human Services Office for Civil Rights and the Wisconsin Department of Children and Families, <https://www.hhs.gov/sites/default/files/ocr/civilrights/activities/examples/TANF/witanfagreement.pdf>; U.S. Department of Health and Human Services, Voluntary Compliance Agreement Between the United States Department of Health and Human Services Office for Civil Rights and the Oregon Department of Human Services, 2004, <https://www.hhs.gov/sites/default/files/ocr/civilrights/activities/examples/TANF/ordhsagreement.pdf>; U.S. Department of Health and Human Services, Voluntary Compliance Agreement Between the United States Department of Health and Human Services Office for Civil Rights and the North Carolina Department of Health and Human Services Division of Social Services, [https://www.hhs.gov/sites/default/files/ocr/civilrights/activities/examples/TANF/nc\\_dhhs\\_tanf.pdf](https://www.hhs.gov/sites/default/files/ocr/civilrights/activities/examples/TANF/nc_dhhs_tanf.pdf).

<sup>25</sup> States cannot require beneficiaries whose eligibility is determined using modified adjusted gross income to attend in-person interviews as part of the renewal process. 42 C.F.R. § 435.916(a)(3)(iv).

<sup>26</sup> Benjamin Hardy, “Medicaid advocate criticizes Arkansas’ Works’ email-only reporting for work requirements,” *Arkansas Times*, April 28, 2018, <https://www.arktimes.com/ArkansasBlog/archives/2018/04/28/medicaid-advocate-criticizes-arkansas-works-email-only-reporting-for-work-requirements>. The article quotes Arkansas Department of Human Services Director Cindy Gillespie as saying, “if you implement it the old-fashioned way of ‘Come into our county office,’ we would have to hire so many people — and that just doesn’t make sense.” Centers for Medicare & Medicaid Services, Special Terms and Conditions.

<sup>27</sup> Centers for Medicare & Medicaid Services letter to state Medicaid directors.



Arkansas instead is relying almost exclusively on exemptions to the work requirement to protect beneficiaries with disabilities, putting the burden on them to request other kinds of reasonable modification without informing them that such modifications may be available. Exemptions from the work requirement fail to ensure that people with disabilities are not erroneously denied health coverage.

### *Barriers to Claiming Exemptions*

While Arkansas automatically exempts some people from reporting work activities if the state already has key data available, such as information about their work hours or medically frail status, the state's data are limited and many people need to claim and prove they are exempt. For those who need to affirmatively claim an exemption, the onus is on them to identify that they may qualify and to navigate the process of claiming and renewing an exemption. But some of the very health limitations that qualify people for an exemption could prevent them from understanding they qualify, requesting the exemption, or proving that they qualify. For example, someone with a traumatic brain injury that makes it difficult to concentrate and understand complex instructions may need one-on-one guidance in understanding the exemptions or in gathering the documentation needed to prove that they qualify and avoid losing coverage.

While the waiver acknowledges that some people may need reasonable modifications that help them claim an exemption, there is no evidence that Arkansas has made these kinds of reasonable modifications readily available, let alone that the state has the required systems in place to identify people who may need support to claim their exemption. One Medicaid health plan has reported that many of the beneficiaries who receive case management to help manage their health conditions and find resources to meet their basic needs are subject to Arkansas' work requirement, but there is no systematic effort to provide them with the help they likely need in navigating the work requirement.<sup>28</sup>

### *Lack of Help With Completing Work Activities*

Even if everyone who qualified for an exemption received one, some people with disabilities would be subject to the work requirement. Many people with disabilities can and do work, but some have chronic conditions that keep them from consistently working enough hours to meet the monthly requirement or need specialized supportive services to find and maintain employment, but that might not be severe enough to qualify for a medically frail exemption and isn't a temporary condition that could qualify for an exemption for acute or short-term "incapacitat[ion]". Nearly one-third of people in Arkansas who likely do not qualify for an exemption and have been working are not working enough to meet the 80-hour requirement.<sup>29</sup>

For example, consider individuals with chronic health conditions such as diabetes, heart disease, or depression who steadily work enough hours to meet Arkansas' monthly requirement for several months, but whose conditions worsen. They may need supportive services to maintain their hours or need to reduce their work hours below the monthly requirement until their conditions improve. Without a reasonable modification, such as being permitted to work fewer hours than the monthly requirement, being allowed to count alternative kinds of activities as work activities, or receiving

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<sup>28</sup> Musumeci, Rudowitz, and Hall.

<sup>29</sup> Anuj Gangopadhyaya *et al.*

effective support services that help them maintain their work hours, they could lose the health coverage that they need to regain their health and continue working. Yet there is no evidence that Arkansas is evaluating whether people can meet the work requirement or need reasonable modifications, and reports suggest that few beneficiaries have requested reasonable modifications.<sup>30</sup>

### *Inadequate Support to Meet Reporting Requirements*

People must report their work or work-related activities online each month. But first, they need to be able to understand the requirement and the reporting process, concentrate long enough to complete the process, and navigate the online portal or access a county office for assistance. Providers, health plans, and beneficiary advocates have reported that the procedures for reporting work activities (and requesting exemptions) are complex and difficult for beneficiaries to navigate.<sup>31</sup> Disabilities that interfere with concentration, understanding, vision, mobility, or other areas of functioning could make it even harder to complete reporting, and some people may need reasonable modifications to prevent that from becoming a barrier to coverage.

For example, the pages that people must navigate to access the online portal that people must use to report their activities are not accessible for people with visual impairments. While the state claims that its portal is ADA-compliant and the portal itself is fairly accessible, the initial pages that an enrollee must click through before they can log in to the portal contain features that, among other shortcomings, make it hard for people with visual impairments to access; the pages are hard for a screen reader to process and have inadequate contrast, making navigation problematic.<sup>32</sup>

While the waiver terms and conditions acknowledge the need for reasonable modifications that assist people in meeting reporting requirements, there's no evidence that people are receiving enough supports or adjustments to the work requirement policy (such as being allowed to work fewer hours than the monthly requirement) that they need to overcome these kinds of barriers. For instance, while many beneficiaries need help navigating the reporting process, very few are using the option to designate a third party, called a "registered reporter," to report their work activities on their behalf, at least in part because efforts to educate people about the work requirements have not reached everyone.<sup>33</sup>

### *Requesting a Hearing or Appealing Benefit Termination*

While some people with disabilities may be able to request a good cause exemption — available to beneficiaries who can't comply or report compliance due to circumstances beyond their control —

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<sup>30</sup> Musumeci, Rudowitz, and Hall. The terms and conditions of Arkansas' waiver require Arkansas to report to CMS the number and percentage of beneficiaries who requested reasonable accommodations and the number and percentage and type of accommodations provided, but to date, no such reports have been made public. Centers for Medicare & Medicaid Services, Special Terms and Conditions.

<sup>31</sup> Musumeci, Rudowitz, and Hall.

<sup>32</sup> The webpages referred to begin at <https://www.access.arkansas.gov/>, which mailed notices direct enrollees to go to before logging in to the portal where they report their work activities or exemptions. U.S. Department of Justice, Accessibility of State and Local Government Websites to People with Disabilities, June 2003, [https://www.ada.gov/websites2\\_scrn.pdf](https://www.ada.gov/websites2_scrn.pdf).

<sup>33</sup> Musumeci, Rudowitz, and Hall.

for a month of non-compliance as a last resort after they receive notice that they are not meeting the work requirement, the state granted just 45 good cause exemptions in August and 140 in September for non-compliance in the prior month. But *nearly 16,000 people* did not meet the reporting requirement in each of those prior months, likely reflecting lack of awareness of this option.<sup>34</sup>

The appeals process is the final recourse to challenge benefit termination and prevent loss of coverage. But for the same reasons that some people with disabilities need reasonable modifications to request exemptions or meet reporting requirements, some people with disabilities may need reasonable modifications that help them appeal the termination of their Medicaid benefits due to the work requirement. While notices that inform people that they are losing their coverage include some information about their appeal rights, again, they do not indicate that reasonable modifications could be available to help people with disabilities navigate the appeals process.

## People With Disabilities Face Serious Harm From Loss of Coverage

The lack of reasonable modifications to help people with disabilities overcome the many obstacles to meeting Arkansas' work requirement puts them at serious risk of losing their Medicaid coverage. Losing Medicaid could lead to worse health, more barriers to employment, and unnecessary financial hardship.

- **Loss of access to care and interruptions to treatment that can worsen health.** Losing coverage is especially harmful to people with disabilities who rely on regular care to manage their conditions. Coverage interruptions can lead to increased emergency room visits, hospitalizations, and admissions to mental health facilities.<sup>35</sup> For instance, losing Medicaid could interrupt or limit access to individual or group therapy or case management services for people with serious mental health conditions, which could increase their risk of becoming institutionalized instead of being able to manage their health while living independently in the community.
- **More barriers to work.** Limited access to care and worse health can make it harder to work, leading to job loss or reduced hours among people with disabilities who work. Arkansas' work requirement threatens access to the services that can help people with significant disability-related barriers find work and keep jobs, all in the name of promoting employment.
- **Financial hardship.** Losing coverage exposes people to potentially devastating medical expenses and debt. That financial risk is high for people with disabilities who often need ongoing or high-cost health care. People with disabilities are already at greater risk of homelessness, and additional financial hardship could make it harder for them to afford other necessities like housing and food, which could contribute to bankruptcy or homelessness and further jeopardize their health and well-being.<sup>36</sup>

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<sup>34</sup> Arkansas Department of Human Services, Arkansas Works Program: September 2018 Report, October 15, 2018, [http://d31hzhk6di2h5.cloudfront.net/20181015/d9/50/39/04/d3b5bd23a6cef7ccec3e4716/101518\\_AWreport.pdf](http://d31hzhk6di2h5.cloudfront.net/20181015/d9/50/39/04/d3b5bd23a6cef7ccec3e4716/101518_AWreport.pdf).

<sup>35</sup> Leighton Ku and Erika Steinmetz, "Bridging the Gap: Continuity and Quality of Coverage in Medicaid," Association for Community Health Plans, September 10, 2013, <http://www.communityplans.net/Portals/0/Policy/Medicaid/GW%20Continuity%20Report%20%209-10-13.pdf>.

<sup>36</sup> National Health Care for the Homeless Council, "Disability, Employment & Homelessness," 2011, [https://www.nhchc.org/wp-content/uploads/2011/09/disability2011\\_-final.pdf](https://www.nhchc.org/wp-content/uploads/2011/09/disability2011_-final.pdf).