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REPEALING HEALTH REFORM'S MAINTENANCE OF EFFORT PROVISION COULD CAUSE MILLIONS OF CHILDREN, PARENTS, SENIORS, AND PEOPLE WITH DISABILITIES TO LOSE COVERAGE

Repeal Would Also Cause Loss of Jobs

By Judith Solomon

The Affordable Care Act requires states to maintain their current Medicaid and Children's Health Insurance Program eligibility standards until 2014, when new, nationwide Medicaid eligibility standards take effect and state-based health insurance exchanges will begin operating. However, citing state budget problems, a number of Republican governors have asked Congress to repeal these "maintenance of effort" provisions so that they can reduce Medicaid and CHIP expenditures by covering fewer people.

Repealing the maintenance-of-effort provision would almost certainly result in a sharp increase in the number of Americans who are uninsured, as states scale back eligibility for low-income children, parents, seniors, and/or people with serious disabilities — the principal groups of people whom Medicaid covers. During the recession of the early 2000s, some 34 states cut back Medicaid and CHIP eligibility — causing 1.2 million to 1.6 million low-income adults and children to lose coverage — before Congress acted to prevent states from making further eligibility cuts as a condition of receipt of federal fiscal assistance enacted in 2003.

State budget shortfalls are substantially larger today than in those years; states face estimated shortfalls of about \$125 billion for state fiscal year 2012, which begins on July 1 in most states. In addition, many governors have said they oppose *any* revenue increases to help close these shortfalls, despite the magnitude of the budget gaps. If the maintenance-of-effort provision is repealed now, the number of low-income Americans cut off Medicaid and cast into the ranks of the uninsured will likely far outstrip the number who lost insurance in the early 2000s. Arizona alone is seeking to end Medicaid coverage for 280,000 people.

Adverse Impact on the Economy

Repeal of the maintenance-of-effort provision also would slow economic growth and job creation. It would reduce demand for goods and services in an economy that continues to operate far below capacity and to be burdened by high unemployment primarily because demand remains inadequate.

Repeal of the MOE provision would have adverse economic effects for two reasons. First, every dollar in reduced state Medicaid expenditures would result (on average across the states) in a reduction of \$1.33 in federal Medicaid expenditures, for a total reduction of \$2.33. If a state used the dollar it saved in state Medicaid funds elsewhere in its budget, there still would be a net withdrawal of \$1.33 from the economy — the opposite result of what the weak economy needs.

Second, despite their budget deficits, a number of governors — especially newly elected Republican governors — campaigned on platforms calling for new *tax cuts*. For example, at the same time that she has proposed cutting 280,000 people off Medicaid, Governor Jan Brewer of Arizona has proposed large corporate tax cuts. Governors in Georgia, Idaho, Iowa, Michigan, and Pennsylvania also have proposed large corporate tax reductions. Governor Kasich of Ohio wants to eliminate that state’s estate tax.

In those and many other states, deep cuts in Medicaid eligibility would likely be used, at least in part, to free up room for bigger tax cuts than the state could otherwise afford. Yet mainstream economics suggests (and studies such as those carried out by the Congressional Budget Office and Mark Zandi, chief economist for Moody’s Analytics.com show) that most such tax cuts have a far lower “bang for the buck” in promoting economic growth and creating jobs in a weak economy than does the Medicaid spending that would be reduced, because a substantial share of the tax cuts would be *saved* rather than spent.¹ (As has been widely reported, U.S. corporations already are sitting on \$1.8 trillion in assets rather than using those funds to expand and hire back workers; they are doing so primarily because there continues to be insufficient demand in the economy for the goods and services the corporations produce.) The net result of repealing the maintenance-of-effort provision thus almost certainly would be weaker economic growth and the loss of the thousands of jobs that would have been created by the lost Medicaid spending.

This analysis examines these issues, with emphasis on how repeal of the maintenance-of-effort provision could affect children, working-poor parents, the elderly, and people with disabilities.

Background on the Maintenance of Effort Provisions

The Affordable Care Act includes two provisions that hold Medicaid and CHIP coverage steady until 2014, when the coverage expansions in the Act will take effect and the new health insurance exchanges will begin operations.²

- The *Medicaid* maintenance-of-effort provision requires a state to maintain its current Medicaid eligibility standards and application and renewal procedures for *adults* until the state has an

¹Congressional Budget Office, “Policies for Increasing Economic Growth and Employment in 2010 and 2011,” January 2010 (Table 1); Moody’s Analytics, “The Economic Impact of Tax Cut Proposals: A Prudent Middle Course,” September 15, 2010 (Table 4). Analysts such as Zandi and the Congressional Budget Office have not directly estimated the “bang-for-the-buck” of federal Medicaid expenditures, but these expenditures generate additional demand for goods and services (in this case health care for low-income households) analogous to food stamps and unemployment insurance, which Zandi and CBO have found to have much higher bang-for-the-buck than reductions in income tax rates or business tax cuts.

² For a full description of the maintenance effort provisions in the Affordable Care Act, see “Holding the Line on Medicaid and CHIP: Key Questions and Answers About Health Care Reform’s Maintenance-of-Effort Requirements,” Center on Budget and Policy Priorities and Georgetown Center for Children and Families, March 26, 2010.

operational health insurance exchange. The provision also requires states to maintain their Medicaid eligibility standards and application and renewal procedures for *children* until October 1, 2019. (There is one exception: states whose Medicaid programs cover adults who aren't pregnant or disabled and have incomes *above* 133 percent of the poverty line can roll coverage back to that level after January 1, 2011, if the state certifies that it has a budget deficit.³ This exception reflects the fact that under the health reform law, states will be required, starting in 2014, to provide Medicaid coverage to non-elderly adults with incomes *up to* 133 percent of the poverty line but not above that.)

- The *CHIP* maintenance-of-effort provision requires that states maintain their CHIP eligibility standards and application procedures until October 1, 2019. This provision makes clear that states can limit enrollment in CHIP if their federal funds run short. In addition, after September 30, 2015, a state can enroll children who meet the CHIP eligibility criteria in a qualified health plan operating in the state's health insurance exchange if the plan has been certified by the Secretary of Health and Human Services as providing coverage comparable to that offered by the state's CHIP program.

Repealing the MOE Provisions Would Affect Children, Parents, Seniors, and People With Disabilities

Under current law, Medicaid beneficiaries fall into two categories: those whom federal law *requires* states to cover, who are known as "mandatory" beneficiaries; and those whom states *elect* to cover, under federal guidelines, a group referred to as "optional" beneficiaries. If the MOE provision is repealed, states will be able to roll back coverage for their optional beneficiaries.⁴

Mandatory beneficiaries include pregnant women and children under age 6 with family incomes below 133 percent of the poverty line and children aged 6 to 18 with incomes below 100 percent of the poverty line. (In 2011, the poverty line is \$10,890 for an individual and \$22,350 for a family of four.) States also generally must cover seniors and people with disabilities with incomes below about 76 percent of the poverty line, the eligibility limit for the federal Supplemental Security Income program, although rules vary in some states. States are required to cover *parents* only up to the state's income limit for its cash welfare program in 1996, which is far below the poverty line in nearly all states. There is *no* requirement that states cover adults without children who are not elderly or disabled, no matter how low their incomes are.

Many Working-Poor Parents Would be Likely to Lose Coverage

Many states have extremely restrictive eligibility criteria for parents. In the typical (or median) state, working-poor parents are ineligible for Medicaid if their income exceeds *64 percent* of the poverty line and parents without employment are ineligible if their income exceeds *37 percent* of

³ In most cases where a state now provides coverage to adults with incomes above 133 percent of the poverty line, the option for the state to roll back coverage takes effect on July 1, 2011; a separate maintenance-of-effort requirement in the 2009 Recovery Act is in effect until then.

⁴ Kaiser Commission on Medicaid and the Uninsured, "Medicaid: A Primer 2010" and "Medicaid: An Overview of Spending on 'Mandatory' vs. 'Optional' Populations and Services," June 2005.

poverty. In Alabama, working parents must have incomes below 24 percent of the poverty line to qualify; in Pennsylvania, eligibility for working parents stops at 46 percent of poverty.⁵

Some states have, however, increased their income limits for parents. For example, Wisconsin and Maine cover parents with incomes up to 200 percent of the poverty line. Overall in 2001, 41 percent of parents in Medicaid were optional beneficiaries.⁶

Coverage is even more limited for childless adults than for parents. As noted, most states provide no Medicaid coverage to adults not raising minor children, unless the adults are elderly or suffer from serious disabilities.

In states that *do* cover optional parents or childless adults, such beneficiaries will be at risk of losing their coverage and becoming uninsured if the maintenance-of-effort provision is repealed. These beneficiaries would likely be the first to lose coverage, as evidenced by Arizona's request for a waiver of the maintenance-of-effort provision that would enable it to cut off 280,000 parents and childless adults, including many people with serious mental illness or other chronic health needs.

Large Numbers of Children Could Lose Coverage

Unlike Arizona and a handful of other states, most states do *not* cover large numbers of parents and childless adults. Should the maintenance-of-effort provisions be repealed, these states likely would curtail eligibility for children, seniors, and people with disabilities, since that is the only way they could generate substantial savings by curtailing Medicaid eligibility.

Children would be at particular risk. All states cover children with incomes above Medicaid's minimum eligibility levels, either through Medicaid or CHIP. Almost every state covers children with incomes up to 200 percent of the poverty line. Most cover children with incomes up to at least 250 percent of poverty.⁷

These eligibility standards have produced strong results. They kept the number and percentage of children who were uninsured from rising in 2009 despite the severe recession. The proportion of children covered by Medicaid and CHIP increased by 3.5 percentage points in 2009, offsetting a comparable percentage decline in employer coverage for children. In contrast, among non-elderly adults, health insurance coverage fell markedly; the number of non-elderly adults who were uninsured jumped by 4.1 million between 2008 and 2009.⁸

⁵ Martha Heberlein, *et al.*, "Holding Steady, Looking Ahead: Annual Findings Of A 50-State Survey Of Eligibility Rules, Enrollment And Renewal Procedures, and Cost Sharing Practices In Medicaid and CHIP, 2010-2011," Kaiser Commission on Medicaid and the Uninsured, January 2011.

⁶ Kaiser Commission on Medicaid and the Uninsured, note 4.

⁷ Heberlein, *et al.*, note 5.

⁸ Matt Broaddus and Rory Thompson, "Employer-Based Health Coverage Declined Sharply Over Past Decade," Center on Budget and Policy Priorities, December 1, 2010.

Children Could Lose Important Protections

The Affordable Care Act also includes provisions to ensure that the coverage which children receive through CHIP is not scaled back *after* 2014. The law provides that by April 1, 2015, the Secretary of HHS must review the health plans offered in a state's exchange to determine whether their benefits and cost-sharing are comparable to those in the state's CHIP plan. After September 30, 2015, states can enroll children eligible for CHIP in plans that have been certified by the Secretary as providing comparable benefits and cost-sharing. If the CHIP maintenance of effort provision is repealed, however, and states roll back CHIP eligibility, children who no longer meet the state's CHIP income eligibility requirements will lose this protection. (Many of the children who will lose coverage if eligibility is rolled back also will become uninsured in the interim.) And while premium credits would become available for these children and their families in 2014, they could end up in health plans that provide fewer benefits at higher costs than these children receive in CHIP today.

If the CHIP and Medicaid maintenance-of-effort provisions are repealed, states will be able to roll back coverage in their CHIP programs, cap or reduce enrollment among eligible children, or even eliminate them, if they so choose. States whose Medicaid programs cover children in families with incomes above the federal minimum eligibility standards will be able to cut back Medicaid coverage for those children as well. Large numbers of low-income children could lose coverage and become uninsured.

Seniors and People With Disabilities Could Lose Long-Term Care Services

Under federal law, states generally must cover seniors and people with disabilities who receive federal Supplemental Security Income benefits.⁹ The federal SSI income limit for elderly and disabled individuals living alone is effectively about 76 percent of the poverty line, or about \$8,328 in 2011. States have the option of providing coverage to seniors and people with disabilities with somewhat higher incomes, and many do.

Indeed, in 2001, *almost half* of seniors enrolled in Medicaid were optional beneficiaries. Many of these individuals were poor — they had incomes *above* the SSI income limit but *below* the poverty line.¹⁰ A large number of these optional elderly and disabled beneficiaries, many of whom are poor elderly widows, could lose Medicaid coverage if the MOE provision is repealed:

- About half of the states cover seniors and people with disabilities with incomes above the SSI income limit. For example, in New Jersey (as in a number of other states), seniors and people with disabilities with incomes up to 100 percent of the poverty line are eligible for Medicaid. This enables people with incomes between \$8,328 and \$10,890 to qualify. If the Medicaid MOE provision is repealed, New Jersey could end coverage for poor seniors and people with disabilities with incomes in this range.

⁹ Thirteen states are so-called “209(b)” states, which are allowed to maintain more restrictive standards for covering seniors and people with disabilities.

¹⁰ Kaiser Commission on Medicaid and the Uninsured, note 4.

- Every state also provides optional coverage for some seniors and people with disabilities who need long-term care and have incomes above the SSI income limit.¹¹ Many of these people receive nursing home care funded by Medicaid or home- and community-based services designed to avoid institutional care. States typically set an income limit for people who require this type of care that is higher than the state’s regular Medicaid income limits, because of the high vulnerability of people who need but can’t otherwise afford such care and because of the high costs of these services. Many states also allow individuals with high recurring health expenses to “spend down” to the state’s Medicaid income limit.

The maintenance-of-effort provision prevents states from imposing new restrictions on eligibility for nursing home care or home- and community-based services, such as by increasing the level of impairment needed before someone can qualify for these services, or by capping or freezing enrollment in home- and community-based services. If the MOE provision is repealed, large numbers of frail low-income seniors and people with serious disabilities could lose nursing home care or home- and community-based services, along with eligibility for any other Medicaid services. Although many of these beneficiaries have *Medicare*, it does not cover the long-term-care services and supports that many frail low-income seniors and people with serious disabilities need.

Enrollment Barriers Could Effectively Bar Entry into Medicaid and CHIP

The maintenance-of-effort provisions require states to maintain both their current eligibility standards *and* their current application and renewal procedures. Congress designed the law this way because burdensome paperwork and reporting requirements have been found to create significant barriers to enrollment by eligible low-income individuals.

For example, requirements to produce original birth certificates, many weeks of pay stubs, or certain other documents — as well as requirements that working-poor parents return to Medicaid offices every few months to reapply, despite the problems that can create with their employers — have been shown to have a marked impact on how many eligible people enroll.

- As one example, in July 2003, Washington State began requiring families to renew their children’s Medicaid eligibility every six months instead of every 12 months and required families to provide pay stubs instead of verifying family income itself by using state databases on earnings. More than 30,000 children lost coverage over the next two years. In January 2005, the state restored its previous 12-month eligibility period; 30,000 children gained coverage by the end of the year.¹²
- Similarly, in 2008, California proposed requiring families to file paperwork four times a year to retain eligibility. The state estimated that when fully in effect, the provision would result in 472,000 children and 35,000 adults losing coverage.¹³

¹¹ Kaiser Commission on Medicaid and the Uninsured, “Medicaid Financial Eligibility: Primary Pathways for the Elderly and People with Disabilities,” February 2010.

¹² Washington State Department of Social and Health Services, 2006.

¹³ “Governor’s Proposed Health Cuts Would Increase Ranks of Uninsured, Reduce Access,” California Budget Project, Updated May 2008.

Among those most at risk of losing coverage due to paperwork and procedural barriers are working-poor families whose jobs prevent them from taking time off to go to a state office, as well as people with limited literacy.

A rollback of the MOE protections relating to application and renewal procedures could hit children particularly hard. While states would not be able to roll back *eligibility standards* to such an extent that children with incomes below the poverty line lost Medicaid eligibility (since these children are “mandatory” beneficiaries), a number of these children could still lose Medicaid coverage if a state added burdensome new paperwork and procedural hurdles to its application and renewal processes.

Cutbacks in state workforces that many states have instituted during the economic downturn would magnify the impact of new procedural and paperwork barriers. If there are not a sufficient number of eligibility workers to respond to people who need help in navigating added paperwork requirements and more cumbersome application procedures, delays in processing eligibility and renewals will result and a number of eligible families, children, seniors, and people with disabilities will likely fall through the cracks.

Allowing Eligibility Cutbacks Is Unlikely to Prevent Other Medicaid Cuts

As noted above, despite their budget deficits, a number of governors have pledged to cut taxes. For this and other reasons, reductions in Medicaid eligibility would not necessarily avert cuts in Medicaid benefits or provider payments, or in other state programs such as education.¹⁴ In many states, one of the principal effects of cutting back Medicaid eligibility and shrinking the number of Medicaid beneficiaries would likely be to free up room in the state’s budget for bigger tax cuts.

In Florida, Governor Rick Scott’s budget proposes cutting, and eventually eliminating, the state’s corporate income tax, while simultaneously making deep cuts in Medicaid funding (for which he has indicated he will seek a waiver from the federal government). Wisconsin Governor Scott Walker has already won enactment of an array of tax cuts and is expected to push for additional tax reductions (he promised in his campaign to repeal the state’s corporate income tax). At the same time, he says deep cuts in services will be needed to balance the budget and has indicated his intention to cut 68,000 people from the Medicaid program, or more if the federal government will allow it. Governors Nikki Haley of South Carolina, C.L. “Butch” Otter of Idaho, and Chris Christie of New Jersey are also among those supporting corporate tax cuts that their states cannot afford without deeper budget cuts than those that have already been enacted. In Iowa, Governor Terry Branstad supports cutting corporate income taxes and commercial property taxes and only partly paying for them with a casino-tax increase. In Texas, Governor Rick Perry supports balancing the budget with cuts in health care and education rather than tapping the state’s \$8.2 billion rainy-day fund.¹⁵ (Rainy-

¹⁴ Michael Leachman, Erica Williams, Nicholas Johnson, “Governors are Proposing Further Deep Cuts in Services, Likely Harming Their Economies,” Center on Budget and Policy Priorities, February 7, 2011.

¹⁵ Erica Williams, “Many States Making Unwise Choices in Budget Proposals,” Off the Charts Blog, Center on Budget and Policy Priorities, February 4, 2011.

day funds generally are intended to be used to help fill state budget gaps during economic downturns.)

It remains to be seen whether the various tax-cut proposals will become law. However, in such an environment, substantially reducing the number of low-income Medicaid beneficiaries that states must cover is likely, in many places, to free up room for larger tax cuts — even as other important programs and services continue to be reduced.

It is of note that during the recession of the early 2000s, states made deep cuts in Medicaid eligibility, benefits, *and* provider payments. Some 34 states scaled back Medicaid and CHIP eligibility, causing between 1.2 million and 1.6 million low-income adults and children to lose coverage,¹⁶ but states imposed major cuts in benefits and provider payments at the same time.

Repeal Could Weaken Economic Recovery

Repeal of the maintenance-of-effort provision also would have negative implications for the economy. Repeal would result in a net reduction in aggregate demand in an economy that is still operating far below capacity. As noted, every dollar in reduced state spending on Medicaid would result, on average, in a reduction of \$1.33 in federal Medicaid spending, for a total reduction in spending of \$2.33. But since the state would save only \$1 in state resources, it could finance only \$1 in additional tax cuts or other measures. Moreover, most of the tax cuts that would be financed in this manner would have a substantially lower “bang-for-the-buck” than the Medicaid spending that was being curtailed.

Rolling Back Coverage Could Undermine Health Reform

The Congressional Budget Office expects that 16 million of the 32 million Americans who will gain coverage under the health reform law will be covered through Medicaid. It will be difficult to attain this goal, however, if millions of current Medicaid beneficiaries lose coverage in the next few years. Experience with efforts to enroll eligible children in CHIP and Medicaid has shown that it takes years for new outreach and education efforts to bear fruit, particularly among families who previously had, but were cut off from coverage.¹⁷

Moreover, changes like requiring additional paperwork or adopting cumbersome application procedures would be inconsistent with the eligibility and enrollment systems that the Affordable Care Act envisions. The Act requires states to create a coordinated system of information, referral and enrollment across Medicaid, CHIP, and the subsidies that people with modest incomes will receive to help them purchase coverage in the health insurance exchanges. States are supposed to

¹⁶ Leighton Ku and Sashi Nimalendran, “Losing Out: States are Cutting 1.2 to 1.6 Million Low-Income People from Medicaid, SCHIP and Other State Health Insurance Programs,” Center on Budget and Policy Priorities, December 23, 2003.

¹⁷ See Lake Research Partners, “Enrolling More Children in CHIP & Medicaid: Insights from Focus Groups with Low-Income Parents of Uninsured Children and Teens,” September 2010, summarized at http://www.insurekidsnow.gov/professionals/outreach/webinars/challenging_times_transcript.pdf. This research found that parents who experienced difficulty enrolling their children in Medicaid and CHIP have negative feelings about the program and do not want to apply again.

operate a system that ensures that individuals or families applying for Medicaid, CHIP, or the subsidies are screened for eligibility for all of these programs and enrolled in the appropriate program. This is sometimes referred to as a “no wrong door” approach. It will be very difficult, however, to build such a streamlined enrollment and eligibility system if states require applicants to produce birth certificates and weeks of pay stubs for Medicaid and impose short renewal periods in that program, since these requirements will not apply to people seeking subsidies for coverage in the exchanges. Moreover, because many people will not know in advance whether they qualify for Medicaid or subsidies, having different paperwork and procedural requirements would likely lead to rather chaotic implementation (and to smaller gains in coverage). Even if these procedural requirements were eliminated in 2014, many individuals and families would likely be deterred from applying then by their previous difficulties in navigating the system.

A final concern is that if states curtail Medicaid eligibility now, they will have to increase their Medicaid budgets by much greater amounts when the Medicaid expansion takes effect in 2014, because they will have to add back the beneficiaries they dropped in the interim. The federal government will pay all of the costs for categories of beneficiaries made *newly eligible* by the Affordable Care Act in 2014 (and the following two years), and most of these costs after that. But that does *not* apply to the costs of adding back categories of people that a state dropped from its Medicaid program after enactment of the ACA. States would have to bear an average of 43 percent of those costs (as the federal government would contribute to these costs at normal Medicaid matching rates). The need for states to come up with the requisite funds in 2014 to restore eligibility for these people, which many states would likely regard as “new costs,” could make it harder to implement health reform, especially if states had used up much of the savings from cutting Medicaid eligibility to institute tax cuts or create new programs.