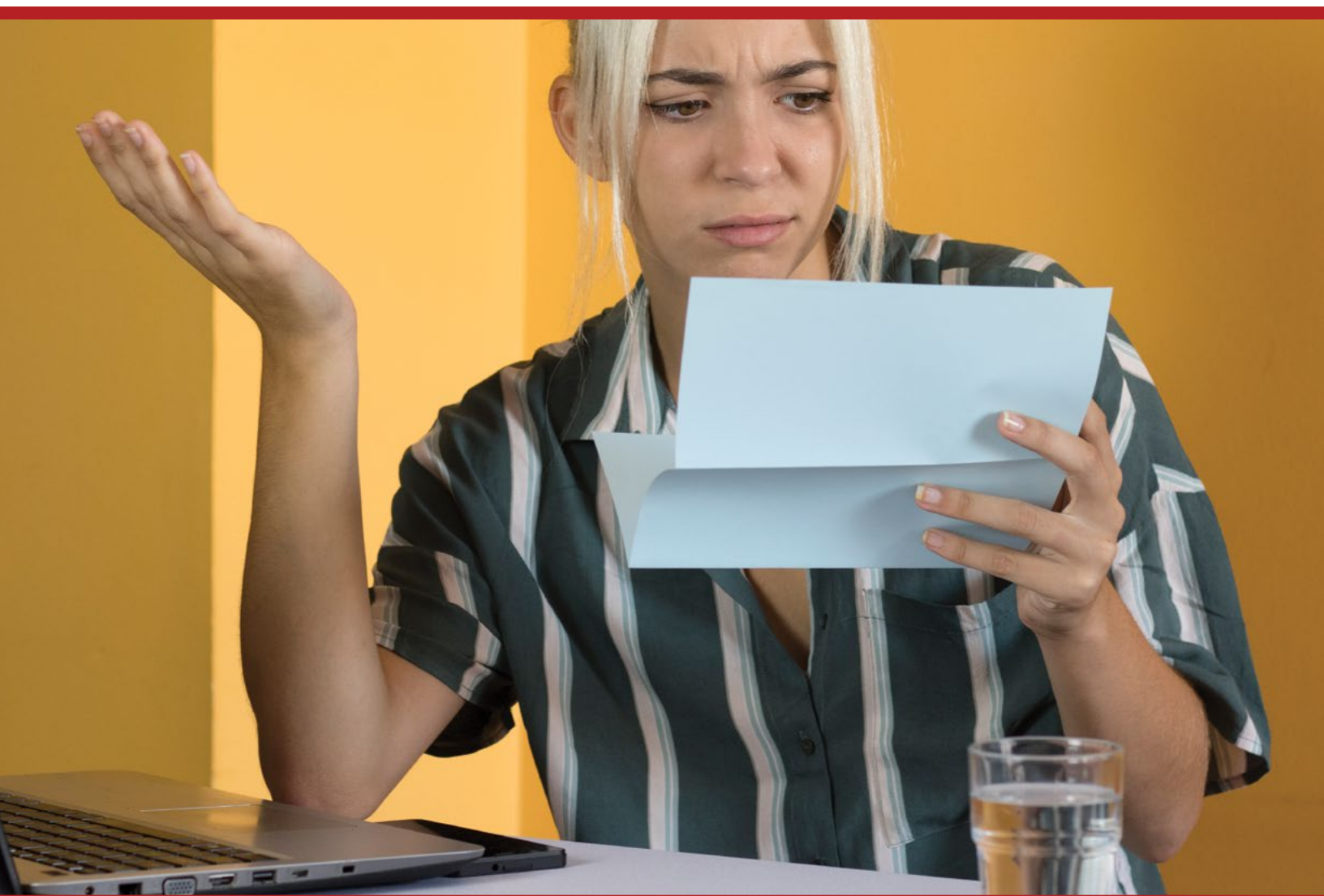


FINAL VERDICT:

**ADDING WORK REQUIREMENTS TO MEDICAID EXPANSION
WAS A FAILED EXPERIMENT FOR THE STATE OF ARKANSAS**



AUGUST 2019





August 2019

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FINAL VERDICT:

ADDING WORK REQUIREMENTS TO MEDICAID EXPANSION WAS A FAILED EXPERIMENT FOR THE STATE OF ARKANSAS

by Joshua Hall, Health Policy Fellow & Loretta Alexander, Health Policy Director

For more than nine months, Arkansas chipped away at the number of people receiving their health care coverage through the Arkansas Works Medicaid expansion program. During that time, more than 18,000 Arkansans lost their insurance coverage for failing to meet the state-added work reporting requirements to the program. On March 27, 2019, the United States District Court for the District of Columbia stopped the state of Arkansas from continuing its failed experiment — a monumental victory for low-income Arkansans. The District Court's ruling is only the first step, (the federal government has appealed the decision), but it does prevent the state from taking health care away from Arkansas's most vulnerable due to an unnecessary work reporting requirement.

Work reporting requirements hurt everyday Arkansans like Melissa. Melissa is a single mother raising her children without any help. She's a full-time college student and works as an intern for 20 hours per week. She receives her health insurance coverage from Arkansas Works and fears that somehow her coverage will be taken away. Before the work requirement even existed, it happened to her children. In 2018 she took her kids to the dentist and was told their insurance had been cancelled. They had moved, but she stated her new address had not been processed by the Arkansas Department of Human Services (DHS), and the state sent her mail to the wrong place. It took a while, but eventually Melissa got her kids' coverage restored.

As she went through the process of getting her children's health insurance back, Melissa was told incorrectly she must submit her work-activity hours to DHS each month to comply with the newly established work reporting requirement. As a parent of children under 19 years of age, Melissa was not only exempt from the requirement to work 80 hours per month, she was also exempt from the requirement to report her exemption. Even if no exemption had applied, however, Melissa would still have been in compliance with the work-activity hours, because of her above-mentioned internship.

Not knowing she was exempt from the requirements, Melissa logged onto the DHS website and experienced what many other Arkansans found: chaos. "There is no place to submit your work-activity hours on the [Arkansas Works web] page," Melissa said. "The Arkansas Works log-in page needs to be fixed for access to submit our information. Mailing can be lost, and I cannot drive it over there because I am going to school and interning all week. By the time I'm done, the office is already closed."

Melissa didn't lose her coverage; she was exempt from the reporting requirement all along. But the fact she was told she needed to report and attempted to do so was an unnecessary stress added to a life already full of strain. And her experience with the complex reporting system illustrates how even people determined to comply faced barriers along the way.

This is Arkansas Advocates for Children and Families' third (and final) report in a series that covers the work reporting requirements placed on Arkansas Works enrollees.

This report considers:

- the history of the work reporting requirement in Arkansas
- the current status of the lawsuit over the work reporting requirement
- the different issues Arkansas faced as it sought to implement the requirements
- impacts of the work requirement on Arkansans, including who was most impacted

The report concludes by giving recommendations for reenrolling individuals who lost coverage due to the work requirement and identifying other issues that stem from Arkansas's failed experiment.



HOW DID WE GET HERE?

In 2017, the Arkansas General Assembly enacted legislation that sought to add a work reporting requirement to Arkansas Works, the state's Medicaid expansion program, formerly called the Private Option. The request to implement work requirements under a Section 1115 waiver was sent to the U.S. Department of Health and Human Services Centers for Medicaid and Medicare (CMS). In March 2018, CMS approved Arkansas's request. Arkansas's plan went into effect on June 1, 2018. It required certain Arkansas Works beneficiaries between the ages of 30 and 49 to report work-related activity (or an exemption) to the state of Arkansas.

Individuals who failed to engage in work or work-related activities for the required number of hours, who failed to report their work hours, or who failed to report their exemption for three months of a calendar year lost their Arkansas Works coverage. Between September 1 and December 31, 2018, more than 18,000 individuals were disenrolled from Arkansas Works for failing to meet the reporting requirements.¹ On January 1, 2019, the work reporting requirement began applying to beneficiaries ages 19 to 29.² Fortunately, the court ruling that stopped Arkansas from continuing to enforce the work requirement came four days before 2019's first disenrollment — saving health coverage for up to 6,472 Arkansans.³ For a detailed analysis on the work reporting requirement placed on Arkansas Works, please refer to Arkansas Advocates for Children and Families' [first](#) and [second](#) reports in this series.⁴

WHAT HAPPENED WITH THE LAWSUIT?

On August 14, 2018, three Arkansans filed a [lawsuit](#) in the U.S. District Court for the District of Columbia.⁵ The plaintiffs sued CMS and other senior officials responsible for considering, approving and implementing the Arkansas Works Amendment.⁶ The plaintiffs of the case had either been subject to the work reporting requirements when they filed the case or would be subject to the work reporting requirements on January 1, 2019. The complaint argues the approval of Arkansas's Section 1115 waiver produced catastrophic result for Arkansans.⁷ Six more plaintiffs were added on November 5, 2018.⁸

CMS's decision to approve Arkansas's Section 1115 waiver was challenged on three points. The first alleged the January 11th, 2018 letter sent out to State Medicaid Directors violated the Administrative Procedures Act (APA) because it exceeds the Secretary of Health and Human Services' authority. The second point alleged that the approval of the Arkansas Works Amendment, in the form submitted by the state of Arkansas, violated the APA because it was outside the scope of the Secretary's authority. In the third point, plaintiffs argued that the defendants violated the Take Care Clause of the Constitution (found in Article II, Section 3, Clause 5) through actions that sought to undermine the Affordable Care Act.⁹

Judge James E. Boasberg wrote the court's [opinion](#) on March 27, 2019.¹⁰ In the opinion, the court found the U.S. Department of Health and Human Services was "arbitrary and capricious" in its approval of Arkansas's plan because it "did not consider how they would affect Medicaid's core purpose of providing health care to the needy." It also stated that "the Secretary's approval cannot stand" and that "the Court will vacate the Secretary's approval and remand for further proceedings."

Judge Boasberg's ruling forced Arkansas to stop applying the Medicaid work requirements to Arkansas Works beneficiaries. Although Governor Asa Hutchinson stated that the state would comply with the ruling, he urged federal officials to appeal the District Court's decision.¹¹ The federal government filed the notice of appeal on April 10, 2019.¹² The appeal will be heard no later than October 2019, after the appellate court granted the government's motion for an expedited appeal.¹³ During this legal battle, which could be considered by the United States Supreme Court, the work requirement is not in effect, and the 18,000 Arkansans who lost their health coverage can reenroll in Arkansas Works.¹⁴



WHAT WERE SOME OF THE ISSUES RELATED TO THE WORK REQUIREMENT?

Aside from the legal issues, many other problems existed with Arkansas's implementation of the work reporting requirement. Some of the issues this report considers are:

- The ineffective communication between the state of Arkansas and Arkansas Works enrollees
- How complex the reporting process was for those subject to the reporting requirements
- That Arkansas is the “least connected” state in the United States
- Individuals who were working and complying with Arkansas's rules still lost their coverage

Though these were not the only issues related to the work requirement, these were four of the most critical for individuals in Arkansas. Much more research has been done on the general issues with the work requirement; however, this section focuses specifically on the impact that the work requirement had on Arkansas and especially low-income individuals and families in the state.

ARKANSAS'S INEFFECTIVE COMMUNICATION WITH ENROLLEES

A major issue with Arkansas's implementation of the work reporting requirements was how ineffectively it was communicated to Arkansas Works enrollees. This issue is best demonstrated by the number of individuals still unaware of the work requirements, even though the state used multiple methods to reach out to enrollees.¹⁵ Enrollees who did not receive or understand the information did not know that they must report their work-related activity, therefore it cost them their health care coverage.

One primary method Arkansas DHS used to contact individuals on Arkansas Works was by mailing letters to their physical addresses on file.¹⁶ This method was used most frequently, with individuals being sent multiple letters to the same address on file — and with no way to know how many individuals actually received or opened the mail. In a recent report, the state notes that “thousands in the

program will move away from recorded addresses or fail to answer other mail from the state.”¹⁷ In addition to the letters, a second method that DHS used was phone calls. The agency contracted with the Arkansas Foundation for Medical Care to run a call center, in an effort to notify more beneficiaries of the work requirements being implemented.¹⁸ Many enrollees did not answer the phone calls — a behavior not unusual for Americans who receive calls from unrecognized numbers. A third method was used for those individuals who provided DHS with an email address. For these enrollees, emails were sent out, but this method only had an open rate of 20 to 30 percent.¹⁹

REPORTING WORK ACTIVITIES WAS TOO COMPLICATED

Even if Arkansas had been successful in letting Arkansas Works enrollees know about the work requirement, multiple issues still existed. The requirement obligated enrollees to report their work-activity or community engagement hours via the Arkansas DHS portal — found at www.access.arkansas.gov. For the work requirement's first six months of implementation, the internet was the primary way an individual could report their work hours to DHS. Unfortunately, there were major issues with accessing the online portal. First, upon reaching the DHS portal, individuals were met with a full-screen opportunity to register to vote (pictured below), instead of any mention of “Arkansas Works” or “work requirement.”²⁰ This voting question had to be answered prior to moving to the actual webpage to access options related to health care.

Welcome to **Access Arkansas**

After you click “Yes” or “No” below, you may begin your DHS application.

If you are not registered to vote where you live now, would you like to register to vote today?

YES

I would like to register to vote.

A new window will open with the Voter Registration Application form. You may return to this browser window to start your DHS application at any time.

NO

I would not like to register to vote.

After clicking this button, you may begin your DHS application.

Source: Arkansas Department of Human Services website, <https://access.arkansas.gov>; Retrieved July 23, 2019.

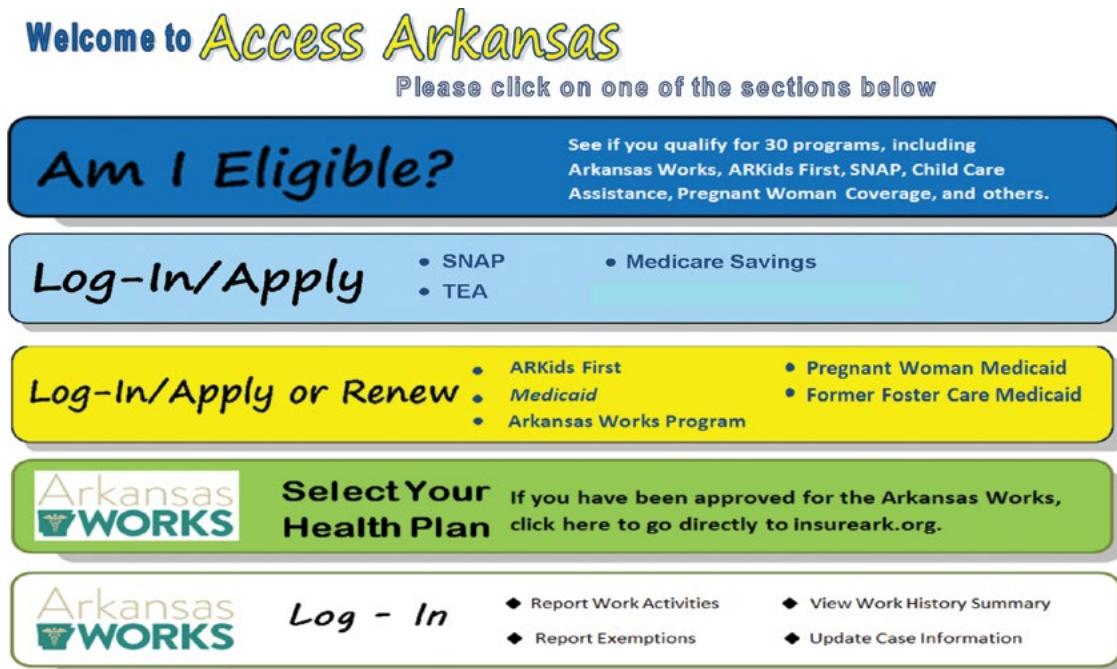
Once an enrollee deciphered the voting question, the correct webpage appeared, but it was full of options that look strikingly similar (pictured below).²¹ The final option was a box that the individual could log in and report their work activities. When that choice was selected, the individual would enter their identification information and register for an account with DHS. This account required the individual to have an email address. Since many beneficiaries do not have an email address, this screen forced them to exit and make one. If the individual could successfully make an email address, return to the DHS page, send the email confirmation, and return to the DHS page, they could then report their work hours or exemption for the month — so long as it was before 9 P.M., when the portal shut down for the night.²² It was important, however, that the individual keep the information and understand how to access their email each time, as the work-activity information had to be reported monthly.

In response to the number of issues related to reporting and the alarming number of individuals losing coverage, DHS opened the “DHS Helpline” on December 19, 2018, allowing enrollees to report their information over the phone. The helpline operated from 7 A.M. to 9 P.M., seven days a week.²⁴ Like the web portal, this option still ignored the fact that many low-income workers often have work schedules that do not allow them to address such personal matters until after 9 P.M., when neither option was available.²⁵ It also did nothing to undo the hardships incurred by those individuals who had already lost their Arkansas Works coverage.

ARKANSAS IS THE “LEAST CONNECTED” IN THE U.S.

As mentioned above, the primary method for Arkansas Works enrollees to report their work-related activities was via the online DHS portal. When the work requirements

became effective on June 1, 2018, the state portrayed the online method of reporting as a positive, reducing costs associated with the Arkansas Works program. However, so much of Arkansas still lacks reliable broadband access, Arkansas is ranked as the “least connected” state.²⁶ Only 12 of Arkansas’s 75 counties have 40 percent of their households able to access download at speeds of 10 megabytes per second or more.²⁷



Source: Arkansas Department of Human Services website, <https://access.arkansas.gov>; Retrieved July 23, 2019.

Enrollees, if they knew to do so, could call Arkansas Blue Cross & Blue Shield, Ambetter, or Qual Choice (the three Arkansas Works providers) to request the assistance of a “registered reporter” to help report their activities or exemption online.²³ These reporters were more familiar with the webpage and could help enrollees log in and navigate the system. However, the knowledge of and use of this assistance was minimal.

According to recent data from the Federal Communications Commission, it is projected that another 11.6 percent of individuals with access to the internet in Arkansas can only do so via a smartphone.²⁸ Much of rural Arkansas still lacks a reliable cellular signal, and when combined with the DHS website’s lack of mobile compatibility, meeting the reporting requirement was even more of a challenge for enrollees in rural communities.²⁹

LOSING COVERAGE DESPITE WORKING; LOSING WORK WHILE UNINSURED

Often, those who support work requirements use justifications based on harmful stereotypes about low-income people: that they are “lazy” or “not working.” Both stereotypes are inaccurate. According to the data, Medicaid recipients are “very likely” to be working. Studies show that many Arkansans who lost their coverage in 2018 were working, yet 23 percent of the population subject to the work requirements lost their health care coverage. After the work reporting requirements were implemented, employment rates declined for those affected, while uninsured rates went up.³⁰

Individuals face real barriers to finding or keeping a steady job in Arkansas. Looking for a job typically means spending long hours at the closest Arkansas Department of Workforce Services (ADWS) office and needing transportation to get there.³¹ The work reporting requirements only added to the barriers, however, as the state allowed only 39 total hours of job searching to count toward the 80 hours required per month. The state provided no assistance for enrollees to reach ADWS offices, of which there are only 33 spread among the state’s 75 counties.³²

It is especially hard to find jobs in rural Arkansas, where full-time job opportunities are often lacking. For some low-income individuals in the more rural parts of the state, there was no plausible alternative to losing their health coverage, because no jobs were available for them.



IMPACT ON ARKANSANS

WORK REQUIREMENTS NEGATIVELY IMPACTED ARKANSANS

Adding work requirements to Medicaid is unnecessary and can increase costs associated with a state's Medicaid program.³³ Arkansas contended that, "by instituting work requirements as a condition of eligibility, the demonstration will incentivize employment and increase the number of employed Arkansas Works beneficiaries," as it attempted to justify the proposal.³⁴ Research on work requirements does not support this idea. Instead, the research shows that higher unemployment numbers exist among the people subject to a work requirement.³⁵

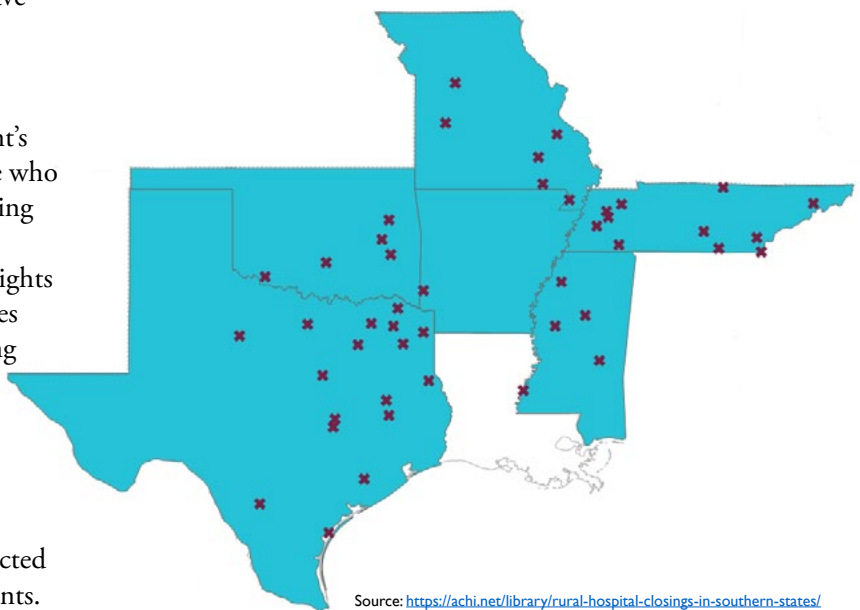
Despite the brief implementation of the rule, the effects will continue to have a far and lasting reach, affecting some groups more significantly than others. Thousands of Arkansas adults remain uninsured, as only a fragment of the 18,164 individuals who lost their coverage have reapplied for Arkansas Works, even after the work requirement was stopped.

Due to lack of protections and the work requirement's design, individuals with disabilities are among those who lost coverage under the work requirement.³⁶ According to a comment by the Center on Budget and Policy Priorities, Arkansas did not adequately explain the rights of beneficiaries under the Americans with Disabilities Act and lacked a comprehensive system for providing reasonable modifications for disabled individuals.³⁷ Experts believe that these individuals were particularly vulnerable to losing coverage because of this fact.

Low-income adults in rural counties were also impacted disproportionately by the work reporting requirements. When Arkansas expanded Medicaid in 2013, the uninsured rate for low-income adults in rural counties fell from 45 percent to 22 percent.³⁸ Implementing the work reporting requirements counteracted the improvements made by expanding Medicaid, and has caused the uninsured rate to increase.

The impact of the work requirement on Arkansas's hospitals remains to be seen. It is significant that, from 2010 to May 2019, not a single rural hospital in Arkansas closed.³⁹ Neighboring states that have not expanded Medicaid have seen many rural hospitals close. Even with the hospital in De Queen, Arkansas, closing in May 2019 (11 months after the work reporting requirements were implemented), Arkansas still has the fewest rural hospitals to have closed during the timeframe (see map below).⁴⁰ More individuals being insured has helped Arkansas's hospitals, with uncompensated costs dropping from \$216 million in 2013 to \$84 million in 2016.⁴¹ Hospital budgets rely heavily on Medicaid reimbursements. When people lack health insurance, hospitals receive less money to operate, as fewer people can pay their bills.⁴² It is likely that the disenrollment of more than 18,000 individuals will have increased hospitals' unreimbursed costs. However, that data will not be available until 2020.

RURAL HOSPITAL CLOSINGS IN SOUTHERN STATES, 2010 – MAY 2019



Source: <https://achi.net/library/rural-hospital-closings-in-southern-states/>

Further, being healthy is vital to staying employed, so if Arkansas is concerned about more individuals working, it should promote methods for individuals to receive health care coverage. A Kaiser report found that some enrollees who lost health coverage for failing to meet the reporting requirements lost their jobs because they could no longer manage a chronic health condition without health care access.⁴³ This is in addition to the individuals that lose health coverage due to non-compliance with the rule, who also contribute to a higher uninsured rate among the population.⁴⁴



LESSONS LEARNED AND RECOMMENDATIONS

The Arkansas experiment reinforces what was already known from the existing research about work requirements: Any work requirement will have the unintended consequence of taking coverage away from people who are already working or should be exempt due to illness, disability or other factors. Rules for reporting and claiming exemptions increase paperwork and red tape, which cause eligible people to lose coverage and become uninsured. Efforts to inform beneficiaries of the complex compliance requirements and the processes for reporting and claiming exemptions are certain to fall short, leaving people without the information and help they need to comply. In addition, working Medicaid beneficiaries often have low-wage jobs with volatile hours and little flexibility, so they may not be able to work a set number of hours each month — meaning that even people strongly attached to the labor force will lose coverage.⁴⁵

As the first to implement Medicaid work requirements, Arkansas is being watched by other states around the country. Several of these other states have already applied for a waiver or had their waiver approved by CMS.⁴⁶ In July 2019, New Hampshire officials suspended the approved work requirements in their state, recognizing that it was on pace for massive coverage losses.⁴⁷ Many others are waiting to see if the challenges Arkansas encountered can be overcome. Arkansas could set an example, if it were to recognize that its experiment with work requirements failed and acknowledge there is no way that it can be “fixed.”⁴⁸

Although it is too soon to determine if the work requirements had any direct impact on children’s health insurance enrollment, state Medicaid agency reports show that the number of children enrolled in Medicaid has decreased over the past two years. As a result of Arkansas expanding Medicaid in 2013, more than 30,000 previously uninsured children received health insurance coverage after their uninsured parents enrolled in the Private Option.⁴⁹ Keeping parents insured is essential to maintaining high insured rates among children.⁵⁰ As Arkansas fixes the damage caused by the work requirements, it should keep in mind that increasing parent enrollment has a direct impact on improving coverage and access to care for children.

LOOKING AHEAD

As the nation looks on, it is time for Arkansas to abandon its failed experiment and look for ways to restore Medicaid coverage to those who lost it. Further, instead of pursuing more legal action, providing job training and employment assistance should be a priority for the state. The state would dramatically improve its future by shifting its focus from taking away services that help families improve themselves to ensuring that children and families in Arkansas have the resources they need to escape poverty.



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