

Court Case Challenging Medicaid Work Rule's 'Frailty' Requirement Gets Moved Up

— States, providers object to requiring medically frail patients to prove they can't work

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States unhappy about a new "medical frailty" provision in the Medicaid work requirement rule are continuing their fight over the rule in court.

The work requirement -- or "community engagement" requirement, as it is officially known -- is part of H.R. 1, the reconciliation bill passed by Congress in July. [Under the requirement](#), Medicaid recipients must demonstrate at least 80 hours of engagement per month in employment; participation in a work program, such as job training; enrollment in an



educational program (at least half time); community service activities; or a combination of these activities. The requirements take effect Jan. 1, 2027, and apply only to the 41 states (and the District of Columbia) that expanded the Medicaid program under the Affordable Care Act, and only to the enrollees that were added as part of the expansion.

On June 29, 25 states and the District of Columbia [sued the Trump administration](#) in federal court, alleging that the interim final rule "lacks workable verification methods or guidance for determining medical frailty and impairment of ability." Although states can develop lists of conditions that usually meet the definition of "medical frailty" -- which normally would exempt those enrollees from the work requirement -- the interim final rule goes a step further by requiring even patients with those conditions to prove that they are unable to meet the requirement.

Last week, Judge Richard Stearns of the U.S. District Court for the District of Massachusetts, [denied the states' motion](#) for a preliminary injunction against the rule but put the case on an "expedited schedule" so it can be heard in full before the law takes full effect. A hearing in the case has been scheduled for Oct. 20.

That additional rule on medical frailty presents a lot of problems, clinicians say. "The rule asks for proof of impairment at a single point in time, which is not how serious illness behaves," Jill Schwartz-Chevlin, MD, MBA, chief medical officer of Vynca, a San Mateo, California palliative care provider, said in an email. "A woman on chemotherapy can feel well 1 week and be unable to lift her head the next. Heart failure and [chronic obstructive pulmonary disease] swing between crisis and recovery before a slow decline." And if that woman was recently diagnosed, or went years without insurance, "there may be no record at all. Patients like her cannot prove frailty in the narrow way it is being defined."

The rule also poses a new burden on providers, she continued. "Clinical frailty and reduced function are not routinely documented in community practice ... That is unpaid work, outside our usual role, added to practices that are already stretched thin, and it falls hardest on the safety net clinicians least able to absorb it. The patients caught in the middle are those with the least stable care and the least ability to fight the system."

"While I agree that function needs to be part of the assessment in patients with serious illness, the problem is the method," she concluded. "There needs to be leniency given to patients with serious illness that recognizes that impairment often comes and goes, and



that some of our sickest patients may not have documentation that supports their frailty. I recommend that we stop tying coverage to a standard the sickest people will have difficulty showing on a form."

America's Physician Groups (APG), which represents physician-led value-based care organizations, also is concerned about increasing the burden on doctors. "Physicians are going to be pulled into this decision," Susan Dentzer, APG's president and CEO, said in a phone interview. "They're going to have this enormous role in, in effect, the decision of whether patients can retain their Medicaid coverage or not, and therefore, whether their own patients are going to be able to get the regular healthcare that they need, because if they don't get it, they will die."

"It's a completely untenable situation," said Dentzer. "It would place physicians and other clinicians in a position that would violate almost every core principle of medical ethics -- the obligation not to harm the patient, the obligation to act for the benefit of the patient, and the obligation to respect the patient's autonomy. I mean, do you really want a physician in on the decision about whether you should work or not if you've got end-stage renal disease?"

Carl Schmid, executive director of the HIV+Hepatitis Policy Institute, said it's important to remember which people are most affected by the work requirement. "These are people who are making \$22,000 or less per year. These are the very poor people ... and people don't seek Medicaid. They use Medicaid when they're sick. It's not like they're lounging away, waiting to be on Medicaid."

In addition to diseases like HIV and hepatitis, they may have substance use and mental health issues, which complicate things further, he added. HHS Secretary Robert F. Kennedy Jr. "spoke to the Ryan White conference this week and [said] the Trump administration is committed to ending HIV, but at the same time, they're proposing to cut all these people" off of Medicaid.

Another provision of the rule that some groups find troubling is a provision that allows an exemption for patients with substance use disorders, but disqualifies from the exemption those who have been in "stable recovery" for 5 or more years. "This narrowing goes beyond the statute and raises material implementation, clinical, and operational issues and questions, including but not limited to how 'stable recovery' is defined; what criteria must be met, and how to determine that an individual is in stable recovery," the APG [said in written comments](#) on the rule.



Asked to comment on the issues raised in this story, CMS said it doesn't comment on pending litigation.



[Joyce Frieden](#) oversees MedPage Today's Washington coverage, including stories about Congress, the White House, the Supreme Court, healthcare trade associations, and federal agencies. She has 35 years of experience covering health policy.
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