

Opinion

Michigan's Discriminatory Work Requirements

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A very young patient in Flint, Mich. State legislators are considering imposing a work requirement on Medicaid recipients. *Brittany Greeson for The New York Times*

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Christian or Muslim, Republican or Democrat, a city dweller or a rural resident. In states that expanded their Medicaid programs under Obamacare, all you have to be is poor enough to qualify.

But maybe not in Michigan. Last month, the State Senate passed a bill that would require Medicaid beneficiaries to find work or else lose their coverage. The bill, now under consideration in the Michigan House, has come under fire for harming the poor and disabled, as well as for burdening struggling families with needless paperwork. More than 100,000 people may lose health insurance if it passes.

There's another flaw in the bill, however, one that exposes it to serious legal challenge: It's racially discriminatory.

Many of the legislators supporting Michigan's work requirements come from rural districts with high unemployment. Many of those districts are predominantly white. To protect their constituents, these legislators have included a safety valve in the bill: If you live in a county with a high unemployment rate (over 8.5 percent), you're exempt from the work requirements. The rationale? When there are no jobs to be had, it doesn't make sense to punish you for not working.

Yet that safety valve does not apply equally. Specifically, it does little for Michigan's black residents, who are concentrated in cities like Detroit, Muskegon and Flint. Those cities suffer from chronically high unemployment rates, but they're all in counties with low rates. The city of Flint, for example, has an unemployment rate of 10.4 percent; but in Genesee County, where Flint is located, the rate is just 5.8 percent. The upshot is that no one in Michigan's biggest cities can take advantage of the safety valve — even if there's no work to be had.

The racial consequences are unmistakable. Those in predominantly white rural counties with high unemployment are exempt from the work requirements. Those in predominantly black cities with high unemployment are not.

Perhaps the discrimination is unintentional. But from the perspective of civil rights law, that makes no difference. Title VI of the Civil Rights Act of 1964

prohibits recipients of federal funds — including state Medicaid programs — from employing “methods of administration that appear neutral but have a discriminatory effect on individuals because of their race.”

That’s according to the Department of Health and Human Services, the federal agency responsible for overseeing Medicaid. And Michigan’s bill presents exactly the sort of discrimination that Title VI outlawed: It’s a county-level exemption that “appears neutral” but has a “discriminatory effect.”

Could the courts step in if Michigan’s bill passes? We think so. The Supreme Court has held that Michigan officials can’t be sued for this sort of Title VI violation — in the legal lingo, there’s no “private right of action” for violating the statute.

But Michigan needs a waiver from the Department of Health and Human Services before it can move ahead with work requirements. As with most kinds of federal agency action, the decision to issue a waiver can be challenged in court, and will be invalidated if the court finds the agency’s decision “arbitrary.” It would be the height of arbitrariness — and hence unlawful — were the Department of Health and Human Services to bless a state policy that so flagrantly violates the agency’s own anti-discrimination rules.

If Michigan wants to accommodate rural counties with stubbornly high unemployment, it’s not hard to come up with an alternative approach: It should simply extend the same accommodation to its metropolitan areas. Not only is that the right thing to do, it’s also what the civil rights laws demand.

There’s a deeper lesson here. If work requirements were a good idea, conservative Michigan legislators wouldn’t need to exempt their rural constituents. They’d just offer a tough-love message: If you want health insurance on the public dime, you should move to a place where you can find work.

That’s not the message, though. The message, instead, is that work requirements are good for people who live in hard-bitten cities and bad for those who live in hard-bitten counties.

That can't be right, and not only because of its racial overtones. The right answer is that work requirements aren't good for anyone — wherever you happen to live and whatever your skin color happens to be.

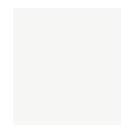
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