



Kentucky Equal Justice Center
201 W. Short Street, Suite 310
Lexington, KY 40507

T: 859-233-3057
F: 859-233-0007

March 22, 2022

Kentucky State Senators
Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601

HB 7 would diminish the safety net in troubling ways

Dear Senator,

Kentucky Equal Justice Center (KEJC) joins our friends and partners in community-based, faith-based, civil rights, mental health, and health advocacy communities to express deep concern about the impact of HB 7. We ask you to vote no or set the measure aside.

Kentucky Equal Justice Center is a non-federally funded partner with civil legal aid programs across Kentucky that help people when things go wrong with public benefits: the perplexing notices, denials of aid, unexpected cutoffs. We and our legal aid partners see in heartbreaking detail what it looks like to navigate the bureaucracy—or to go without help.

Together with the National Health Law Program and Southern Poverty Law Center, KEJC challenged Governor Bevin's plan for Medicaid work requirements—requirements that reappear in this bill. We won in federal district court. Governor Beshear withdrew the plan.

We suggest as a touchstone the experience of the pandemic. The pandemic showed that we need a safety net that works efficiently, treats people with respect and provides real help. In our view, that means straightforward rules, user-friendly programs, adequate staffing and modern technology. It means answering the phones. Kentuckians deserve no less.

In the following paragraphs, we identify key provisions of the bill that would diminish the safety net and share concern about the rationale and narratives used to justify the measure.

HB 7 provisions would cause loss of coverage

House Bill 7 would add red tape, barriers, costs and penalties to safety net programs that connect people with health care and keep food on the table. Key provisions could see thousands of people lose Medicaid or food assistance, or never make it past new roadblocks to aid in the first place. Among the troubling provisions:

- **Ban on temporary Medicaid:** HB 7 would bar Kentucky's Medicaid agency from making available simplified, temporary coverage, an approach called presumptive eligibility or "PE." PE helped thousands who lost their jobs when the pandemic hit and shrank dramatically as it eased. Next time, our hands would be tied.

- **Bureaucratic reporting burden:** HB 7 would end simplified reporting of changes for SNAP—an approach embraced by nearly every state—in favor of reporting almost every change within 10 days. It would tie up families and state workers in a flood of paperwork for over half a million cases. Especially hard hit: part-time workers with fluctuating schedules and income.
- **Loss of SNAP after three months:** Federal law limits SNAP for adults without children or disabilities to just three months in three years—unless they report work activity. But federal law also wisely allows states to set aside the time limit for areas with high unemployment. HB 7 says Kentucky could never set it aside, a heartbreaking result for many rural counties.
- **Medicaid work reporting:** HB 7 would require Kentucky to apply for a waiver to implement a Medicaid work activity plan like Governor Bevin’s all over again, inviting costly litigation should the federal agency approve. The courts have struck down Medicaid work reporting, ruling emphatically that the resulting loss of coverage doesn’t fulfill the purpose of Medicaid. Regarding the Kentucky plan, the court held that:

“...[A]pproving Kentucky HEALTH[’s Medicaid work requirements] on [a health improving] basis would...be arbitrary and capricious. The Secretary, most significantly, did not weigh health gains against coverage losses in justifying the approval.” *Stewart v. Azar*, 366 F. Supp. 3d 125, 145 (D.D.C. 2019)

An additional troubling provision of HB 7 would empower the state—and perhaps neighbors or partners—to “watchdog” spending of cash benefits, mandating that:

“cash may only be used for goods and services necessary for the welfare of the family, including but not limited to food, clothing, housing, utilities, childcare, transportation, medicine, and medical supplies.” HB 7 GA Section 3(3)

This provision is startlingly intrusive. Would a birthday present for a child be a misuse? Do we want to saddle a state worker or a family member with that judgment call? Note that the related penalties escalate to a 5-year cross-program ban on other public benefits, a feature the feds are likely to disapprove.

Cash benefits reach few people statewide

We hope that a narrative about dependency on cash assistance isn’t driving this bill. Kentucky’s TANF cash assistance program, KTAP, is a tiny vestige of what it used to be, with just 3,221 adults receiving benefits along with their children in February statewide. That’s an average of 27 adults per county.

The average KTAP benefit per case was \$219.36 per month in February, an amount that won’t go far. Are we using a sledgehammer on a fly? Locking up everyone to catch the “criminals?” We hope that a misleading narrative about dependency on cash benefits—or their misuse—isn’t driving this bill.

The gorilla in the room is reporting

During House committee discussion, HB 7's prime sponsor, Rep. Meade, said, "The only way that you would lose benefits in this bill is that you were either doing something that is illegal, or you are an able-bodied adult with no dependents that is not willing to participate in the work programs."

This statement is incorrect. The gorilla in the room on HB 7 is the blizzard of reporting requirements it would unleash. That's what will cause people to lose coverage. It will happen under SNAP work reporting, SNAP change reporting, and under Medicaid work reporting if it comes to pass.

This is not alarmist speculation on our part. Arkansas implemented a work reporting requirement for Medicaid very much like Governor Bevin's. It ran for a few months before the federal courts struck it down in a case combined with Kentucky's. About 18,000 people lost coverage in that handful of months, mostly for not reporting—not for not working. A [Harvard study](#) reported that:

"In addition, more than 95% of the low-income individuals in Arkansas subject to the policy were already meeting the work requirements (either working 80 hours a month or participating in a community engagement activity such as job training) or should have been able to gain an exemption (based on disability, childcare, or other factors). But one third of this group hadn't even heard of the requirements (particularly among those with less than a high school degree), and only half were reporting the required information online to the state in order to keep their coverage, primarily due to confusion about the process or lack of internet access."¹

We vividly recall a [PBS news story](#)² that showed an older worker in Arkansas looking into his phone trying to figure out how to report his work. He had failed once already. That's what this bill will look like here. In Medicaid and SNAP, it's the vast increase in required reporting that will trip people up.

Computer algorithms in fraud cases

We were also troubled by Rep. Meade's assertion that computers would detect fraud. Computers use algorithms to detect pre-identified patterns. They produce information but cannot evaluate intent. Examples: a return visit to a store on the same day, a purchase with a round number of dollars, or repeat fumbling with a pin. Older Kentuckians can be especially confused and frightened by a resulting, computer-driven but incorrectly accusatory notice. We urge care in the use of algorithm generated information.

¹ [Coverage losses, substantial confusion in Arkansas following implementation of Medicaid work requirements | News | Harvard T.H. Chan School of Public Health.](#)

² <https://www.pbs.org/newshour/show/with-new-work-requirement-thousands-lose-medicaid-coverage-in-arkansas>

Time for narrative change

House floor discussion revealed narratives used to justify this bill: of non-working “able bodied adults” and fraudsters gaming the system. Those statements should give us pause. In a compelling [new article](#), attorney Parker Gilkesson of the Center on Law and Social Policy notes that, “Although the number of convicted instances of fraud is low, everyone who receives public benefits is clouded by fear.” Gilkesson’s theme: racialized fraud provisions criminalize hunger.³

It is well past time to call out the fraud and dependency stereotypes each time they are raised. They not only hide the real-life story of the vast majority of Kentuckians who use the safety net; they justify policies that deprive Kentuckians of health care and food when they need it.

Sincerely,

Richard J. Seckel
Director

³ [SNAP “Program Integrity:” How Racialized Fraud Provisions Criminalize Hunger | CLASP.](https://www.clasp.org/publications/report/brief/snap-program-integrity-how-racialized-fraud-provisions-criminalize-hunger)
<https://www.clasp.org/publications/report/brief/snap-program-integrity-how-racialized-fraud-provisions-criminalize-hunger>