



Medicaid Flexibility and Recent Litigation

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Major Points

1. Flexibility can be good – and Medicaid is already flexible
2. Slashing coverage is a bad policy use of flexibility
3. Sometimes bad policy is also illegal



Medicaid Is Very Flexible



- States choose whether to participate
- Optional populations and services
- FFS or PCCM or MCOs or ACOs or...
- Flexibilities around cost-sharing
- Wide state administrative control
- Wide state rate-setting control

Flexibility is not a dirty word!



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Flexibility... to do WHAT? (KY example)

Charge premiums

- + Lock people out of coverage (3 ways)
- + Waiting periods
- + Terminations for not proving work
- Transportation
- Retroactive coverage

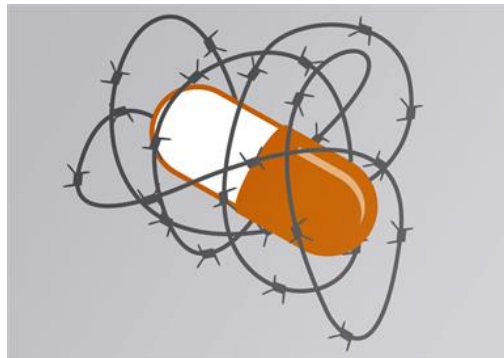
= 100,000 people lose coverage



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There ARE Legal Limits to Sec. 1115

1. § 1115 project must be “experimental”
2. Must “promote the objectives of Medicaid”



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Work Requirements in Statutes

- TANF: “purpose...is to...end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage”
- SNAP: “Conditions of participation... Work requirements” and “Workfare”
- Medicaid: **Nope.**

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Litigation Overview



- KY: Waivers vacated by federal court
 - HHS failed to consider administrative record
 - KY II coming soon?
- AR: Litigation filed in August
 - Same judge as KY case
 - Briefing runs November to January
 - Terminations began in September
- Other states: Litigation inevitable?



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Thank You

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