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!

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
There ARE Legal Limits to Sec. 1115

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

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.**
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?

Thank You

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