New Administration, New Approach to Medicaid Waivers?

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Section 1115 Waiver Authority

- Under Section 1115 of the Social Security Act, the Secretary of HHS has broad, but not unlimited, authority to approve a state's requests to waive compliance with certain provisions of federal Medicaid law and authorize expenditures not otherwise permitted by law
- Such authority is allowed in the context of an "experimental, pilot or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives" of the Medicaid program
- By longstanding practice, waivers must be budget neutral to the federal government

The Secretary may not waive certain statutory provisions including, for example:

- FMAP percentage formula
- FMAP claiming processes
- MAGI counting rules and the prohibition on the asset test
- Cost sharing requirements (limited waiver authority)
- Spousal impoverishment protections

Source: Social Security Act (SSA) § 1115; See SSA § 1916(f) for cost sharing waiver limitations.
**States may only waiver the previsions in SSA § 1902.*

Overview of Section 1115 Waivers

Four Types of Waivers in Recent Years

Managed Care Waivers: New populations and new services

Delivery System Reform Waivers: Often involve substantial federal investment; 12 states have DSRIP-type waivers

Uncompensated Care Pool Waivers: Funding approved along with new policies to take expansion into consideration in calculating allowable uncompensated care costs; 9 states have UCC waivers

Expansion-Related Coverage Waivers: New programmatic authorities to modify features of Medicaid coverage targeted to the expansion population

Coverage Waivers Under the Obama Administration

Policy	"Guardrails"
 **Premiums**	▪ No more than 2% of household income ▪ Nonpayment cannot result in loss of coverage for those under 100% FPL (can be a debt to state) ▪ No lock-out for nonpayment of premiums (beyond Indiana, pending evaluation of Indiana waiver) ▪ Exemptions
 **Cost Sharing**	▪ States may impose copayments on most Medicaid-covered benefits without a waiver ▪ Waiver authority is limited by statute ▪ Premiums and co-payments may not exceed 5% of aggregate household income
 **Work**	▪ No waivers of Title XIX granted (no authority to condition eligibility on compliance with work activity) ▪ Referrals permitted (no waiver needed)
 **Benefits & Eligibility**	▪ Waivers of NEMT and retroactive coverage granted; preconditions established ▪ No lockouts for failure to renew eligibility ▪ No time limits or (new) enrollment caps ▪ Enhanced match for expansion only if coverage extended to 133% FPL
 **QHP Premium Assistance**	▪ Beneficiary protections apply (cost sharing/benefits) (e.g., EPSDT, premiums, cost-sharing, NEMT, some LTSS)
 **ESI Premium Assistance**	▪ Beneficiary protections apply (cost sharing/benefits)

Source: Centers for Medicare and Medicaid Services, "Frequently Asked Questions on Exchanges, Market Reforms and Medicaid," (December 10, 2012) available at https://www.cms.gov/CCIIO/Resources/Files/Downloads/exchanges-faqs-12-10-2012.pdf.

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Key Elements of Pending Coverage Waivers

Proposed Features	New or Amended Waiver Proposals Undergoing Public Comment or CMS Review								
	AR	AZ	IA	IN	KY	MA	ME	UT	WI
Premiums/Lockout	✓	✓	✓	✓	✓	✓	✓		✓
Cost Sharing	✓	✓	✓	✓	✓	✓	✓	✓	✓
Healthy Behavior Incentives	✓	✓	✓	✓	✓				✓
NEMT Waiver			✓	✓	✓	✓			
IMD Exclusion Waiver		✓		✓	✓	✓		✓	✓
Retro Waiver	✓		✓	✓	✓	✓	✓	✓	
Delay in Enrollment				✓	✓				
Drug Screening									✓
Time Limits		✓						✓	✓
Partial Expansion (w/ Enhanced Federal Funding)	✓					✓			
Work-Related Provisions	✓	✓		✓	✓		✓	✓	✓
Health Savings-Like Accounts		✓		✓	✓				
Late Renewal Paperwork Penalty/ Lockout				✓	✓				
Closed Formulary						✓			

✓ = For childless adults (expansion state)

✓ = For childless adults and other populations (expansion state)

✓ = For childless adults (non-expansion state)

✓ = For other populations (non-expansion state)

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Findings from Waiver Evaluations in IN and IA

INDIANA

Indiana's expansion waiver requires enrollees to contribute to an HSA-like "POWER Account"; upon failure to contribute, those > 100% FPL may be disenrolled and those <100% FPL get a more limited benefit plan

Formal evaluations of the waiver found:

- Most enrollees did not know they had an account, only 19% reported checking the balance of their account monthly
- Nearly 55% of enrollees did not make required contributions to their account; reasons for nonpayment included not knowing a payment was required or confusion about the payment process
- As a result of non-payment, 286,914 people (<100% FPL) were enrolled in a more limited benefit plan, and 59,696 people (>100% FPL) were either disenrolled or not enrolled at all

IOWA

Iowa's expansion waiver incentivizes enrollees to complete "healthy behavior" activities to avoid premium penalties of $5 and $10

One study evaluating the waiver found:

- Less than 20% of Medicaid expansion enrollees completed the wellness exam and health risk assessment
- Non-white, younger enrollees residing in rural areas completed these activities at lower rates than other enrollees
- Despite State outreach and education efforts, most providers were unaware of the program and, as a result, failed to educate and encourage members to complete the wellness exam and health risk assessment

Sources: https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/1115/downloads/in/healthy-indiana-plan-2/in-healthy-indiana-plan-support-20-interim-evl-rpt-07062016.pdf ; https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/in/Healthy-Indiana-Plan-2/in-healthy-indiana-plan-support-20-POWER-acct-cont-assesmnt-03312017.pdf;http://content.healthaffairs.org/content/36/5/799.abstract I

Waiver "Pools"

- **As Congress was debating cuts to Medicaid, Florida's waiver renewal was approved:**
  - Uncompensated care pool funding increased from $608M/year to $1.5B/year ($7.5B/5 years)
  - Hospitals/counties pay nonfederal share
  - All funds are for care for the uninsured
- **Likely to pique interest in other states**
- **Texas is next (uncompensated care pool and delivery system pool up for renewal)**

Implications and Key Questions

- New flexibility may encourage new expansions or roll backs of current expansions
- Many of the eligibility/coverage policies in pending waivers will make it more difficult to get and keep Medicaid coverage
- New flexibility could encourage states to develop waiver proposals to improve coverage/care/health outcomes

Implications and Key Questions

- How will state delivery system transformation efforts be impacted?
  - Will significant new federal investments in delivery system transformation be requested/approved?
  - To the extent that policies such as premiums, work requirements, and lock outs increase churn and disrupt continuity of care, how will that affect state efforts to improve care and lower costs through care improvements?
- Will evaluations inform policy? Will positive results be replicated with ease and will negative findings be addressed?
- Will the courts weigh in on whether approved waivers conform to Section 1115 requirements?

Thank You!

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