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HEALTH REFORM POLICY BRIEF

September 19, 2017

SECTION 1115 WAIVERS

In March 2017, Health and Human Services (HHS) Secretary Tom Price and Centers for Medicare and Medicaid Services (CMS) Director Seema Verma issued a letter to governors signaling their willingness to provide states with more flexibility for Medicaid design:

“[W]e commit to ushering in a new era for the federal and state Medicaid partnership where states have more freedom to design programs that meet the spectrum of diverse needs of their Medicaid population.”¹

This openness to more flexibility has led more states to consider using section 1115 waivers to make alterations to their Medicaid programs, including changes that would not have been approved by previous administrations. This brief explains the basics of 1115 waivers, requirements for states, and how states have used the waivers to implement innovative ways of delivering health care to their Medicaid populations. A summary chart shows which states currently have active 1115 waivers and what they are used for.

WHAT ARE 1115 WAIVERS?

Section 1115 of Title XIX of the Social Security Act allows CMS to waive many requirements of the Medicaid statute in order for states to demonstrate or test innovative methods of health care delivery in their Medicaid programs. Section 1115 waivers allow states to include services and populations normally not covered by Medicaid. However, CMS will only approve 1115 waivers that are budget neutral — the cost to the federal government cannot be more than it would have been without a waiver.²

A state’s application for an 1115 waiver must include:

- The goals and objectives of the demonstration
- A description of the proposed delivery system, eligibility requirements, benefits, and cost-sharing, and how these would differ from the state’s current program or federal requirements

- Estimates of the expected increase or decrease in annual enrollment and expenditures
- Current enrollment data and projections for each category of beneficiary whose health care coverage would be impacted
- Other features of the state’s Medicaid and Children’s Health Insurance Program (CHIP) that would be modified by the demonstration
- Specific authorizations sought by the state for the demonstration
- The research hypotheses that are to be tested by the demonstration and the identification of appropriate evaluation indicators
- Evidence of compliance with public notice and comment requirements at both the state and federal levels

Waivers can be approved for an initial period of five years with subsequent three- to five-year renewals.³

¹ Center for Medicare and Medicaid Services. (2015). Letter to state Medicaid directors. Retrieved from <https://www.medicare.gov/federal-policy-guidance/downloads/SMD15003.pdf>

² 42 U.S.C. § 1315

³ 42 C.F.R. § 431, Subpart G

TYPES OF 1115 WAIVERS

Delivery System Reform Incentive Payments

Delivery System Reform Incentive Payments (DSRIP) waivers, authorized by the Affordable Care Act (ACA), provide states with funding derived from projected savings from testing cutting-edge ways to improve how care is paid for and delivered. Originally, DSRIP waivers were focused on improving funding for safety net hospitals by restructuring their Medicaid supplemental funding. However, these waivers have grown to include more extensive delivery and payment reforms. Currently nine states have DSRIP waivers: California, Kansas, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Texas, and Washington. Key features of DSRIP waivers include:⁴

- Infrastructure development
- System redesign
- Clinical outcome improvements
- Population-focused improvements and
- Performance metrics

TEXAS DSRIP

- 1115 waiver approved in 2011 and extended through 2017
- Created 20 Regional Healthcare Partnerships (RHPs) to redesign infrastructure and programs, improve health care quality, and enhance population health
- Funding to RHPs based on volume of Medicaid low-income patient care
- Example: University Physician Associates expanded connectivity with nine rural counties to further integrate primary and behavioral health care services⁵

DSRIPs have proven successful at promoting collaboration and innovation, while bringing renewed focus to the provision of social services. However, DSRIPs have also faced challenges, such as difficulty measuring their impact on health outcomes and creating sustainable financing

structures. In addition, their complexity has created systemic challenges — such as limited administrative funding — for providers, state officials, and advocates.⁶

Other Delivery System Reform

Four states — Arizona, Florida, Oregon, and Rhode Island — have DSRIP-like programs that use Medicaid section 1115 waiver authority and funding to incentivize system transformation and quality improvement for low-income patients. These waivers do not meet all ACA DSRIP program requirements and involve other avenues for state funding and matching federal funds beyond the 1115 waiver. These four states and several others also have approved section 1115 waivers for federal investment in delivery system reform initiatives other than DSRIPs, such as:

- Alabama — Provider-based regional care organizations
- Arizona — Integrating physical and behavioral health care
- Oregon — Coordinated care organizations
- Vermont — All-payer accountable care organizations
- Florida, Tennessee, Arizona, California, Kansas, Massachusetts, New Mexico, and Texas — Uncompensated care pools to help defray the cost of uncompensated hospital care⁷

FLORIDA UNCOMPENSATED CARE POOL

- Operated under 1115 waiver since 2006
- State share funded by state and local property and sales taxes, as well as general revenue
- Funds can be distributed to hospitals, medical schools, and Federally Qualified Health Centers and Rural Health Centers, based on level of uncompensated care
- Five-year extension approved in 2017, increased spending from \$608 million per year to \$1.5 billion per year (\$7.5 billion over 5 years)⁸

⁴ National Academy for State Health Policy. (2015). State Experiences Designing and Implementing Medicaid Delivery System Reform Incentive Payment (DSRIP) Pools. Report for Medicaid and CHIP Payment and Access Commission. Retrieved from <https://www.macpac.gov/wp-content/uploads/2015/06/State-Experiences-Designing-DSRIP-Pools.pdf>

⁵ Texas Health and Human Services. Waiver Overview and Background Resources. Retrieved from <https://hhs.texas.gov/laws-regulations/policies-rules/waivers/medicaid-1115-waiver/waiver-overview-background-resources>

⁶ See note 4 above.

⁷ National Academy for State Health Policy. State Delivery System and Payment Reform Map. Retrieved from <http://nashp.org/state-delivery-system-payment-reform-map/>

⁸ Florida Agency for Healthcare Administration. Low Income Pool (LIP) Program. Retrieved from <http://ahca.myflorida.com/medicaid/Finance/finance/LIP-DSH/LIP/>

Alternatives to Medicaid Expansion

Seven states have used 1115 waivers to expand their Medicaid programs to cover all individuals up to 138% of the federal poverty level. States that use 1115 waivers to expand eligibility may have program features that were not explicitly stated in the ACA, such as support for private insurance, cost sharing, and healthy behavior incentives. For example, Arkansas' 1115 waiver allows it to use Medicaid funds to pay for private insurance for its expansion population, in addition to waiving the requirements for retroactive eligibility. Indiana's waiver allows it to not only provide premium assistance, but also to impose co-payments above those normally permitted by Medicaid, as well as incentives for healthy behaviors. Features of the various alternate expansions are shown in the table below.⁹

MEDICAID EXPANSION THROUGH 1115 WAIVERS AS OF JULY 2017

APPROVED PROVISIONS	STATES
Alternative Medicaid expansion	AR, AZ, IA, IN, MI, MT, NH
Premium assistance	AR, IA, IN, MI, NH
Premium/monthly contributions	AR, AZ, IA, IN, MI, MT
Healthy behaviors incentives	AZ, IA, IN, MI
Waived benefits	
non-emergency transport	IA, IN
reasonable promptness	IN
retroactive eligibility	AR, IN, NH
Co-payments above statutory limits	IN
12-month continuous eligibility	MT

Source: Medicaid and CHIP Payment and Access Commission. (2017). Expanding Medicaid to the New Adult Group through Section 1115 Waivers. Retrieved from <https://www.macpac.gov/wp-content/uploads/2015/07/Waiver-Summaries-Overview-1.17.pdf>

In addition to these features, four of the 1115 expansion states have laws that require the state to reduce or eliminate Medicaid eligibility and/or benefits for the expansion population if the enhanced Federal Medical Assistance Percentages (FMAP) is ever reduced below 90%. For example, in Arkansas, expansion would be terminated within 120 days of an FMAP reduction below 90%.¹⁰

⁹ Medicaid and CHIP Payment and Access Commission. (2017). Expanding Medicaid to the New Adult Group through Section 1115 Waivers. Retrieved from <https://www.macpac.gov/wp-content/uploads/2015/07/Waiver-Summaries-Overview-1.17.pdf>

¹⁰ Arkansas HB 1143 (2013); Indiana SB 165 (2016); Michigan HB 4714 (2013); New Hampshire HB 1696 (2016)

¹¹ Center for Medicare and Medicaid Services. (2015). Letter to state Medicaid directors. Retrieved from <https://www.medicare.gov/federal-policy-guidance/downloads/SMD15003.pdf>

¹² Medicaid and CHIP Payment and Access Commission. (2017). Chapter 2: Medicaid and the Opioid Epidemic. Retrieved from <https://www.macpac.gov/wp-content/uploads/2017/06/Medicaid-and-the-Opioid-Epidemic.pdf>

¹³ California Department of Health Care Services. Retrieved from <http://www.dhcs.ca.gov/provgovpart/Pages/Drug-Medi-Cal-Organized-Delivery-System.aspx>

¹⁴ Virginia Department of Medicaid Assistance Services. (2017). Presentation for Medical Providers. Retrieved from http://www.dmas.virginia.gov/Content_atchs/bh/ARTS%20Benefit%20Final%20Presentation_09.12.16%20Final%20v9.pdf

Behavioral Health

1115 waivers can also be used to provide additional behavioral health services to a state's Medicaid population. In July 2015, CMS issued guidance in support of state efforts, through 1115 waivers, to reform systems of care for individuals with substance use disorders (SUD) by:¹¹

- Enhancing short-term acute care and recovery support availability for individuals with SUD
- Improving care delivery
- Integrating behavioral and physical care
- Increasing provider capacity and raising quality standards

These waivers are active in 12 states: Arizona, California, Delaware, Hawaii, Kansas, Massachusetts, Maryland, Montana, New Hampshire, New Jersey, New York, and Virginia. Several of these states are using these waivers specifically to combat the opioid epidemic.¹²

1115 WAIVERS FOR BEHAVIORAL HEALTH

- California¹³
 - Drug Medi-Cal Organized Delivery System pilot program
 - Enables counties to provide an enhanced set of benefits to SUD patients
 - Aims to increase recovery success and lower system costs
- Virginia¹⁴
 - Provides SUD benefits to all Medicaid beneficiaries
 - Benefits include detoxification, treatment, and peer supports
 - Increased provider payments for medication-assisted treatment and case management

Managed Long-Term Services and Supports

Many states have used 1115 waivers to mandatorily enroll their aged, blind, and disabled populations in capitated managed care plans that provide for managed long-term services and supports (MLTSS). 1115 MLTSS waivers allow states to streamline

program administration, improve care coordination, and expand access to home and community-based services (HCBS). Twelve states currently have 1115 waivers for MLTSS: Arizona, California, Delaware, Hawaii, Kansas, New Jersey, New Mexico, New York, Rhode Island, Tennessee, Texas, and Vermont. Nearly all 1115 MLTSS waiver states require their managed care organizations to cover a comprehensive set of benefits including nursing home care, HCBS, acute and primary care, and behavioral health services.¹⁵

Targeted Programs

States can also use 1115 waivers to provide specific services, not usually covered by Medicaid, to target populations. For example, Florida uses an 1115 waiver to expand Medicaid eligibility for low-income seniors with disabilities. In addition to receiving full Medicaid benefits, waiver participants receive prescription drug case management services in an effort to increase patient compliance and reduce unnecessary prescriptions.¹⁶ Georgia uses an 1115 waiver for its Planning for Healthy Babies program, which provides a limited Medicaid benefit package of family planning and family planning–related services to populations currently not covered under the Medicaid state plan.¹⁷

LOOKING FORWARD

The March letter from HHS Secretary Price and CMS Director Verma can be viewed as an invitation to seek approval for 1115 waivers that would allow states to make changes to their Medicaid programs that have not been allowed under previous administrations. The first applications filed since the letter was issued are from six 1115 expansion states — Arkansas, Indiana, Kentucky, Maine, Utah, and Wisconsin — that are seeking even more flexibility for their Medicaid expansion programs. For example, all six states have sought permission to impose some type of work requirements on Medicaid beneficiaries. Other requests include:¹⁸

- Limiting expansion to those at or below 100% of the federal poverty level (Arkansas)
- Eliminating presumptive hospital eligibility (Maine and Utah)
- Surcharge for tobacco use (Indiana)
- Locking members out who do not complete a timely renewal (Indiana and Kentucky)
- Disenrollment for failure to pay premiums (Kentucky, Maine, and Wisconsin)
- Time limits on coverage (Maine and Wisconsin)

If CMS approves these requests, it is likely that more states will seek approval for 1115 waivers that could be used to make a variety of changes to their Medicaid programs in terms of eligibility, member responsibility, and delivery of services. The Georgia Health Policy Center will continue to monitor 1115 waiver applications and issue updates and further briefs as appropriate.

The Georgia Health Policy Center (GHPC), has been a neutral source of health policy information and analysis for more than 20 years. GHPC's Health Reform Work Group is composed of faculty and staff from Georgia State University's Andrew Young School of Policy Studies, J. Mack Robinson College of Business, College of Law, and Rollins School of Public Health at Emory University. Team members have expertise in the areas of health policy, health care administration and finance, economics, insurance, risk management, employee benefits, population health, and health law.

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¹⁵ National Association of States United for Aging. (2017). Demonstrating the Value of Medicaid LTSS Programs. Retrieved from <http://www.nasuad.org/sites/nasuad/files/FINAL%20Demonstrating%20the%20Value%20of%20MLTSS%205-12-17.pdf>

¹⁶ Florida Agency for Health Care Administration. MEDS-AD Research and Demonstration Waiver. Retrieved from <http://ahca.myflorida.com/Medicaid/MEDS-AD/index.shtml>

¹⁷ Georgia Department of Community Health. Planning for Healthy Babies. Retrieved from <https://dch.georgia.gov/planning-healthy-babies>

¹⁸ See pending 1115 applications for the following states: Arkansas: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ar/ar-works-pa2.pdf>; Indiana: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/in/in-healthy-indiana-plan-support-20-pa4.pdf>; Kentucky: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ky/ky-health-pa2.pdf>; Maine: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/me/me-mainecare-pa.pdf>; Utah: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ut/ut-primary-care-network-pa3.pdf>; Wisconsin: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/wi/wi-badgercare-reform-pa.pdf>