



Section 1115 Demonstration Waivers

What is a Section 1115 Waiver?

Section 1115 of the *Social Security Act* provides the U.S. Secretary of Health and Human Services with authority to approve experimental, pilot, or demonstration projects that promote the objectives of the Medicaid program and the Children's Health Insurance Program (CHIP). Through this state option, certain provisions of the Medicaid program may be waived by the federal government to allow states additional flexibility in designing and improving their programs. These waivers allow states to change their Medicaid and CHIP programs to increase eligibility; expand services covered; and implement innovative service delivery systems to improve efficiency, quality of care, health outcomes, and to reduce costs. The state waiver must lead to improved coverage, access to care, health outcomes, and/or efficiency and quality of care for eligible populations. Waiver applications are submitted to the Centers for Medicare & Medicaid Services (CMS) for approval and are subject to public review and comment.

History of Section 1115 Waivers

As of September 2017, 33 states and the District of Columbia have active Section 1115 waivers.ⁱ In 2010, President Barack Obama signed into law the *Affordable Care Act* (ACA) which the Supreme Court later ruled gave states the option to expand coverage to all individuals with incomes at or below 138% of the federal poverty level (FPL). The passage of the ACA and resulting state Medicaid expansion fundamentally changed how waivers were used by states.ⁱⁱ Prior to the passage of the ACA, waiver applications were narrow in scope and were used to cover ineligible populations. This included childless adults who were not otherwise covered under federal regulations. Waivers were also used to implement delivery system reforms, including broader managed care delivery systems. During the George W. Bush Administration, states sought to expand coverage to previously ineligible populations, however states could provide more limited benefits and charge higher cost-sharing requirements to these populations than what would be traditionally allowed under Medicaid and CHIP. Section 1115 waivers were also granted to provide state flexibility to broaden access and provide expedited Medicaid and CHIP services in emergency situations.ⁱⁱⁱ

Section 1115 Waivers Under the Obama Administration

The Obama Administration approved more than twenty-five Section 1115 waiver applications and extensions. Most notably seven states (AR, AZ, IA, IN, MI, MT, and NH) used this mechanism to provide an alternative approach to Medicaid expansion under the ACA. Key trends seen in approved waivers include premium assistance models, charging premiums or monthly contributions, utilizing healthy behavior incentives to reduce premiums or cost-sharing, and waiving retroactive eligibility.^{iv} Following is an example of an approved waiver:

Michigan initially submitted their Healthy Michigan Plan on November 8, 2013 to provide coverage to all newly eligible adults with incomes up to 138% FPL. The Michigan waiver was approved by CMS on December 30, 2013. The waiver requires beneficiaries to make monthly payments into a health savings account. Michigan revised their Healthy Michigan Plan in September 2015 to extend the program beyond the initial end date of April 30, 2016, and to allow beneficiaries who are not medically frail and are between 100% and 138% FPL to have two coverage options. Under the waiver, beneficiaries may continue coverage through the Healthy Michigan Plan (Medicaid managed care) or participate in the Marketplace Option. The Marketplace Option gives premium

AAFP Headquarters

11400 Tomahawk Creek Pkwy.
Leawood, KS 66211-2680
800.274.2237 • 913.906.6000
fp@aafp.org

AAFP Washington Office

1133 Connecticut Avenue, NW, Ste. 1100
Washington, DC 20036-1011
202.232.9033 • Fax: 202.232.9044
capitol@aafp.org

assistance to the expansion population for Marketplace coverage through a Qualified Health Plan. The Healthy Michigan Plan requires beneficiaries to meet a healthy behavior requirement, like having an annual primary care visit, after a one year grace period. If the beneficiary does not demonstrate healthy behaviors, he or she is transferred to the Marketplace Option. Beneficiaries above 100% FPL must pay monthly premiums of up to 2% of income in both options.^v

Section 1115 Waivers Under the Trump Administration

The Trump Administration views Section 1115 waivers as an important tool for Medicaid reform and has [committed](#) 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.” The administration has expressed support for waiver provisions that were not previously approved as well as their commitment to fast-tracking approval of waivers and demonstration project extensions.^{vi} As a result, there have been new trends in Section 1115 waiver and amendment applications including changes to state Medicaid programs that affect non-expansion populations, work requirements as a condition of eligibility, time limits for coverage eligibility, and coverage lockouts for failure to pay premiums and/or for failure to timely renew eligibility. As of September 2017, six states (AR, IN, KY, ME, UT and WI) have pending Section 1115 waivers featuring these trends. Following is a proposed waiver from Wisconsin which was submitted for approval on June 15, 2017:

Wisconsin has not expanded Medicaid, but has an active Section 1115 waiver that was approved by CMS in December of 2013. The waiver that allows the state to provide Medicaid benefits to childless adults up to 100% FPL. The state submitted an amendment on June 7, 2017 to request changes to the waiver. The proposed changes would continue to pertain to non-pregnant, childless adults with incomes that do not exceed 100% FPL. The amendment would implement a required premium payment of up to 2% of income for beneficiaries between 51% and 100% FPL. A coverage lockout will occur for up to six months for failure to pay premiums and enrollment in the program will be limited to 48 months. Following this time limit, members will be ineligible for coverage for six months. If a beneficiary is engaged in work or job training for at least 80 hours per month, that month will not accrue onto their eligibility time limit. Drug screening and drug testing, as needed, will be required as a condition of eligibility; a positive indication will not result in loss of eligibility or disqualification, however they would only be eligible under the condition that the beneficiary enters a substance abuse treatment program.^{vii}

Looking Ahead

Given the Administration’s approval and support of Section 1115 waivers, it is expected that states will continue to use these waivers to gain flexibility in their Medicaid programs. There are currently multiple pending Section 1115 and other amendments and applications waiting for CMS approval that include provisions that have not been approved in the past. It will be important to watch how the Administration handles approval of these provisions as well as how other states utilize 1115 waivers once a precedent has been set.

ⁱ Centers for Medicare and Medicaid Service. (n.d.). State Waivers List. Retrieved from https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/waivers_faceted.html

ⁱⁱ Musumeci, M.B., Hinton, E., & Rudowitz, R. (2017, June 14). Key Themes in Section 1115 Medicaid Expansion Waivers. Retrieved from <http://www.kff.org/medicaid/issue-brief/key-themes-in-section-1115-medicaid-expansion-waivers/>

ⁱⁱⁱ Rudowitz, R., Artiga, S., & Musumeci, M.B. (2014, February). *The ACA and Recent Section 1115 Medicaid Demonstration Waivers* (Issue Brief). Retrieved from <https://kaiserfamilyfoundation.files.wordpress.com/2014/02/8551-the-aca-and-recent-section-1115-medicaid-demonstration-waivers.pdf>

^{iv} Musumeci, M.B., Hinton, E., & Rudowitz, R. (2017, June 14). Key Themes in Section 1115 Medicaid Expansion Waivers. Retrieved from <http://www.kff.org/medicaid/issue-brief/key-themes-in-section-1115-medicaid-expansion-waivers/>

^v Centers for Medicare and Medicaid Services. (2014, January 3). Healthy Michigan Section 1115 Demonstration Fact Sheet. Retrieved from <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/mi/mi-healthy-michigan-fs.pdf>

^{vi} Price, Thomas E and Verma, Seema. "Secretary Price and Administrator Verma Letter." Received by State Governors, 14 March 2017. Retrieved from <https://www.hhs.gov/sites/default/files/sec-price-admin-verma-ltr.pdf>

^{vii} State of Wisconsin Department of Health Services. (2017, June 7). *Section 1115 Demonstration Waiver Amendment Application*. Madison, WI. Retrieved from <https://www.dhs.wisconsin.gov/badgercareplus/clawaiver-finalapp.pdf>