



## 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 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 May 2018, 37 states have active Section 1115 waivers.<sup>i</sup> 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.<sup>ii</sup> 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 expanding managed care delivery systems. During the George W. Bush Administration, states also sought to expand coverage to previously ineligible populations, and 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.<sup>iii</sup>

### 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.<sup>iv</sup> 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 assistance to the expansion population for Marketplace coverage through a Qualified Health Plan.

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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.<sup>v</sup>

### **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.<sup>vi</sup> 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 May 2018, ten states (AZ, FL, KS, ME, MS, NM, NC, OH, UT, and WI) have pending Section 1115 waivers featuring these trends. Following is an example of an approved waiver:

Kentucky’s Section 1115 waiver was the first to contain work requirements and be approved by CMS. The state’s original waiver was submitted on August 24, 2016, updated on July 3, 2017, and approved by CMS on January 12, 2018. Once the waiver is fully implemented, Medicaid beneficiaries in Kentucky between the ages of 19 and 64 will have to complete 80 hours of “community engagement” activities, which can include employment, job training, and other forms of activity. Exempt populations include pregnant women, primary caregivers, “medically frail” individuals, and full-time students. In addition to the work requirements, the waiver also temporarily creates a “lock out” for beneficiaries who don’t meet the 80-hour work requirement and imposes premiums on individuals in the expansion population. These individuals would also be subject to a six-month lock out from coverage should they not pay their premiums for two consecutive months.<sup>vii</sup>

### **Looking Ahead**

Under the Trump administration, four states have received CMS approval to establish work requirements for their Medicaid expansion population through their Section 1115 waivers. Kentucky is currently facing a lawsuit for allegedly violating the core principles of the Medicaid program in its waiver. Work requirements in the traditional population, time limits, and drug testing requirements for Medicaid have not yet been approved by the Administration.

Given the current 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. How the Administration handles approval of pending waivers as well as how other states utilize Section 1115 waivers, now that new precedents have been set, will impact Americans’ health insurance across the country.

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<sup>i</sup> Centers for Medicare and Medicaid Services. (n.d.). State Waivers List. Retrieved from [https://www.medicare.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/waivers\\_faceted.html](https://www.medicare.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/waivers_faceted.html)

<sup>ii</sup> 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-medicare-expansion-waivers/>

<sup>iii</sup> 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-medicare-demonstration-waivers.pdf>

<sup>iv</sup> 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-medicare-expansion-waivers/>

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

<sup>vi</sup> 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>

<sup>vii</sup> Centers for Medicare and Medicaid Services. (n.d.). Kentucky HEALTH. Retrieved from <https://www.medicare.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/?entry=39258>