

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.

Recent History of Section 1115 Waivers

As of January 2021, 45 states had Section 1115 waivers approved by CMS.¹ In 2010, President Barack Obama signed into law the Affordable Care Act (ACA) which, among other things, gave states the option to expand coverage to all individuals with incomes at or below 138 percent of the federal poverty level (FPL). The passage of the ACA and resulting state Medicaid expansion fundamentally changed how waivers were used by many states.²

Prior to the passage of the ACA, waiver applications were often narrow in scope and used to cover ineligible populations, such as childless adults who were not otherwise covered under federal statute, or to implement delivery system reforms, including expanding managed care delivery systems. The Obama administration approved more than 25 Section 1115 waiver applications and extensions. Most notably, seven states (AR, AZ, IA, IN, MI, MT, 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.³ For example:

Michigan's [Healthy Michigan Plan](#) to provide coverage to all newly eligible adults with incomes up to 138% FPL was approved by CMS in 2013 and requires beneficiaries to make monthly payments into a health savings account. Michigan revised the 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 percent FPL to have two coverage options. Beneficiaries may continue coverage through the Healthy Michigan Plan (Medicaid managed care) or participate in the Marketplace Option, which gives premium 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 percent FPL must pay monthly premiums of up to 2 percent of income in both options.

¹ Kaiser Family Foundation. (2021). "Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State." Web.

² Price T, Verma S. (2017). "Secretary Price and Administrator Verma Letter." Web.

³ Musumeci M.B., Hinton E., Rudowitz R. (2017). "Key Themes in Section 1115 Medicaid Expansion Waivers." *Kaiser Family Foundation*. Web.

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Section 1115 Waivers Under the Trump Administration

The Trump administration expressed [support](#) for waiver provisions that were not approved by previous administration. The administration fast-tracked approval of waivers and demonstration project extensions, including changes to state Medicaid programs that affected 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.⁴ Under the Trump administration, CMS issued [new criteria](#) for waiver approval which eliminated expansion of coverage as a stated objective and granted waiver extensions for up to ten years instead of the typical three- or five-year extensions granted by previous administrations. For example, the approved [Healthy Indiana Plan](#) includes a six-month lockout for failure to pay, a work requirement for non-exempt beneficiaries aged 19 to 59, and a lockout for those who fail to meet the work requirement. The majority of this waiver has been [extended](#) through 2030 and the work requirement has been conditionally extended through 2025 pending a decision in the [Azar vs Gresham](#) case.

Section 1115 Waivers During the COVID-19 Pandemic

The COVID-19 pandemic affected the types of waivers submitted to and approved by CMS. The submission of waivers slowed as states were required to meet “maintenance of eligibility” conditions to access enhanced Medicaid funding, which limited states’ pursuit of eligibility restrictions. However, in the last months of the Trump administration, waivers with eligibility restrictions and other provisions that limit coverage were granted in four states (GA, NE, TN, TX).^{5,6} Eight emergency waivers were granted; however, they were limited in scope, focused mostly on long-term services and supports, and followed a template issued by CMS. In a departure from previous administrations that experienced crises, CMS rejected a waiver submitted by [Washington](#) which aimed to temporarily expand eligibility to include individuals with incomes at or below 200% FPL.

Looking Ahead

The Trump administration approved 12 states’ (AZ, AR, GA, IN, KY, MI, NE, NH, OH, SC, UT, WI) waivers to establish work requirements on select Medicaid populations. Despite these approvals,, work requirements are currently not operational in any state. Of those 12 states, four (AR, KY, MI, NH) have been blocked by the courts with lawsuits pending in Arizona and Indiana. The Supreme Court is set to rule on cases pertaining to work requirements in Arkansas and New Hampshire in the 2020-2021 session after lower courts deemed the requirements unlawful because the administration failed to consider the impact on Medicaid coverage.⁷

The Trump administration’s use of waivers focused primarily on eligibility and benefits restrictions that shrunk coverage rather than expanded it. However, since the beginning of the pandemic, Medicaid and CHIP have seen at least a 7.4% increase in enrollment, signaling a growing need for these benefits. While the outgoing Trump administration put in place policies to make it difficult to easily reverse CMS approvals, the Biden administration may review and rescind waivers granted during the Trump administration and grant new waivers to expand coverage.⁸

Updated: February 2021

⁴ Kaiser Family Foundation. (2019). “Pending Section 1115 Medicaid Waivers.” Web.

⁵ Guth M et al. (2020) “The Landscape of Medicaid Demonstration Waivers Ahead of the 2020 Election.” *Kaiser Family Foundation*. Web.

⁶ Guth M et al. (2021) “Tennessee & Other Medicaid 1115 Waiver Activity: Implications for the Biden Administration.” *Kaiser Family Foundation*. Web.

⁷ Guth M et al. (2020). “The Landscape of Medicaid Demonstration Waivers Ahead of the 2020 Election.” *Kaiser Family Foundation*. Web.

⁸ Rudowitz R et al. (2021). “Medicaid: What to Watch in 2021.” *Kaiser Family Foundation*. Web.