



## 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 September 2018, 37 states have active Section 1115 waivers.<sup>1</sup> In 2010, President Barack Obama signed into law the *Affordable Care Act* (ACA) which 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>2</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>3</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, 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>4</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

<sup>1</sup> Kaiser Family Foundation. (2018). "Approved Section 1115 Medicaid Waivers, as of September 28, 2018." Web.

<sup>2</sup> Price T, Verma S. (2017). "Secretary Price and Administrator Verma Letter." Retrieved from <https://www.hhs.gov/sites/default/files/sec-price-admin-verma-ltr.pdf>

<sup>3</sup> Rudowitz R., Artiga S., Musumeci, M.B. (2014). The ACA and Recent Section 1115 Medicaid Demonstration Waivers (Issue Brief). Kaiser Family Foundation. Web.

<sup>4</sup> Musumeci M.B., Hinton E., Rudowitz R. (2017). "Key Themes in Section 1115 Medicaid Expansion Waivers." Kaiser Family Foundation. Web.

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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. 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>5</sup> Michigan has submitted an amendment to modify this waiver to include work requirements.

### **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 a system “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. 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 2018, 19 states (AL, AZ, FL, KS, ME, MI, MS, NM, OH, OK, NC, NH, OH, SD, TN, TX, UT, VA, WI) have waivers pending approval or working through the comment process featuring these trends. Following is an example of an approved waiver:

Indiana’s Section 1115 waiver was the second to contain work requirements and be approved by CMS, after Kentucky. The state’s original waiver was submitted on January 31, 2017, updated on July 20, and approved by CMS on February 1, 2018. Once the waiver is fully implemented, Medicaid beneficiaries in Kentucky between the ages of 19 and 64 will have to work 20 hours per week, which can include employment, job training, and other forms of activity. Exempt populations include pregnant women, primary caregivers, “medically frail” individuals, full- and part-time students, among other categories. In addition to the work requirements, the waiver also creates a three month “lock out” for beneficiaries who don’t meet the new work requirement. This lock out builds on an existing lockout for individuals with incomes above the federal poverty level (FPL) who failed to pay monthly premiums.<sup>6</sup>

### **Looking Ahead**

Under the Trump administration, four states (AR, IN, KY, NH) have received CMS approval to establish work requirements for their Medicaid expansion population through their Section 1115 waivers. Kentucky’s work requirements were blocked by a judge for not properly considering the estimated 95,000 beneficiaries who could lose coverage under the waiver. Arkansas’ work requirement, which took effect in June and has since disenrolled more than 8,000 beneficiaries for noncompliance, is also subject to a lawsuit. Work requirements in the “traditional” Medicaid population, time limits, and drug testing requirements for Medicaid have not yet been approved.

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>5</sup> Centers for Medicare and Medicaid Services. (2014). 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>

<sup>6</sup> Centers for Medicare and Medicaid Services (2018). Health Indiana Plan Section 1115 Demonstration Waiver Amendment to Extension. Retrieved from <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/in/in-healthy-indiana-plan-support-20-pa5.pdf>