Administrative Threats to Medicaid: Medicaid Waivers

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About NHeLP

• National non-profit committed to improving health care access and quality for low income and underserved individuals and families

• State & local partners:
  • Disability rights advocates – 50 states + DC
  • Poverty & legal aid advocates – 50 states + DC

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Roadmap

• What is Medicaid
• What are Medicaid waivers
• What’s at risk?
What Is Medicaid?

• Medicaid is the largest public health insurance program in the country, currently insuring about 74 million people
  • Medicaid covers low-income individuals

• Medicaid is a Federal program, but it is funded jointly by Federal and State governments, and it is almost entirely implemented by States
  • States have tremendous flexibility in how they implement Medicaid
  • States get partial federal funds for their Medicaid spending
The Medicaid Promise

- Federal-state partnership –
  - States pay part of the costs
  - On average 57% paid by the federal government but up to 75% in states with lowest per capita income
  - Enhanced federal match for systems upgrades, services for newly eligible adults, family planning, preventive services

- No waiting lists (except for some waiver programs)
- As an “entitlement,” Medicaid is a “property interest” under the Constitution and cannot be taken away without due process
Medicaid Waivers – § 1115

• One of the most important waiver authorities in Medicaid is § 1115
• It allows HHS to waive federal Medicaid requirements for a state to do an innovative health care project
• Historically, used to do coverage expansions, managed care, family planning, and lately, Medicaid Expansion
Things Have Gotten Much Worse

1. Worse waivers are being requested and approved…
2. With no new expansions…
3. And targeting traditional Medicaid populations
§ 1115 Waivers: Experiment or backdoor cuts?

Medicaid is tailored for low-income populations

- *e.g.* Low cost sharing and premiums
- Transportation to medical appointments, if needed
- Robust services for children and adolescents (EPSDT)

Innovations can drive better, more efficient care, but…

Waiving key guardrails can have predictable consequences.
§ 1115 Waivers background

• § 1115 scope has expanded dramatically and now accounts for 1/3 of Medicaid spending

• Under previous Administration, 7 states received waivers as part of Medicaid expansion
  • Premiums with lockouts and waiting periods
  • NEMT, retroactive eligibility waivers
  • Higher cost sharing
§ 1115 Waiver Trends (pre-2017)

**Four Types of Waivers in Recent Years**

- **Managed Care Waivers**: new populations and new services

- **Delivery System Reform Waivers**: often involve substantial federal investment; 12 states have DSRIP type waivers

- **Uncompensated Care Pool Waivers**: new policies established by Obama Administration; 9 states have UCC waivers

- **Expansion Waivers**: accompanied by new programmatic authorities but only to expansion populations; 7 states have such waivers
Current Issues in § 1115 Waivers

- High, mandatory premiums & cost sharing
- Mandatory exclusions
- Life-time limits
- Work requirements
- Drug testing
- Retroactive eligibility
- Non-emergency transportation
Limits on 1115 demonstrations

1. Is it experimental? What is it testing?

2. Is it likely to assist in promoting Medicaid objectives?
   - furnish medical assistance to limited income people

3. Is it within the scope of § 1115 authority?
   - Waive compliance with requirements of Social Security Act § 1902
   - Only to extent and for period needed
   - Special limitations (e.g. Cost sharing, budget neutrality)
Kentucky Medicaid Damage

- Lock people out of coverage (3 ways)
- Waiting periods
- Work requirements
- Transportation
- Retroactive coverage

KEEP CALM AND READ THE STATUTE

100,000 people lose coverage
Kentucky Litigation Overview

- Class action with 16 plaintiffs
- Filed against HHS, CMS, and leadership
- Filed in U.S. District Court, DC
- Co-counsel: Kentucky Equal Justice Center, Southern Poverty Law Center
  - Additional help from law firm Jenner & Block
- Asking the court to (1) declare waivers illegal and (2) enjoin the waivers
Collateral Damage – Exemptions

• The process of identifying, screening, & verifying exemptions increases red tape and lowers enrollment.

• Sanctions disproportionately impact people with disabilities and serious medical conditions.
Collateral Damage – Purged by Paperwork

Reasons for Non-Payment of Premiums, Healthy Indiana Plan Basic Members

- 34% Could not Afford
- 25% Confusion on payment process
- 17% Did not know payment required
- 24% Other

Adapted from Lewin Group, Indiana HIP 2.0 POWER Account Contribution Assessment
Collateral Damage – Work requirements

• People with disabilities who should be exempt lose coverage due to documentation or verification issues

• People facing substantial barriers to work due to health or functional status may not qualify as exempt

• People with disabilities facing substantial barriers to work will not receive adequate employment supports

• Low-wage workers will lose coverage due to unstable hours and reporting/verification problems

• Caregivers may not be exempt, or may have to document their caregiving hours as work activities
Going Forward

• Each state will be a separate case

• Litigation will not be a “one and done” solution

• Litigation is just one piece of a larger campaign that is needed to stop bad waivers & protect the integrity of the Medicaid program
Advocacy & Enforcement

There are a lot of different ways to be involved:

- coalitions
- evidence
- comms
- plaintiffs
- amicus
- comments
- letters
- hearings
Helpful § 1115 Resources

• NHeLP waiver page for 1115 tracker, sample comments, legal/policy analysis, & approved waiver fact sheets

• CBPP, Kaiser Family Foundation, and CLASP
  • How Might Older Nonelderly Medicaid Adults with Disabilities Be Affected By Work Requirements in Section 1115 Waivers?
  • Section 1115 Medicaid Demonstration Waivers: A Look at the Current Landscape of Approved and Pending Waivers
  • Medicaid Waivers Should Further Program Objectives, not Impose Barriers to Coverage and Care
  • The Effects of Premiums & Cost Sharing on Low Income populations
THANK YOU

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