

Fighting Restrictive Medicaid Waivers

October 2018



1115 Waivers: The Basics

Must be an ***experimental, pilot or demonstration project***

Project must be likely to assist in ***promoting the objectives of the Medicaid statute***

State may “waive” certain provisions of federal law ***to the extent necessary to carry out the demonstration***

Project must be ***budget neutral*** to the federal government

Subject to state and federal ***public notice and comment*** periods

What We Know:

Evidence of Harm From Coverage Restrictions

Premiums reduce coverage, create barriers to care

Cost-sharing decreases use of necessary services

Limited understanding of complex incentive programs

Increasing documentation requirements decreases coverage

Many sanctioned under work requirements should have been exempt based on disability or chronic illness

Status of Proposals

To Take Medicaid Away From People Who Don't Meet Work Requirements

Approved: AR, KY*, IN, NH

Pending at CMS: AL, AZ, KS, ME, MI, MS, OH, SD, UT, WI

State comment period: OK, TN, VA

Defeated in state legislatures: AK, CO, LA, MN, NC, PA, WY

Reasons for Coverage Loss

- Inability to comply
 - Lack of work supports (transportation, job training, child care)
 - Inability to meet hourly requirement or consistently report hours
- Administrative complexity/confusion
 - Inability to meet documentation requirements for exemptions
 - Confusion and misunderstanding
 - Limited internet access
- “Catch-22” in non-expansion states

Stages of Advocacy

Against Proposals for Work Requirement and Other Coverage Restrictions

- Develop an initial strategy to prevent and deal with harmful proposals
- Prevent harmful proposals from arising
- Oppose proposals arising from legislature and executive branch
- Maximize the impact of public comment periods
- Support litigation
- Monitor waiver implementation

Developing an Initial Strategy

To Oppose Work Requirements and Other Coverage Restrictions

Initial questions:

- Who has the legal authority to submit a waiver -- executive branch, legislative branch, or both?
 - Who are key executive and legislative leaders to reach?
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- Develop a coalition or broaden existing coalition
 - Key providers, hospitals, managed care plans, patient advocates, disease-specific groups
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- Analyze data as part of a preliminary analysis of impact

Timing: Before a proposal is developed by the executive branch or legislature

Minnesota's "This Is Medicaid" Coalition



Preventing Proposals for Work Requirements and Coverage Restriction

- Educate key policymakers (legislators, legislative staff, executive branch officials)
 - Basics of Medicaid: who is eligible and characteristics of enrollees
 - Alternatives to work requirements – e.g. Montana’s workforce promotion program
 - Evidence from other states – early experience from Arkansas, other “healthy behavior programs”
 - Administrative difficulties/costs
 - Harm to other Medicaid populations, such as children and to providers (e.g., higher uncompensated care)

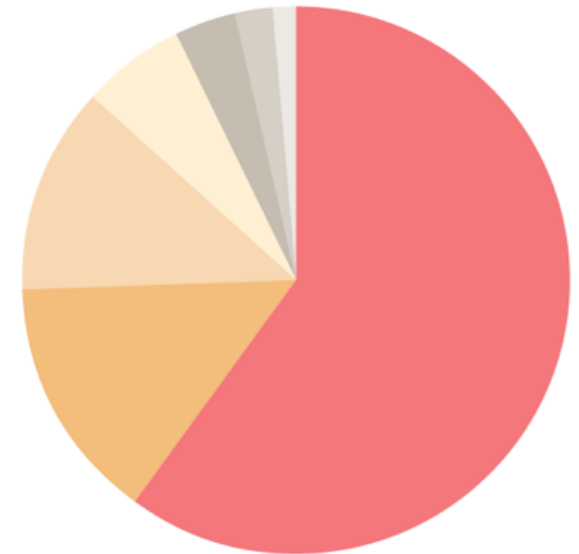
Timing: Before a new legislative session begin

Who Is Affected by Medicaid Work Requirements

Medicaid Work Requirements Will Mostly Affect People Who Are Working, Ill or Disabled, Caregivers, or Students

Non-elderly adult enrollees not receiving SSI, 2016

- Working: 60%
- Ill or disabled:* 15%
- Taking care of home or family: 12%
- Going to school: 6%
- Retired: 4%
- Could not find work: 2%
- Other: 1%



*People receiving Supplemental Security Income (SSI) are exempt from Medicaid work requirements. Figure shown here includes people who are ill or disabled but not receiving SSI.

Source: Kaiser Family Foundation analysis of March 2017 Current Population Survey

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Alternatives to Work Requirements: Montana's HELP-Link Program

HELP-Link offers job training and career planning for low-wage workers and those between jobs

- Outreach with personalized assistance
- Provides workshops, tuition assistance, on-the-job training

Medicaid Enrollees Want Job Training Services

- 22,000 Montanans (nearly 25% of all expansion enrollees) have enrolled and received employment services

Targeted Advocacy Opposing Proposals

- Continue legislative/administrative education and advocacy
- Develop and deploy key messages and messengers
 - Use your coalition and keep members engaged
- Analyze proposals as they are developed, circulate issue briefs, testify at hearings, etc.

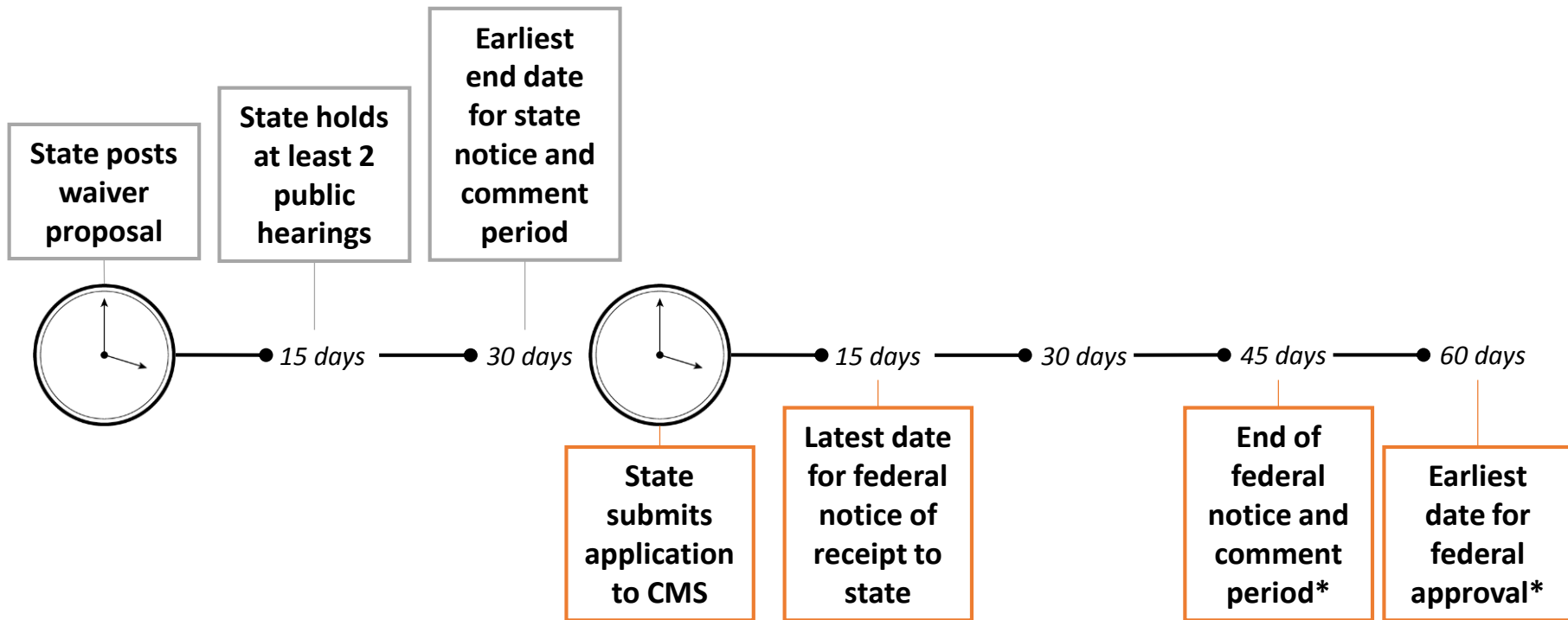
Timing: during a legislative session/while a proposal is under consideration

Maximize Impact of Public Comment Periods

- Educate coalition members, Medicaid beneficiaries, and the public on need for comments at both state and federal levels
- Develop tools to gather comments (surveys, etc.)
- Ensure understanding of relationship between comments and potential litigation

Timing: State and federal comment periods

Comment Timeline



**If the federal government provides the notice of receipt to the state earlier than within 15 days of the state submission, the timelines for the end of the federal notice and comment period and earliest date for federal approval could be shorter.*

Supporting Litigation

- Finding and vetting plaintiffs
- Litigation support:
 - Research, story collection, etc.

Timing: After a proposal has been submitted/approved

Kentucky Litigation: Status and Outlook

- Lawsuit against HHS brought by 16 Kentucky Medicaid beneficiaries challenging HHS approval of KY waiver
- Approval vacated on 6/29 based on court finding approval was “arbitrary and capricious”
- HHS held another 30-day comment period, which ended on 8/18
- HHS approval likely, followed by additional court action

Monitoring Waiver Implementation

- Develop and deploy a strategy to monitor the effects of the waiver especially harm to beneficiaries
- Combine with ongoing community education -- especially of community agencies that interact with beneficiaries
- Analyze public notices sent to beneficiaries
- Ask the implementing agencies questions/maintain engagement
- Work with waiver evaluators, universities, researchers to ensure analyses are comprehensive

Timing: After a proposal has been approved

Communications: Essential At Every Stage

- Share messaging guidance from the beginning -- ensure coalition partners are using the strongest possible framing
- Social media: create shareable graphics to raise awareness
- Communicate with the press, work with coalition partners to write op-eds, etc.
- Collect and share beneficiary stories

Questions?

