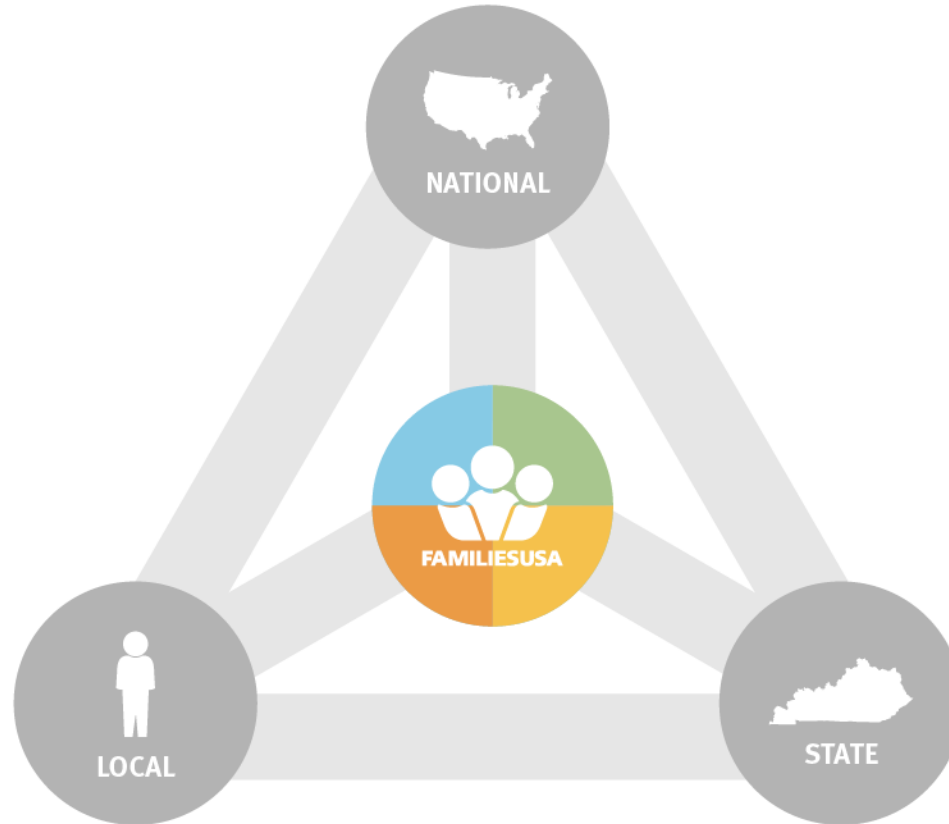




Medicaid 1115 Waivers and Other Federal Coverage Issues 2018 Health Action Conference



Families USA's Work on the Local, State and National Levels



Basic Trump Administration Principles:

1A: When it comes to beneficiaries, it's the state's call

1B: Except we do not support Medicaid expansion

Interaction of 1A and 1B?

2: When it comes to Medicaid financing, CMS will say no to states.

Litigation

- Waiver approvals are subject to judicial review.
- There are cases where courts have ruled that the Secretary has overreached and waivers have been overturned.
- This is the first time we have multiple waiver proposals cutting back coverage instead of expanding it.
- Federal Courts have been prepared to block this administration's agenda in a variety of spheres.

- An 1115 waiver is a “Demonstration Project” waiver.
 - Allows demonstration waivers in a variety of health and human services programs but in practice is predominantly used for Medicaid.
 - “1115” is the section of the Social Security Act that outlines the purposes and limitations of these waivers.
- 1115 waivers allow a state to waive certain Medicaid requirements for projects that are **“likely to promote the objectives of the Medicaid program”**.
- Limits:
 - Types of waivers: experimental, demonstration
 - Purposes: likely to promote Medicaid’s objectives
 - What can be waived: can only waive items in one section of the Social Security Act, **Section 1902**.

Seema Verma: Speech at NAMD Conference on Medicaid



Eliot Fishman @FishmanEliot · Nov 7

Replying to @FishmanEliot @FamiliesUSA @SeemaCMS

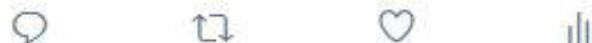
Those who oppose work requirements represent "the previous administration's soft bigotry". And the room goes into shocked silence.



Eliot Fishman @FishmanEliot · Nov 7

Replying to @FishmanEliot @FamiliesUSA @SeemaCMS

Calls for a deep breath and reset in health care battles. Sounds good to me! But I suspect those battles aren't going anywhere.



Eliot Fishman @FishmanEliot · Nov 7

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Work requirements framed as community engagement requirements, anti poverty tools. Not as a mechanism to take away health insurance.



Eliot Fishman @FishmanEliot · Nov 7

Replying to @FishmanEliot @FamiliesUSA @SeemaCMS

Strong support of accountability in Medicaid spending: state Medicaid scorecard. This can be a powerful tool or an ideological document. Will be important to watch.

Waivers to Watch 1: Work and Community Engagement Requirements

- Multiple states proposing them:
 - Arizona (Exp.)
 - Indiana (Exp.)
 - Arkansas (Exp.)
 - Maine (Non-exp.)
 - Wisconsin (Non-exp.)
 - Utah (Non-exp.)
 - North Carolina(Non-exp.)*
 - Kansas (Non-exp.)
 - Mississippi (Non-exp.)
 - Kentucky-- APPROVED

Considering: Alabama, West Virginia, South Dakota, South Carolina, Louisiana , Tennessee, Ohio

This includes both expansion and non-expansion states: but, not a single state has proposed expansion of income eligibility by one penny tied to adopting a work requirement. All existing populations.

- Why these are legally problematic:
 - Core objective of Medicaid program is to cover low-income people
 - Adding new eligibility requirements is not purpose of 1115
 - Decades of experience shows that adding documentation requirements to eligibility determinations will cause eligible people not to enroll

Waivers to Watch 2: Lock-outs, including for failure to renew elig.

- Proposed/Approved
 - Indiana
 - Kentucky (Approved)
 - Maine
 - New Mexico
- Lockouts for failure to renew eligibility: Originally proposed by Kentucky and then Indiana, both working with Seema Verma as their consultant.
- Note that no other type of insurance—including the marketplace—requires annual redeterminations of eligibility.
- This could produce enormous coverage losses

Waivers to watch 3: Premiums as condition of eligibility

- Obama administration: Only for people with above poverty incomes
- Below poverty: premiums can be
 - Collectible debt, or
 - Can be basis for immediate enrollment and enhanced benefits (Indiana HIP 2.0)

Proposals:

- Premiums as condition of eligibility for people below poverty
- States:
 - Arizona
 - Wisconsin
 - Kentucky
 - Maine

Early, Periodic, Diagnostic and Treatment benefits for Medicaid children

- “The Medicaid Children’s Health Benefit”
- Obama Administration refused to waive EPSDT
- Could come up in two contexts:
 1. Expansion adults aged 19 and 20
 2. States trying to waive broad federal mandates
- Proposals in Utah and New Mexico to waive EPSDT for 19 and 20 year olds

Waivers to watch 5: Drug Testing as part of eligibility determinations

- Proposed in Wisconsin
- Objective of Medicaid program is to provide coverage for medical services—including substance use services—for low-income people.
- Americans with Disabilities Act: *“An individual shall not be denied health services or services provided in connection with drug rehabilitation on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.”*
- Will pose a major barrier to enrollment even for people who do not use drugs—taking us back to the days for face to face interviews, finger printing etc.

Waivers to watch 6: Retroactive coverage

- Not new: a couple of states have long-standing waivers of retro, was part of Obama expansion waiver in Indiana.
- Along with NEMT, retroactive coverage tends to be hard to explain to state legislators and governors since it is foreign to commercial coverage.
 - So is annual eligibility redetermination!
- Primary care providers can have an outsized voice on this issue.
- “Retroactive coverage keeps individuals from incurring high medical bills and medical debt”
- “Retroactive coverage encourages doctors and clinics to help patients enroll”

Waivers to watch 7: Non-emergency Medical Transportation

- Short-term (one year) waivers with evaluations granted in Iowa and Indiana
- State-conducted evaluations showed that:
 1. Transportation is an issue for Medicaid beneficiaries
 2. Especially for poorest
 3. NEMT's impact on this problem is not clear
 4. "Unmet need for transportation" similar for those with and without NEMT.
 - May represent issues with NEMT for people who receive the benefit.
- Always vulnerable politically.

Waivers to watch 8: Time limits on Medicaid eligibility

- Arizona and Utah have both proposed a five year limit.
- Kansas has proposed a three year limit
- Kentucky initially proposed premiums escalating with length of enrollment, then withdrew this proposal for unclear reasons.

Core question: Is Medicaid analogous to “welfare” or is it a part of health insurance system?

- Statute has a point of view on this question!



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