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Children, Families, Health, and Human Services Interim Committee
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MEDICAID EXPANSION: WORK REQUIREMENTS AND OTHER FEDERAL CHANGES

Background

Recent decisions by the federal government will allow for significant changes to the Medicaid program in three states. Arguably the biggest change allows the states to require Medicaid expansion enrollees and some other recipients to work or participate in other “community engagement activities” in order to receive benefits. This requirement – among others – is being tested as part of “research and demonstration” projects approved for Arkansas, Kentucky, and Indiana.

The Centers for Medicare and Medicaid Services (CMS) has waived certain requirements of federal law to allow the states to try out new approaches and evaluate whether they result in the outcomes expected by the state.

This briefing paper :

- discusses some of the key elements of the work requirements in each state;
- highlights other changes authorized in the waivers for those states; and
- provides a table showing how the approved work requirements differ among the three states.

Community Engagement: A Range of Approaches

CMS granted Kentucky the first waiver allowing work requirements, on Jan. 18, 2018. It then approved a request from Indiana in February and one from Arkansas in March. In all cases, the states are testing the theory that work or other activities that engage people in their communities will improve health outcomes, incentivize employment, and promote independence. However, the states also have taken different approaches to the requirements, ranging from the groups affected to the penalties involved.

Who's Affected?

Kentucky has applied the work requirements most broadly, requiring all people eligible for expansion (ages 19 to 64) to take part in community engagement activities unless they meet one of several exemptions. Indiana is requiring people 19 to 59 years of age to take part in the activities, while Arkansas has limited the requirement to people who are 19 to 49 years of age.

All three states exempt medically frail individuals, pregnant women, full-time students, people who are caring for a dependent child or disabled adult, and people with a short-term illness or incapacity that prevents them from working. Indiana's exemption for caregivers with dependent children is limited to children who are below the compulsory education age; the state also provides an exemption for part-time students.

Both Indiana and Arkansas exempt people who are actively participating in substance use disorder treatment and people who are either meeting or exempt from the work requirements of the Temporary Assistance for Needy Families (TANF) program.

All three states have other exemptions unique to their waiver, as follows:

- **Arkansas:** former foster care youth
- **Kentucky:** people who are exempt from the work requirements of the Supplemental Nutrition Assistance Program, who are receiving TANF cash assistance, or who are receiving unemployment benefits
- **Indiana:** people who are homeless, who were incarcerated within the last 6 months, who are eligible for Medicare, who are enrolled in the state’s Medicaid employer premium assistance program, or who have been found to have a good-cause exemption

What Counts as Engagement?

In all three states, Medicaid expansion enrollees must participate in some type of work or other “community engagement” activity for a specified period of time. Both Arkansas and Kentucky set that time period at 80 hours a month. Indiana bases its requirements on the length of time people have been in the Medicaid program, as follows:

Length of Enrollment (Indiana)	Hours Per Week
1 to 6 months	0
7 to 9 months	5
10 to 12 months	10
13 to 18 months	15
18 or more months	20

The states all count the following as “community engagement” activities: employment, job skills training, job search activities, general education classes, education related to employment, vocational education and training, and community or public service. Both Kentucky and Indiana also count caregiving services for a nondependent relative or other person with a disabling medical condition, while Arkansas and Indiana both count activities that meet the requirements of the SNAP employment initiative and participation in state-run workforce development programs.

Kentucky counts participation in substance use disorder treatment as a community engagement activity, while Arkansas gives credit for up to 20 hours a year of participation in classes on health insurance, using the health system, or healthy living.

What Happens When People Fail to Engage?

In all three states, failure to complete the required activities will result in a suspension and possible disenrollment from the Medicaid program. However, each state takes a different approach, as follows.

- **Arkansas:** People who fail to complete community engagement requirements for any 3 months will be disenrolled from the program for the remainder of the calendar year unless they qualify for a good-cause exemption. This waiver contains the possibility for the longest period of disenrollment for failure to meet the requirements, with a potential removal from the program for up to 9 months.

Kentucky: People who fail to meet the requirement in one month will have a chance to either make up all the missing hours from the previous month or complete a state-approved health literacy or financial literacy course to remain enrolled. If they don't take either of those steps, their eligibility will be suspended in the following month. It can be reactivated at any time during their 12-month benefit period by completing 80 hours of community engagement in a 30-day period or completing a health or financial literacy course.

- **Indiana:** The state will measure each person's hours at the end of the calendar year, and people must meet the requirements for 8 months of the year. Months in which people were not enrolled will not be counted in the calculation. For those who have not met the required hours, eligibility will be suspended on the first day of the new calendar year and will remain suspended until the time their eligibility would normally be redetermined. If a person does not qualify for one of several good-cause exemptions, their eligibility will be denied and they must re-apply to gain Medicaid coverage again.

Not Yet a Sure Thing

Shortly after CMS approved the Kentucky work requirements, 15 individuals filed suit in federal court to stop the requirements from going into effect. The suit contends that the work requirements violate the principal purpose of federal Medicaid law, that CMS failed in its duty to faithfully enforce that law, and that the changes are so significant they are outside of the authority of CMS to make through a waiver. Only Congress has the authority to change the program so significantly, the suit contends.

Other Waiver Elements

In addition to the community engagement requirements, the approved waivers allow the three states to test out a number of other ideas. Following are some highlights from each state's waiver.

Additional Arkansas Provisions

- People with incomes above 100% of poverty will be charged premiums of 2% and be responsible for cost sharing for health care services they receive, up to the amount allowed by federal law. The state may attempt to collect unpaid premiums.
- The state will limit what's known as "retroactive eligibility" to 1 month instead of 3 months. Federal Medicaid law requires that the Medicaid program pay for any medical costs incurred by a person for up to 3 months before the date the person applies for Medicaid, if the person qualifies for the program.
- Prior authorization will be required for non-emergency medical transportation except for medically frail individuals or people served by Indian Health Service or tribal facilities.

Additional Kentucky Provisions

- Kentucky will create accounts similar to health savings accounts, consisting of a \$1,000 annual payment by the state and any additional funds from a person's premium payments and for rewards that they earn for participating in certain healthy behaviors and avoiding use of the emergency room for non-emergency conditions. Money from the account will be used to pay for the \$1,000 deductible that applies to all non-preventive services and for services not covered by regular Medicaid benefits, such as vision services, dental services, and over-the-counter medications. The state also

may deduct funds when a person fails to pay premiums, uses an emergency room inappropriately, or misses medical appointments.

- All expansion enrollees and certain parents in the regular Medicaid program will be required to pay premiums as set by the state. The premiums can be as high as 4% but must be at least \$1 a month for all enrollees. People above 100% of poverty will be disenrolled from the program if they fail to make premium payments within 60 days of receiving the invoice and will be prohibited from re-enrolling for up to 6 months. People at or below 100% of poverty who don't make their premium payments within 60 days will be required to make copayments for all services and may have their incentives accounts suspended for up to 6 months. A third party may make the premium payments on behalf of an enrollee.
- People who fail to provide the information needed to complete their annual redetermination process will be disenrolled from the program. They will have a 90-day grace period for submitting the paperwork; if they fail to do so, they can't re-enroll for up to 6 months.
- People who fail to report a change in circumstances that could affect their eligibility will be disenrolled from the program and prohibited from re-enrolling for up to 6 months.
- The state is not required to cover non-emergency transportation for anyone in the expansion group except pregnant women, medically frail individuals, former foster care youth, and individuals who are 19 or 20 years of age and entitled to the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit under Medicaid law. The waiver of coverage for non-emergency transportation will allow the state to offer methadone through its Medicaid state plan.
- Retroactive eligibility is limited to pregnant women and former foster care youth.

Additional Indiana Provisions

- Enrollees who use tobacco will pay a surcharge of 50% on their monthly payments if they continue to use tobacco after a 1-year grace period designed to give them an opportunity to take part in tobacco cessation programs.
- Enrollees with incomes above 100% of poverty will be disenrolled and unable to re-enroll for 6 months if they fail to make their monthly contributions within the 60-day grace period except under certain circumstances.
- Enrollees can be disenrolled and prohibited from re-enrolling for up to 6 months if they fail to complete the redetermination process before their 12-month eligibility period ends.
- Retroactive eligibility is eliminated except for pregnant women.
- The state may use Medicaid funds to pay for substance use disorder treatment in what are known as Institutes for Mental Disease – facilities with more than 16 beds.

What Wasn't Approved

Arkansas asked to limit its Medicaid expansion program to people at or below 100% of poverty, rather than the 138% level allowed by the federal Affordable Care Act. CMS was silent on this request when it approved the waiver on March 5.

Subjects of Other Waivers

At least seven other states have waiver requests pending with CMS to impose work requirements. Other pending requests would institute other limitations, including:

- in Arizona, Kansas, Maine, Utah, and Wisconsin, limits on how long some people could remain covered by Medicaid during their lifetime;
- in Arizona, more frequent determinations of whether a person is still eligible for Medicaid expansion;
- in Massachusetts, limiting coverage of expansion enrollees to people with incomes at or below 100% of poverty; and
- in Wisconsin, drug screening and testing individuals as a condition of Medicaid eligibility.

Sources

- CMS Waiver No. 11-W-00287/6, Arkansas Works, March 5, 2018.
- CMS Waiver No. 11-W-00296/5, Healthy Indiana Plan (HIP), Feb. 1, 2018.
- CMS Waiver No. 11-W-00306/4 and 21-W-00067/4, KY Health Section 1115 Demonstration, Jan. 12, 2018.
- *Ronnie Maurice Stewart, et al., v. Eric Hargan*, Acting Secretary, United States Department of Health and Human Services, filed Jan. 24, 2018, in U.S. District Court for the District of Columbia.
- *Approved and Pending Eligibility and Enrollment Restrictions, as of March 5, 2018*, Kaiser Family Foundation.
- *Proposed Changes to Medicaid Expansion in Kentucky*, Kaiser Family Foundation, Aug. 4, 2017.

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Tables: Work Requirement Provisions in Arkansas, Kentucky, and Indiana

Provision	Arkansas	Kentucky	Indiana
Ages Affected	19 to 49 years of age	19 to 64 years of age	19 to 59 years of age
Hours Required	80 hours per month	80 hours per month	0 to 20 hours per week (based on length of enrollment)
Effective Date	June 1, 2018	July 1, 2018	Jan. 1, 2019
Penalty	Disenrolled for rest of year if fail to complete in any 3 months	Suspended after 1-month grace period until eligibility redetermination date; disenrolled if still not compliant	Suspended in the following calendar year until date of eligibility redetermination

Eligible Activities	AR	KY	IN
Employment	X	X	X
General Education	X	X	X
Employment-Related Education	X	X	X
Job Skills Training	X	X	X
Job Search Activities	X	X	X
Vocational Education and Training	X	X	X
Community/Public Service	X	X	X
Community Work Experience		X	X
Volunteer Work			X
Caregiving for a Nondependent Relative or Other Person with a Disabling Condition		X	X
Meeting or Being Exempt from SNAP/TANF Employment Requirements	Both		SNAP
Participation in State-Run Workforce Development Programs	X		X
Meeting TANF Work Requirements			
Participation in a Substance Use Disorder Program		X	
Participation in Classes on Health-Related Topics (20 hours)	X		
Groups Exempted	AR	KY	IN
Medically Frail	X	X	X
Pregnant Women	X	X	X
Women 60 Days Post-Partum	X		
Full-Time Students	X	X	X
Part-Time Students			X
Primary Caretakers of a Dependent Child or Disabled Adult	Both	Both	Adult
Primary Caretakers of Dependent Children Under Compulsory School Age			X
People With Temporary Illness or Incapacity	X	X	X
Participants in Substance Use Disorder Treatment	X		X
People Exempt From or Meeting SNAP/TANF Work Requirements	Both		TANF
Former Foster Youth		X	
Receiving TANF Cash Assistance	X		
Receiving Unemployment Benefits	X		
Homeless			X
Incarcerated Within Last 6 Months			X
Eligible for Medicare			X
Enrolled in Medicaid Employer Premium Assistance Program			X
People With a Good-Cause Exemption			X