

Section 1115 Medicaid Waiver Authority

Background

Section 1115 of the Social Security Act delegates to the Secretary of Health and Human Services the authority to approve “experimental, pilot, and demonstration projects” for the Medicaid program. Medicaid is a partnership between the states and federal government and is designed to be a health insurance program for low-income and other vulnerable populations. In their implementation of Medicaid, states have some flexibility in how they design their State Plans. However, there are some restrictions. If states wish to deliver their Medicaid program in a way that requires waiving some of these restrictions, they can design a project and submit a Section 1115 waiver to the Center of Medicare and Medicaid Services (CMS), the agency responsible for evaluating and approving these waivers.

In approving these projects, CMS is authorized to waive certain other provisions of the Social Security Act, where the provisions of Medicaid are written. These projects must be “likely to assist in promoting the objectives” of Medicaid but also must be budget neutral, meaning that the waiver must not cause the federal government to incur more costs than they would have if the waiver were not present. These waivers are designed in order to allow states to be innovative in their approach to delivery of Medicaid services.

What does a Section 1115 project look like?

This varies significantly and states use the waiver authority in a variety of ways. States can request Section 1115 waivers to extend eligibility to populations that may not otherwise be eligible. For example, a state may choose to extend coverage for substance abuse disorder treatment beyond what is currently allowed. They may also use it as a vehicle to limit coverage. For example, states have asked for and been granted the ability to waive retroactive eligibility. Under current law, states must provide 3 months of retroactive coverage. However, a state can request a Section 1115 waiver to waive this portion of the law and ask that CMS only require them to cover a person for the month that they applied for Medicaid. States can use waivers to implement even bigger changes, such as the implementation of the Healthy Adult Opportunity.

When states apply for a Section 1115 waiver, they have to convince CMS that their proposed project is both budget neutral and promotes the objective of the Medicaid program, which generally involves promoting access to free or low cost health care for low-income populations. Waiver requests that seek to limit access to health care (like waivers of retroactive eligibility) generally justify doing so by offering up an explanation. For example, a state may justify getting rid of retroactive eligibility by saying that they are doing it to incentivize signing up for Medicaid early and maintaining your enrollment in the program.

National Indian Health Board



Is Tribal Consultation Required?

When states propose a Section 1115 waiver, they are required to conduct Tribal consultation and solicit the feedback from Tribes that may be affected by the waiver.

How important is it for Tribes to comment on 1115 waivers?

It is extremely important. Full participation in Tribal consultation ensures that your state hears your concerns and is prepared to respond. There are cases where Tribal consultation has made a difference. For example, South Carolina asked for a waiver from work requirements for the Catawba Tribe after discussing the issue with the Tribe. This request ultimately led to all member of federally recognized Tribes being exempt in South Carolina.

What are the limits?

Courts have sometimes stepped in to limit the authority of CMS to approve certain waivers. For example, on February 14, 2020, the United States Court of Appeals in Washington, DC invalidated Arkansas's work requirements, citing that the imposing of work requirements did not further the objectives of the Medicaid program. This case was an appeal of an earlier decision to invalidate Arkansas's requirements by the United States District Court in DC. This follows the invalidating of work requirements in Kentucky and New Hampshire by the same District Court. All of the decisions cited the incapability of the work requirements with the goals of the Medicaid program.

How long are waiver requests approved for?

According to CMS, Section 1115 waivers are generally approved for an initial five year period and then renewed for up to three to five additional years¹. However, there are sometimes exceptions to this. In December 2017, Mississippi's 1115 waiver was approved for ten years, the first such occurrence². There is no limit to how many times a waiver may be approved.

Conclusion

The Section 1115 waiver affords flexibility to states and facilitates experimental projects. The waiver allows CMS to make exceptions to certain elements of Medicaid law for states, as long as the proposed project is budget neutral and promote the objective of the program.

Questions?

Please contact Christopher Chavis, Policy Analyst, at 202-750-3402 or at cchavis@nihb.org.

¹ "About Section 1115 Demonstrations," Center for Medicare and Medicaid Services, <https://www.medicaid.gov/medicaid/section-1115-demonstrations/about-section-1115-demonstrations/index.html>

² "CMS Approves First 10-Year Section 1115 Demonstration Extension," Center for Medicare and Medicaid Services, Dec. 28, 2017, <https://www.cms.gov/newsroom/press-releases/cms-approves-first-10-year-section-1115-demonstration-extension>