Medicaid Work / Community Engagement Requirements: *Key Considerations and Implications*

National Academy for State Health Policy (NASHP)
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Agenda

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- CMS Guidance on Work/Community Engagement (CE) Requirements
- State of Play: Work/CE Waivers
- Impact of *Stewart v. Azar* Decision
- Implications and Key Considerations for States and Stakeholders
- Discussion

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Overview of CMS Guidance

Changing Direction Under the Trump Administration





"….we shouldn't just celebrate an increase in the rolls, or more Medicaid cards handed out… for able-bodied adults, we should celebrate helping people move up, move on, and move out." [CMS Administrator Seema Verma, 11/7/2017]

"…programs should be designed … to help individuals and families rise out of poverty and attain independence…" [SMD 18-002]

In April, President Trump issued an Executive Order on Economic Mobility:

"we can lift our citizens from welfare to work, from dependence to independence, and from poverty to prosperity"

Sources: https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-11-07.html; https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf; https://www.whitehouse.gov/presidential-actions/executive-order-reducing-poverty-america-promoting-opportunity-economic-mobility/

Overview of State Medicaid Directors Letter (SMDL)

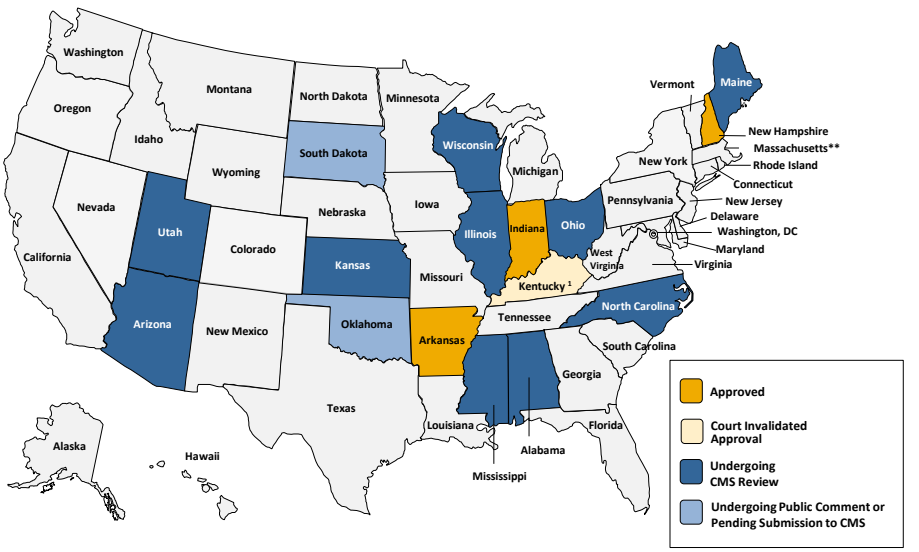
In January 2018, CMS released a State Medicaid Directors Letter setting out standards states must meet to condition coverage on work/community engagement (CE)

- Identifies two demonstration objectives for such waivers:
  1. Promoting better mental, physical and emotional health and well-being
  2. Helping individuals and families rise out of poverty and attain independence
- Reviews factors that CMS will consider and issues states must address in applications for and implementation of waivers that impose work/CE requirements for non-elderly, non-disabled adults:
  - Alignment with TANF & SNAP
  - Populations Subject to Work/CE Requirements
  - Range of Work and Community Engagement Activities
  - Beneficiary Supports
  - Attention to Market Forces and Structural Barriers
- States that Medicaid funds cannot be used for employment supports for people subject to work requirements
- Requires states to regularly monitor impact on beneficiaries and "to conduct rigorous outcomes-based evaluations"

SMD letter acknowledges that beneficiaries may lose coverage for "failure to meet program requirements"

State of Play: Work/CE Waivers

To Date, 4 States Have Approval and 12 States Have Pending Waivers for Work/CE Requirements



1. In June 2018, a U.S. District Court judge issued a ruling in *Stewart v. Azar* that invalidated HHS's approval of Kentucky's Medicaid waiver for failing to consider how the waiver, which included which included work requirements, higher-than-previously approved premiums, and lock outs from coverage, furthered the goals of the Medicaid program; waiver application, amendment application, and STCs undergoing additional public comment period until 8/18/2018

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Key Features of Approved and Pending Coverage Waivers Under the Trump Administration

	Approved				Pending													
Features	**AR**	**IN**	**KY**	**NH**	**AL**	**AZ**	**KS**	**MA**	**ME**	**MI**	**MS**	**NC**	**NH**	**NM**	**OH**	**OK**	**SD**	**UT**	**WI**
Work Requirements	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓		✓	✓	✓	✓	✓
Premiums *(some states with lockout)*	✓	✓	✓			✓	✓	✓	✓	✓		✓		✓					✓
Cost Sharing	✓	✓	✓	✓		✓		✓	✓	✓		✓	✓	✓				✓	✓
Healthy Behavior Incentives	✓	✓	✓	✓		✓				✓			✓	✓					✓
Non-Emergency Medical Transportation Waiver		✓	✓					✓											
Retroactive Coverage Waiver	✓	✓	✓	✓		✓		✓	✓				✓	✓	✓	✓		✓	
Prompt Enrollment Waiver		✓	✓											✓					
Asset Test									✓				✓						
Drug Screening																			✓
Partial Expansion with Enhanced Match																		✓	
Limits on Enrollment Duration						✓												✓	✓
Health Savings-Like Accounts		✓	✓			✓	✓			✓									
Late Renewal Paperwork Penalty/Lockout		✓	✓																

Approved: AR, IN, KY, NH; submitted to CMS: AL, AR, AZ, MA, ME, MI, MS, NC, NM, OH, UT, WI; released and undergoing public comment or pending submission to CMS: NH, OK, SD. Note: Chart includes approved and pending waiver features; some states are seeking amendments or extensions to current demonstrations while others are seeking new demonstrations; populations impacted by waiver features vary across states; chart does not include all waiver features.

As of 7/25/2018

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Work/CE Requirements Vary Across States With Approved Waivers

CMS approved work requirements in four expansion states; it has not issued decisions on requests from non-expansion states

	Arkansas	New Hampshire	Indiana	Kentucky
Target Population	Expansion adults		• Expansion adults • Parents/caretakers • TMA enrollees	
Age	19-49	19-64	19-59	19-64
Exemptions	In addition to exemptions required by CMS (pregnant women, individuals with a disability medically frail , among others), exemptions vary considerably across states. Examples include: • Individuals caring for a dependent child or adult (AR, IN, KY, NH - *disabled child or child <6 only*) • Individuals who are homeless (IN) • Individuals receiving unemployment benefits (AR) • Individuals in court-ordered drug treatment (NH) or in active SUD treatment (IN) • Individuals who were recently incarcerated (IN) • Students (AR, IN, KY)			
Required Hours	80 hours/month	100 hours/month	20 hours/week	80 hours/month
Grace Period	3 mo. in plan year	1 mo.	4 mo. in calendar yr.	1 mo.
Penalties for Non-Compliance	• Disenrollment • Lock-out (up to 9 mo.)	• Coverage suspension • Disenrollment if non-compliant at redetermination		
Re-Activating Coverage	• Turn age 50 (AR) • Meet requirements for 1 month (IN, KY) • Meet missed hours (NH) • Meet an exemption (IN, KY, NH) • Complete a health or financial literacy course (KY) • Become eligible for an eligibility group not subject to work requirements (IN, KY, NH)			

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Impact of *Stewart v. Azar*

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Overview of *Stewart v. Azar*

- Kentucky waiver application submitted to CMS August 2016 and revised July 2017
- CMS approved January 2018
- Beneficiaries in Kentucky soon after filed suit against HHS in D.C. district court
- Court declined to transfer case to Kentucky federal court; Kentucky joined as defendant
- Late June, Court concludes beneficiaries have standing and that court may review legality of HHS' decision to approve the 1115 coverage waiver
- Key question before Court: Was the waiver appropriate under the Administrative Procedures Act? The standard is whether it was arbitrary or capricious

Requirements for Approving an 1115 Waiver Demonstration

1115 waivers must be:

- Experimental, pilot or demonstration project
- Likely to assist in promoting the objectives of Title XIX
- Limited to the extent and period necessary to carry out demonstration

Court concludes:

- Review must focus on "project as a whole," not particular provisions
- Medicaid was created to provide "medical assistance" (i.e. coverage)
- Statutory purpose for expansion is no different: Medicaid expansion under the ACA is an element of a "comprehensive national plan to provide universal health insurance coverage"

What Court Concludes CMS Considered in Approving the Kentucky Demonstration

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Examined whether the demonstration would impact "only" these four factors (that Court concludes are not equivalent to the "objective" of Title XIX):

- Likely to improve health outcomes
- Address behavioral and social factors that influence health outcomes
- Incentivize beneficiaries to engage in own care and achieve better outcomes
- Familiarize beneficiaries with commercial insurance-type benefit to facilitate smoother transition to commercial coverage

Did not examine whether the program promoted the objective of providing medical assistance to needy populations

- The Secretary "paid no attention" to Kentucky's projected loss of coverage for 95,000 enrollees under the demonstration nor to estimates from commentators
- Nothing in record rationally supports idea that demonstration would promote coverage
- Secretary failed to consider: "First, whether the project would cause recipients to lose coverage. Second whether the project would help promote coverage."

The Court's Findings

- Coverage is a primary objective of the Medicaid program
- After the ACA, Medicaid's coverage objective includes the expansion population should a state decide to cover them
- Promoting "health" is not equivalent to promoting coverage
- Other bases for approving waiver (i.e., cost considerations to state, promoting beneficiaries' self-sufficiency) are either not supported by administrative record or impermissible bases for approving waiver, or both

Stewart v. Azar: What Happens Next?

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- Court vacated approval; Kentucky cannot implement at this point
- Government can appeal to the D.C. Circuit
  - Notice of appeal would need to be filed within 60 days of June 29th order
- HHS can reconsider the waiver request on remand
  - HHS has opened new comment period ending Aug. 18th at 11 p.m.
  - HHS will need to address concerns raised by court
  - Plaintiffs could challenge new waiver approval

On July 17, 2018 , the CMS Administrator indicated that CMS remains committed to work/CE requirement:
"[HHS] is looking at what the court said. We want to be respectful of the court's decision while also wanting to push ahead with our policy initiatives and our goals…"

Implications and Key Considerations of Work/CE Requirements

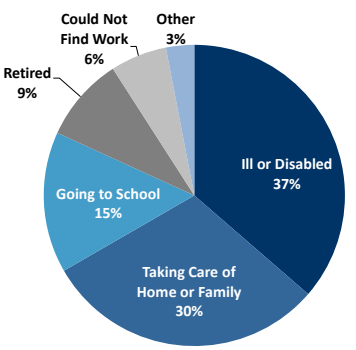
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Majority of Medicaid Enrollees Work

60% of 24.6M non-elderly adult enrollees without SSI are working full or part-time; the vast majority of those not working have significant limitations that prevent them from doing so

Main Reasons for Not Working Among Non-SSI, Adult Medicaid Enrollees, 2016



- ***Among the 40% of Medicaid enrollees that do not work, 67% are ill or disabled, or taking care of home or family and***
- ***15% are going to school***

Total = 9.8M

Note: Includes nonelderly adults who do not receive Supplemental Security Income (SSI)
Source: Kaiser Family Foundation analysis of March 2017 Current Population Survey. Available at: http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work

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Potential Impact of Work/CE Requirements on Coverage

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Coverage Risks

- **For those who are working:** The nature of low-wage labor market puts working households at risk
- **For those seeking work:** No federal funding for skill trainings, placements, or support services
- **For those who are exempt:** High risk that exempt populations would lose coverage, face coverage gaps

Early Evidence from Arkansas

- **Arkansas**: During the first month of implementation, 72% of individuals who were notified that they had a work/CE reporting obligation did not satisfy the reporting requirement [1]

Evidence from SNAP

- **Kansas**: SNAP work requirements took effect in January 2014. From July 2013 to April 2015, enrollment among childless adults fell approximately 70% from about 30,000 to 8,337 [2]
- **Maine:** SNAP work requirements took effect in January 2015. From December 2014 to March 2015, enrollment among childless adults fell approximately 80%, from about 14,000 to 2,700 [2]

Sources: 1. M. Brantley, "Work Rule 'Works' in First Month Report; 26 Percent Flunk," Arkansas Times, Arkansas Blog. July 13, 2018. https://www.arktimes.com/ArkansasBlog/archives/2018/07/13/work-rule-works-in-first-month-report-26-percent-flunk; 2. Foundation for Government Accountability, Aug. 2015, https://thefga.org/download/2015_policy_solutions/RestoringWorkRequirements-ResearchPaper-Final(3).pdf.

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Estimated Coverage Impacts of States' Current and Proposed Waivers Vary

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- ~15% of expansion adults projected to lose coverage under recent waiver approval



- 1% reduction in expansion adult enrollment due to lock-out for non-timely eligibility renewals
- 5% reduction due to work requirement



- Coverage loss for < 3% of expansion adults due to work requirement
- Assumes 95% of expansion adults will be exempt or already working, and that half of the remaining 5% will not comply



- 20% reduction in enrollment of low-income parents due to work requirement

It is not clear how CMS will view these coverage impacts in the context of the Stewart decision in the future

Sources: Kentucky: https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ky/ky-health-pa2.pdf; Indiana: https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/in/in-healthy-indiana-plan-support-20-pa5.pdf; Ohio: https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/oh/oh-work-requirement-community-engagement-pa.pdf; Alabama: http://www.medicaid.alabama.gov/documents/2.0_Newsroom/2.7_Special_Initiatives/2.7.5_Work_Requirements/2.7.5_Final_Work_Requirements_Waiver_Bookmarked_2-27-18.pdf

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Additional Considerations for States Contemplating Work/CE Requirements

- Administrative burden and cost
  - *Kentucky:* $17.5 million in state funds and $170 million in federal funds to build the technology platform to track compliance with work requirements
  - *Arkansas:* $2.5 to $3 million in state funds to build work requirements portal; state expects 90% match
- Opportunity cost as state Medicaid agency, health plans, providers devote time to implementation; together with increased churn, this may impede other priority payment and delivery system reforms in Medicaid
- Further litigation is likely

Sources: D. Yetter, "Bevin's Medicaid changes actually mean Kentucky will pay more to provide health care," Louisville Courier Journal, February 14, 2018. Available at: https://www.courier-journal.com/story/news/politics/2018/02/14/kentucky-medicaid-changes-bevin-work-requriements/319384002/; L. Gillespie, "Bevin Official Tells Congress Kentucky's New Medicaid System Will Be Streamlined," WFPL, March 15, 2018. Available at: http://wfpl.org/bevin-administration-official-says-medicaid-system-to-be-one-stop-shop/ ; A. Davis, "State seeks to log Medicaid users' work: Draft of federal request spell out job requirement, $2.5M website to track it," May 20, 2017. Available at: http://www.arkansasonline.com/news/2017/may/20/state-seeks-to-log-medicaid-users-work--1/?f=news-arkansas

Thank You

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