



Georgetown University
Health Policy Institute
CENTER FOR CHILDREN
AND FAMILIES

Section 1115 Waivers: An Introduction

Joan Alker

Executive Director, Research Professor
Georgetown University Center for Children
and Families

February 23, 2017

What is Section 1115?

- Reference to the Social Security Act – applies to Medicaid and CHIP.
- Gives Secretary of HHS broad authority to allow states to implement “experimental, pilot or demonstration projects” that promote the objectives of the program.
- Permit states to use federal program funds in ways not otherwise permitted.
 - i.e. populations or services not otherwise allowed.
 - Certain Medicaid requirements (but not all) may be waived if in the Secretary’s judgment they meet the above criteria.
- Other waivers exist in Medicaid - 1915 b and c.

Section 1115's are Popular!

- As of February 2017, 33 states had 41 approved Section 1115's.
- States use them for:
 - Delivery system reform;
 - State specific expansion designs like AR, IA, IN;
 - Prior to ACA to cover ineligible populations;
 - Managed long term care;
 - Behavioral health and other more limited issues.

Medicaid Has a lot of Flexibility Though

- States can accomplish many things by filing a state plan amendment (SPA).
- This includes mandatory managed care for all - except duals, certain kids (SSI, foster care, adoption assistance), members of federally recognized tribes.
- Also states can do cost-sharing for adults, and premium assistance with a wrap. Premiums require a waiver.

What Cannot be Waived Under Section 1115?

- Can waive provisions found in Section 1902 of the Social Security Act; FMAP is in Section 1903.
- Cost-sharing waiver requests must be considered under a different process (Section 1916(f)) with a rigorous design including a control group and should be limited to two years.

How Long do Waivers Last?

- Initial approval period is usually five years.
 - Recent Medicaid expansion waivers often three year approvals.
- Renewal/Extension typically three years.
 - Some states are requesting longer extensions.
 - Short term extensions are often granted while agreements are being negotiated.



What Else Does Section 1115 Require?

- An independent evaluation.
- Public notice and comment process.
- Budget neutrality rules apply but this is not statutory – more on that later.

What is Most Important?

- Key document in an approved waiver is the “Special Terms and Conditions.”
- Important pieces to focus on include the requested waivers in the application which results in the waiver list.
 - Example of something often waived is the “comparability” provision which requires states to treat everyone alike.

What is Most Important?

- Medicaid Costs Not Otherwise Matchable or CNOM – this specifies where federal funds can be used in different ways
- Budget neutrality agreement



What are the Rules on Public Participation?

- [Public notice and comment rules](#) apply as a result of the ACA after much concern about waivers being negotiated secretly.
- Apply to new waivers and extensions but not amendments.
 - Amendment policy is different.
- Issued in February 2012 and can be found at 42 CFR Part 431 Subpart G.

What Process is Required at State Level?

- 30 day state public comment process:
 - State must provide a comprehensive description of the waiver “to ensure meaningful input.”
 - State must hold two public hearings and have a website to keep public informed.
 - State’s final application must note how public comments were incorporated.
- State may have their own rules too.

Federal Public Notice and Comment

- Federal government has 15 days to certify an application is complete and send state notice of receipt.
- Once certified federal public comment opens for 30 days; unlike states feds don't have to provide a written response.
- Federal government cannot render a decision until at least 45 days after receipt.
- All documents are posted on [medicaid.gov](https://www.medicaid.gov)

Evaluation

- States should conduct one using Medicaid match.
 - This can raise q's about independence of analysis.
- Federal government sometimes does as well.



Waiver Policy is Often an Important Tool Reflecting an Administration's Priorities

- Bush Administration Health Insurance Flexibility and Accountability Initiative – “HIFA” 2001.
 - Intent to expand coverage but not spend any more money and promote private health insurance approaches; allowed states to cut benefits and raise cost-sharing.
- Obama Administration issued guidance on Arkansas style premium assistance approaches for Medicaid expansion in March 2013.
- Obama Administration implemented a “Fast Track” process for federal review of waivers in July 2015.



Georgetown University
Health Policy Institute
CENTER FOR CHILDREN
AND FAMILIES

Waiver Financing



“Budget Neutrality” Under Waivers

- Longstanding federal policy-- Waivers cannot result in new federal costs.
- But what federal costs (“without waiver”) would have been is not precisely known.
- A formula must be derived to estimate this.
- Budget neutrality is enforced over the life of the waiver not by year but there has been a lot of wiggle room.
- CMS issued a new budget neutrality template in 2016.
- This is where the Office of Management and Budget comes in.



Enforcing Budget Neutrality

- Most section 1115 waivers rely on *per capita* caps to enforce budget neutrality.
 - State claims match for all people covered by the waiver (“Per Member Per Month or PMPM”) *but*:
 - Cannot claim more than amount permitted by the cap;
 - Per person amount is agreed as part of the waiver (usually based on historical costs with a “trend rate”).



A Few Waivers Included a Global Cap

- Global caps were used in “Pharmacy Plus” waivers during the Bush Administration.
- Global caps were established in statewide waivers for Vermont and Rhode Island.
 - Waiver sets overall cap on federal funding (not on a per person basis).
- Similar in nature to a “block grant” with important difference – cutting federal funds was not the objective.
- Rhode Island and Vermont were very generously funded – for more info see [CBPP blog](#).

Waiver Pressure Points

- CMS National and Regional Offices
- Office of the Secretary of HHS
- Congressional delegation
- State legislators
- State agency
- White House



Helpful References

- On public process rules:
[The New Review and Approval Process Rule for Section 1115 Medicaid and CHIP Demonstration Waivers](#), Kaiser Commission on Medicaid and the Uninsured, March 2012
- [3 Key Questions: Section 1115 Medicaid Demonstration Waivers](#), Kaiser Family Foundation, February 2017
- CCF [SayAhh!](#) blog and website has waiver comments
- [CBPP](#) and [National Health Law Program](#)

Want to Learn More?

- Visit our website ccf.georgetown.edu and sign up for our newsletter!
- Twitter: [@GeorgetownCCF](https://twitter.com/GeorgetownCCF)
[@JoanAlker1](https://twitter.com/JoanAlker1)
- Facebook: Georgetown University Center for Children and Families

The screenshot shows the website's header with the logo and navigation menu. The main content area features a large banner for 'Congress Must Act Quickly on CHIP' with a 'Say Ahhh!' button. Below the banner are three article teasers: 'Understanding Pending Proposals to Repeal the Affordable Care Act', 'Medicaid Fulfills Crucial Role for Children with Special Health Care Needs Like My Daughter', and 'Cutting Medicaid Would Hurt Public School's Efforts to Improve Student Success'. A footer contains a 'Subscribe to Updates from our Team' button and a 'Sign Up' button.

Georgetown University
Health Policy Institute
CENTER FOR CHILDREN
AND FAMILIES

Search

Topics Say Ahhh! Blog States Research About Us f t r

Understanding Pending Proposals to Repeal the Affordable Care Act

Medicaid Fulfills Crucial Role for Children with Special Health Care Needs Like My Daughter
Marta Conner

Say Ahhh!

Congress Must Act Quickly on
CHIP

Cutting Medicaid Would Hurt Public School's Efforts to Improve Student Success

State Snapshots of Children's Health Coverage
Tricia Brooks

Subscribe to Updates from our Team Sign Up