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
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

  - 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.

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”).

Image Source: Dave Manuel
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: 

- 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](http://ccf.georgetown.edu) and sign up for our newsletter!

- Twitter: [@GeorgetownCCF](http://twitter.com/GeorgetownCCF)  [@JoanAlker1](http://twitter.com/JoanAlker1)

- Facebook: Georgetown University Center for Children and Families