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Section 1115 Waivers: An Introduction

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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.



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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](#)

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The screenshot shows the website's header with the logo, navigation menu (Topics, Say Ahhh! Blog, States, Research, About Us), and social media icons. Below the header 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 'Congress Must Act Quickly on CHIP'. A 'Say Ahhh!' button is visible above the CHIP article. To the right, there are two more teasers: 'Cutting Medicaid Would Hurt Public School's Efforts to Improve Student Success' and 'State Snapshots of Children's Health Coverage'. At the bottom, there is a dark blue banner with the text 'Subscribe to Updates from our Team' and a 'Sign Up' button.