

## Update on Recent State Waiver Activity

States may seek approval from CMS to waive certain federal requirements in order to test new or different models for administering or implementing or their Medicaid, CHIP and Health Insurance Marketplace programs. The waivers that are most often relevant for health centers and their patients are Section 1115 (used to waive certain Medicaid requirements) and Section 1332 (used to waive certain Marketplace requirements) waivers. Both types of waivers are subject to several procedural requirements, such as the opportunity for public comment at the state and/or federal levels and, in the case of 1332 waivers, the enactment of enabling state legislation. See NACHC's Fact Sheet on *State Waiver Options* [here](#).

### Section 1115 Medicaid “Demonstration Project” Waivers

A Section 1115 waiver is the broadest type of waiver available under Medicaid. Officially, these waivers are to be used by states to create demonstration projects intended to improve Medicaid and/or CHIP programs, and they must include a formal evaluation of impact.

STATE	BRIEF DESCRIPTION OF WAIVER	STATUS
AZ	<a href="#">Arizona Health Care Cost Containment System</a> - Two Amendments pending - IMD (May 2017) and Phoenix Children's Hospital Safety Net Care Pool (Aug 2017). [Previously considered amendments: work requirements, a year lockout for failing to report an income change, a 5 year lifetime coverage limit (with few exceptions), and cost-sharing for nonemergency ED and ambulance use.]	Pending at CMS
AR	<a href="#">Arkansas Works</a> - The amendment caps eligibility at 100% FPL (100-138% FPL would move to the Marketplace), establishes work requirements (with a lockout for the rest of the calendar year for those who do not meet requirements), and eliminates retroactive coverage.	Pending at CMS
IL	<a href="#">The Path to Transformation: Illinois 1115 Waiver Proposal</a> - State application submitted to CMS in June 2014. State sought 5 year waiver to implement broad alignment goals encompassing all services and eligible populations. The application laid out 11 goals, including the integration of care, consolidation of several 1915(c) waivers, optimize existing managed care models including risk based, promote community-integrated, competitive employment opportunities (incentive payment targeted to increase employment opportunities for the ID/DD population), and enhance access to SUD services.	Pending at CMS
	<a href="#">Illinois Behavioral Health Transformation</a> - State application submitted to CMS in Oct 2016. This application proposed comprehensive transformation to integrate behavioral and physical health delivery.	Pending at CMS
IN	<a href="#">Healthy Indiana Plan (HIP) 2.0</a> - Renewal of HIP submitted Feb. 20, 2017. Also, state submitted an amendment on July 20, 2017 seeking to implement work requirements, add a tobacco premium surcharge, and reestablish a six-month lockout if beneficiary does not comply with annual redetermination process.	Pending at CMS
IA	<a href="#">Iowa Wellness Plan - 1115 Medicaid Waiver Amendments:</a> -- <i>Iowa Dental Wellness Plan</i> - Amendment – Modified the eligibility to remove the earned dental benefit tier structure and include all adult Medicaid beneficiaries aged 19 and older, with certain exceptions, such as beneficiaries who are medically needy or enrolled in PACE. Beneficiaries will be required to pay a monthly premium starting in the 2nd year of enrollment.	Approved
	-- <i>Iowa Health and Wellness Plan (IHAWP, Expansion Waiver)</i> – Amendment - waives 3 months retroactive eligibility; will only apply to new applications or new beneficiaries who join an existing household, for applications filed or requested on or after November 1, 2017. Pregnant women (and during the 60-day period beginning on the last day of the pregnancy) and infants under age one are excluded.	Approved

<b>KS</b>	<p><a href="#">KanCare</a> - Kansas' statewide mandatory Medicaid managed care program - CMS approved a one-year extension on October 20, 2017.</p> <p><a href="#">KanCare Renewal</a>: "KanCare 2.0" State is seeking to renew the KanCare demonstration under Section 1115(a) five years, effective from January 1, 2019 through December 31, 2023. State public comments open until November 26, 2017. State intends to submit the renewal request to CMS no later than December 31, 2017. The renewal would add work requirements.</p>	<p><a href="#">Approved</a></p> <p>Pending at <a href="#">State</a></p>
<b>KY</b>	<p><a href="#">Kentucky Health</a> - Waiver Modifications - Shifts away from traditional expansion. Modifications seek to 1) replace its graduated hours for work related requirements with a flat 20-hour per week requirement, 2) disenroll individuals for failure to report changes in income, work or work related activities, and 3) reverse their proposal related to presumptive eligibility.</p>	<p>Pending at CMS</p>
<b>ME</b>	<p><a href="#">MaineCare</a> – Maine submitted an 1115 waiver application to CMS dated August 1, 2017 seeking approval to implement the following: work requirements, premiums, lockouts, copayments for non-emergency ED use and missed appointments, asset testing, ending retroactive coverage, and ending presumptive eligibility.</p>	<p>Pending at CMS</p>
<b>MA</b>	<p><a href="#">MassHealth</a> - Amendments - November 4, 2016, Massachusetts received federal approval of its request for an amendment and extension of the 1115 Demonstration Waiver (the "Demonstration"). The amendment pending at CMS as of June 2017 seeks authority to limit non-emergency transportation in the MassHealth CarePlus program, except for transportation to substance use disorder (SUD) services, to modify eligibility criteria for provisional eligibility, and to continue existing coverage of certain former foster care youth.</p> <p>September of 2017 (in parallel with a since rejected 1332 waiver) amendment submitted to CMS seeking to align coverage with commercial plans. The Sept 2017 amendment would limit drug formularies, subsidize enrollment of non-disabled adults into commercial plans, implement narrower Primary Care Clinician plan network to encourage ACO/MCO enrollment, waive IMD restrictions, implement cost-sharing of 5% on annual rather than quarterly basis and cost sharing for incomes over 300%, limit premium assistance cost sharing wrap to MassHealth providers, and provide an income disregard to certain veterans and their families.</p>	<p>Pending at CMS</p>
<b>MS</b>	<p><a href="#">Healthier Mississippi MS</a> - State application for 5 year extension filed with CMS on Oct. 16, 2017. Healthier Mississippi Waiver Renewal 10/1/2018 – 9/30/2023. State is seeking no programmatic changes, and proposes to maintain same STCs, waiver and expenditure authorities.</p> <p><a href="#">Mississippi Workforce Training Initiative</a> – State is proposing to: a) Amend the Medicaid program by extending the eligibility period for low-income parents and caretaker relatives receiving Transitional Medical Assistance (TMA) from 12 to 24 months. b) Identify individuals eligible for workforce training opportunities and assist them with accessing workforce training. c) Garner enhanced federal matching funds to assist with workforce training programs for individuals covered under this waiver.</p>	<p>Pending at <a href="#">CMS</a></p> <p>Pending at <a href="#">State</a></p>
<b>NC</b>	<p><a href="#">North Carolina's Medicaid Reform Demonstration</a> – The state of North Carolina is aiming to achieve a 2015 state legislative goal of shifting its Medicaid program to managed care and broad Medicaid reform. The state has not opted to expand Medicaid under the ACA. In June 2016, the state submitted an 1115 waiver application for its Medicaid Reform Demonstration to CMS. The draft proposal for the state's Medicaid managed care program were released in August 2017 and includes a payment provision for cost-settled providers, including FQHC/RHCs. Comments at the state level were open until September 8, 2017.</p> <p>See, also, <a href="#">Medicaid Managed Care Concept Paper on Behavioral Health and I/DD Tailored Plan</a>. RFI extended through Dec. 15, 2017. RFIs address managed care operations, and financial aspects of managed care, such as the proposed capitation rate setting methodology. As the state explains: "Under the proposed program design, the State is seeking a waiver to continue to pay public ambulance, stated owned or operated SNFs and LHD settlements under managed care (payments to FQHCs can continue without a waiver)."</p>	<p>Pending at <a href="#">CMS</a></p> <p>Pending <a href="#">State</a> RFIs regarding Concepts</p>

<b>NH</b>	<a href="#"><u>New Hampshire Health Protection Program Premium Assistance</u></a> - On October 24, 2017, the state of New Hampshire submitted an amendment to their Section 1115 waiver that would create a work requirement. Individuals must participate in anywhere from 20 to 30 hours per week, depending on the number of months they have received benefits over their lifetime. Non-compliance results in termination of benefits.	Pending at CMS
<b>TX</b>	<a href="#"><u>Healthy Texas Women</u></a> - Texas submitted a new section 1115(a) Medicaid demonstration application seeking to address women's health care services by extending eligibility for family planning services. However, the waiver also seeks to exclude certain types of providers. The demonstration is proposed to be effective September 1, 2018 through August 31, 2023.	Pending at CMS
<b>UT</b>	<a href="#"><u>Primary Care Network Demonstration Waiver</u></a> - Amendment - Proposed amendments include: enrollment limits, lifetime limits on number of eligible months, work requirements, coverage lock-outs, and higher co-pays for non-emergent use of the emergency department. The state also requested the ability to change eligibility criteria for targeted eligibility groups (which were requested in its July 2016 amendment) through their state administrative rule rather than waiver amendment.  5-Year Extension was approved by CMS on Oct. 31, 2017 - increased Medicaid eligibility for parents with incomes up to 55% of the poverty line and expanding eligibility for a target group of childless adults.	Pending at <a href="#"><u>CMS</u></a>  <a href="#"><u>Approved</u></a>
<b>WV</b>	<a href="#"><u>West Virginia Creating a Continuum of Care for Medicaid Enrollees with Substance Use Disorders</u></a> - New 5 year waiver submitted December 2016 and approved October 6, 2017. Waiver expires Dec. 31, 2022.  The demonstration provides SUD services for all Medicaid enrollees, both those served via the managed care and fee-for-service delivery systems. No state plan beneficiaries are excluded. Two implementation dates: January 1, 2018 for initial implementation (methadone treatment services); and July 1, 2018 for full implementation (short-term residential treatment, peer recovery support, and withdrawal management). State is proposing to use ASAM criteria.	Approved
<b>WI</b>	<a href="#"><u>BadgerCare Reform Demonstration Waiver</u></a> - Amendments - Work requirements, and a 2-year coverage time limit when not meeting the requirements; premiums (for 50-100% FPL, and higher if the person is engaged in a "health risk behavior"); lockout for 6 months unless premium arrears are paid, drug testing for childless adults (with disenrollment unless applicant completes SUD treatment), and increased ED copays.  Re drug testing requirement, Medicaid eligibility for childless adults (who are covered up to 100% FPL under Wisconsin's waiver) would be conditioned upon completing drug screening and testing (unless disclosed upfront), and if indicated, entering treatment. Screening questionnaire asks about current and prior substance use, and if indicated, a drug test, at application <i>and</i> renewal. Testing positive results in eligibility conditioned upon completing treatment. Those who refuse treatment lose eligibility but can re-apply at any time.	Pending at CMS

**Note:** The list above represents a select number of states. All waivers submitted to CMS can be reviewed at <https://www.medicaid.gov/medicaid/section-1115-demo/>

**Priority Issues to Monitor:** provider payment or services, work requirements, premiums/co-pays, lock-outs, drug testing, reporting requirements, timely renewal, retroactive coverage, EPSDT, and procedural issues.

**States Seeking or Considering Work-Related Requirements:** AR, IN, KY, KS, ME, MS, NH, UT, WI, WV (Subject to change.)

**States Seeking or Considering Time Limits on Coverage:** AZ, UT, WI (Subject to change.)

**DSRIP States:** CA, KS, MA, NH, NJ, NM, NY, RI, TX, WA (See KFF [Issue Brief](#), Sep. 13, 2017)

**Behavioral Health Waivers:** As of November 2017, there are 15 approved and 11 pending behavioral health waivers in 22 states. (See KFF Issue Brief, [Key Themes in Medicaid Section 1115 Behavioral Health Waivers](#), Nov. 10, 2017)

For more information contact [regulatoryaffairs@nachc.org](mailto:regulatoryaffairs@nachc.org) or [state@nachc.org](mailto:state@nachc.org).

## Section 1332 ACA “State Innovation” Waivers

A section 1332 waiver (also known as “State Innovation Waivers”), allows states to seek federal approval to waive Affordable Care Act (ACA) provisions related to the Health Insurance Marketplaces and the individual and employer mandates. However, these waivers cannot be used to waive the basic protections of the ACA (e.g., prohibition on lifetime caps, nondiscrimination provisions, and guaranteed access to fair prices for all enrollees). While Section 1332 waivers only focus on private Marketplace insurance, they can be coordinated and submitted in conjunction with other waiver requests from the state.

STATE	BRIEF DESCRIPTION OF WAIVER	STATUS
<b>Alaska</b>	Alaska’s 1332 waiver aims to increase stability in its individual health insurance marketplace. Alaska will receive federal funding to invest in its state-operated reinsurance program (the Alaska Comprehensive Health Insurance Fund). The program is designed to reinsure the one remaining insurer offering health coverage on the marketplace for costs to treat people with life-threatening, chronic conditions (such as HIV/AIDS and cancer). By subsidizing the costs of individuals with high-cost diagnoses, the state expects premiums will be 20 percent lower in 2018 than they otherwise would be and an additional 1,460 individuals will gain coverage.	<b>Approved</b>
<b>Idaho</b>	The purpose of the waiver is to provide eligibility for Advance Premium Tax Credits to Idaho residents who are U.S. citizens and who have income under 100% of the Federal Poverty Level. Comments are open through December 15, 2017	Pending at State
<b>Iowa</b>	Iowa proposed a broad 1332 waiver application in June 2017, a stop-gap measure. The state is seeking to create a reinsurance program and implement a new state-administered tax credit program for its marketplace. Iowa also requested expedited review.	Withdrawn
<b>Massachusetts</b>	In the fall of 2017, along with an 1115 waiver amendments, Massachusetts proposed to use federal pass through money to provide advance payments to insurers operating CSR plans when federal CSR payments disappeared. CMS deemed the application incomplete because it was submitted too close to the 2018 enrollment period. The state had also proposed to: administer small business tax credits and follow its state employer responsibility laws.	Deemed Incomplete
<b>Minnesota</b>	Minnesota submitted a 1332 waiver application in May 2017 seeking to implement a reinsurance program in 2018. The state has requested an expedited review. The state’s request to set up a two-year reinsurance program was approved but with a caveat that the state’s Basic Health Program—MinnesotaCare—would not be allowed to receive pass-through funding.	<b>Approved (Partially)</b>
<b>New Hampshire</b>	New Hampshire’s Legislature enacted HB 469, effective July 10, 2017, which gives the state’s insurance commissioner the ability to establish market stabilization mechanisms, including applying for any federal waiver opportunities that may be available. State may seek approval for a new state-based reinsurance program.	No action at state level
<b>Oklahoma</b>	Oklahoma drafted a 1332 waiver proposal seeks to create market stabilization and improve insurance affordability by addressing the high-risk enrollee population. The state sought to establish a state-based reinsurance program to encourage enrollment and attract other carriers to their market. The state public comment period: July 14, 2017 - August 13, 2017. The state withdrew its application after CMS reneged on agreement to approve it by no later than Sept. 25. The state’s health plan commitments and rate-filing deadlines had already passed.	Withdrawn
<b>Oregon</b>	Oregon’s waiver program will fund a reinsurance program, partially funded by a state health insurance tax. The waiver will allow Oregon to reinsure claims that exceeded a specified percentage rate up to a cap, instead of particular conditions. The state’s goal is to reduce premiums for individual market enrollees.	<b>Approved</b>

For more information contact [regulatoryaffairs@nachc.org](mailto:regulatoryaffairs@nachc.org) or [state@nachc.org](mailto:state@nachc.org).