

Section 1115 Medicaid Demonstration Waivers: A Look at the Current Landscape

Council of State Governments

September 14, 2017

Figure 1

Congress has been considering fundamental changes to Medicaid, which have implications for waivers.

American Health Care Act (passed by House)	Better Care Reconciliation Act (failed in Senate)	Obamacare Repeal Reconciliation Act (failed in Senate)	Graham-Cassidy (introduced in Senate)
Phase out Medicaid expansion in 2020	Phase out Medicaid expansion 2020-2024	Eliminate Medicaid expansion in 2020	Eliminate Medicaid expansion in 2020; states could use Market-based block grant funds to cover those ineligible for Medicaid and up to 20% to cover Medicaid eligibles
Convert Medicaid funding to per capita cap; Growth rate: CPI-M+1% and CPI-M; Block grant option for children and nonexpansion adults	Convert Medicaid funding to per capita cap; Growth rate: CPI-M+1% and CPI-M, then CPI-U starting 2025; Block grant option for expansion adults and nonelderly nondisabled adults	No change to current financing	Convert Medicaid funding to per capita cap; Growth rate: CPI-M+1% and CPI-M, then CPI-U and CPI-M starting 2025; Block grant option for nonelderly nondisabled adults
Create state option for work requirement	Create state option for work requirement	No option for work requirement	Create state option for work requirement

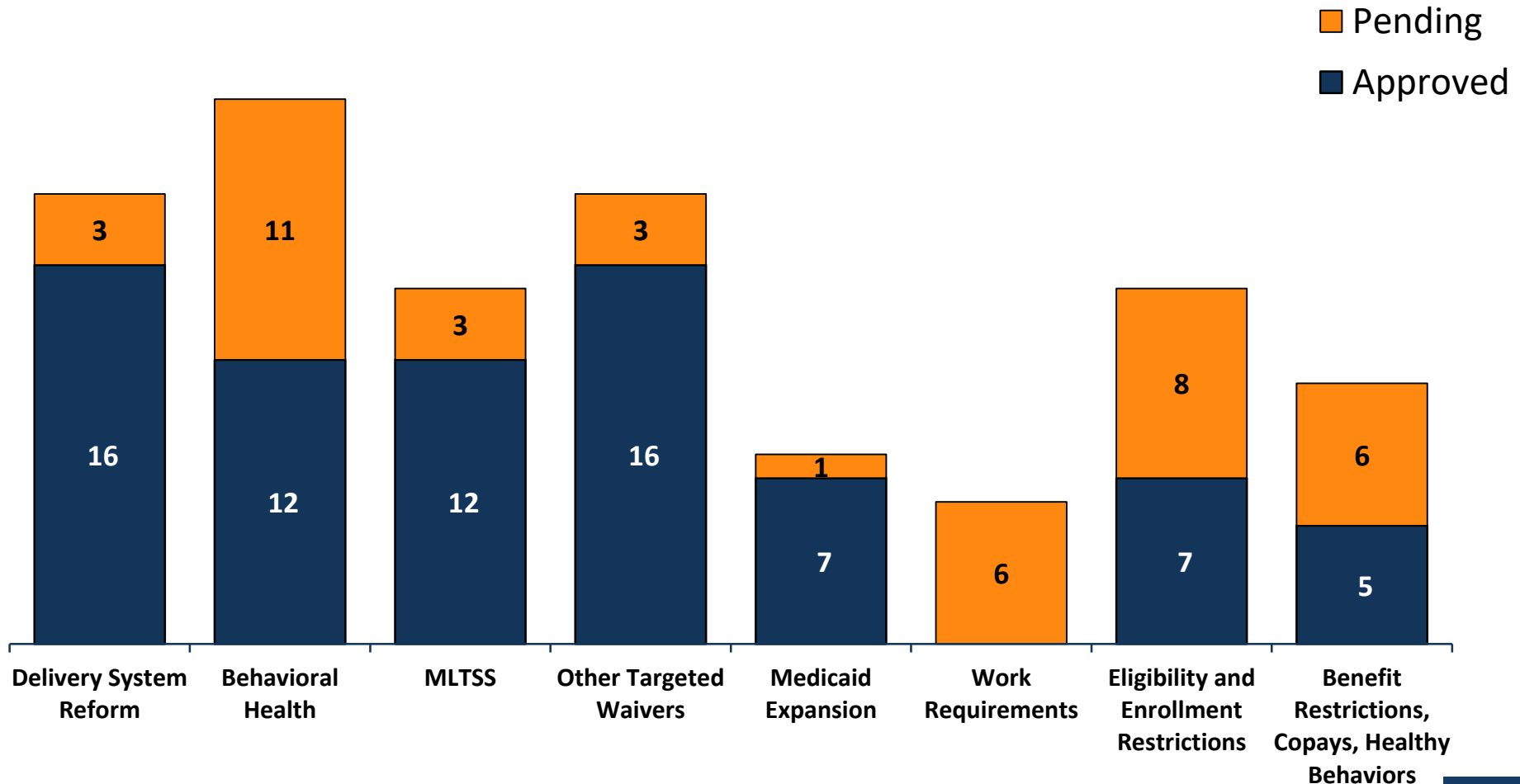
Figure 2

Section 1115 of the Social Security Act allows the HHS Secretary to grant waivers of certain Medicaid provisions that are:

- “Experimental, pilot or demonstration projects”
- “Likely to assist in promoting the objectives of the program”
- Budget-neutral to federal government
- Subject to state and federal public notice and comment periods

Figure 3

There are 41 approved waivers in 33 states and 21 pending waivers in 18 states as of September, 2017.



NOTE: Some states have multiple approved and/or multiple pending waivers, and many waivers are comprehensive and may fall into a few different areas.

SOURCE: KFF, [Section 1115 Medicaid Demonstration Waivers: A Look at the Current Landscape of Approved and Pending Waivers](#), (Sept. 2017).

Figure 4

Seven states have approved Section 1115 ACA Medicaid expansion waivers, as of September, 2017.

Waiver Provision	AR	AZ	IA	IN	MI	MT	NH
<i>Eligibility and Enrollment</i>							
Premium Assistance	QHP & ESI		ESI	ESI	QHP ⁴		QHP
Premiums / Monthly Contributions	X	X	X	X	X	X	
Reasonable Promptness				X			
Retroactive Eligibility	X ²			X			X ⁵
12-Month Continuous Eligibility						X	
<i>Benefit Restrictions, Copays, and Healthy Behaviors</i>							
Waive Required Benefits (NEMT)	¹		X	X			
Co-payments Above Statutory Limits				X ³			
Healthy Behavior Incentives		X	X	X	X		

NOTES: QHP = Marketplace Qualified Health Plan. ESI = Employer-sponsored insurance. NEMT = Non-emergency medical transportation. ¹NEMT waived for individuals covered through ESI who do not demonstrate need for services. ²Contingent on state meeting standards for timely eligibility determinations, offering a reasonable opportunity period for immigration status verifications, and implementing a presumptive eligibility program. ³Approved under § 1916 (f), not § 1115. ⁴Effective April, 2018. ⁵Contingent on state submission of data showing no gaps in coverage.

SOURCE: KFF, [Key Themes in Section 1115 Medicaid Expansion Waivers](#) (August 2017).

Figure 5

Both expansion and non-expansion states are seeking provisions that would restrict eligibility and enrollment never before approved by CMS, as of September, 2017.

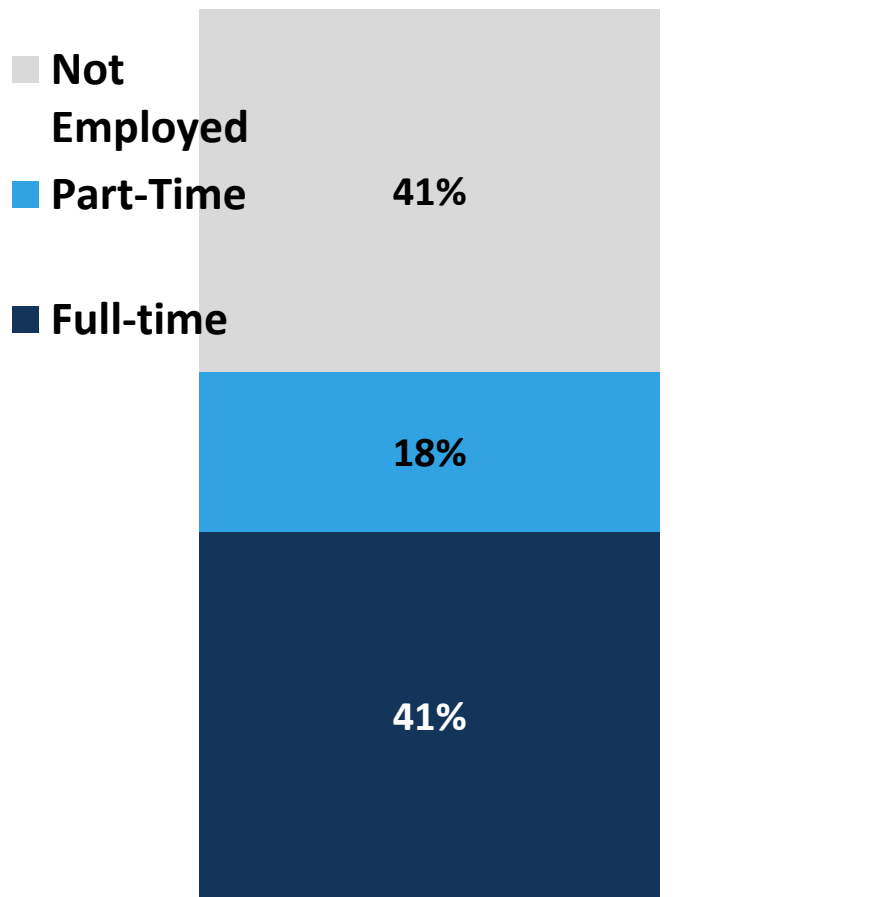
Waiver Provision	AR	IN	KY	ME	TX*	UT	WI
Limit Expansion to 100% FPL w/ Enhanced Match	X						
Eliminate Hospital Presumptive Eligibility				X		X	
Asset Test for Poverty-Related Pathways				X			
Waive MAGI Methodology					X		
Drug Screening and Testing							X
Premiums with Disenrollment for Non-Payment for Traditional Medicaid Populations			X	X			X
Tobacco Surcharge		X					
Lock-out for Failure to Timely Renew Eligibility		X	X				
Time Limit on Coverage				X		X	X
Work Requirement	X	X	X	X		X	X

NOTES: *TX = Healthy Women family planning waiver. IA has pending waiver request to eliminate retroactive eligibility for all populations.

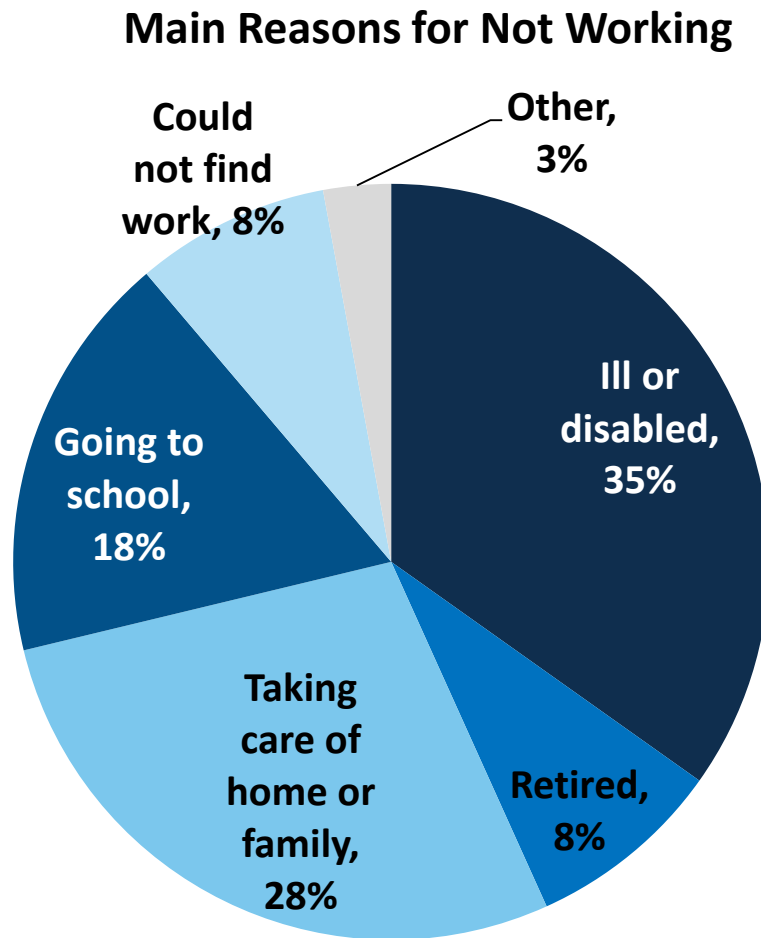
SOURCE: KFF, [Section 1115 Medicaid Demonstration Waivers: A Look at the Current Landscape of Approved and Pending Waivers](#), (Sept. 2017).

Figure 6

Six states are seeking waivers to condition Medicaid on work requirements, but most enrollees not working face barriers.



Own Work Status, 24 Million Medicaid Adults



Not Employed = 9.8 Million Medicaid Adults

NOTE: Totals may not add due to rounding. Includes nonelderly Medicaid adults who do not receive Supplemental Security Income (SSI), 2015. SOURCE: Kaiser Family Foundation analysis of March 2016 Current Population Survey.

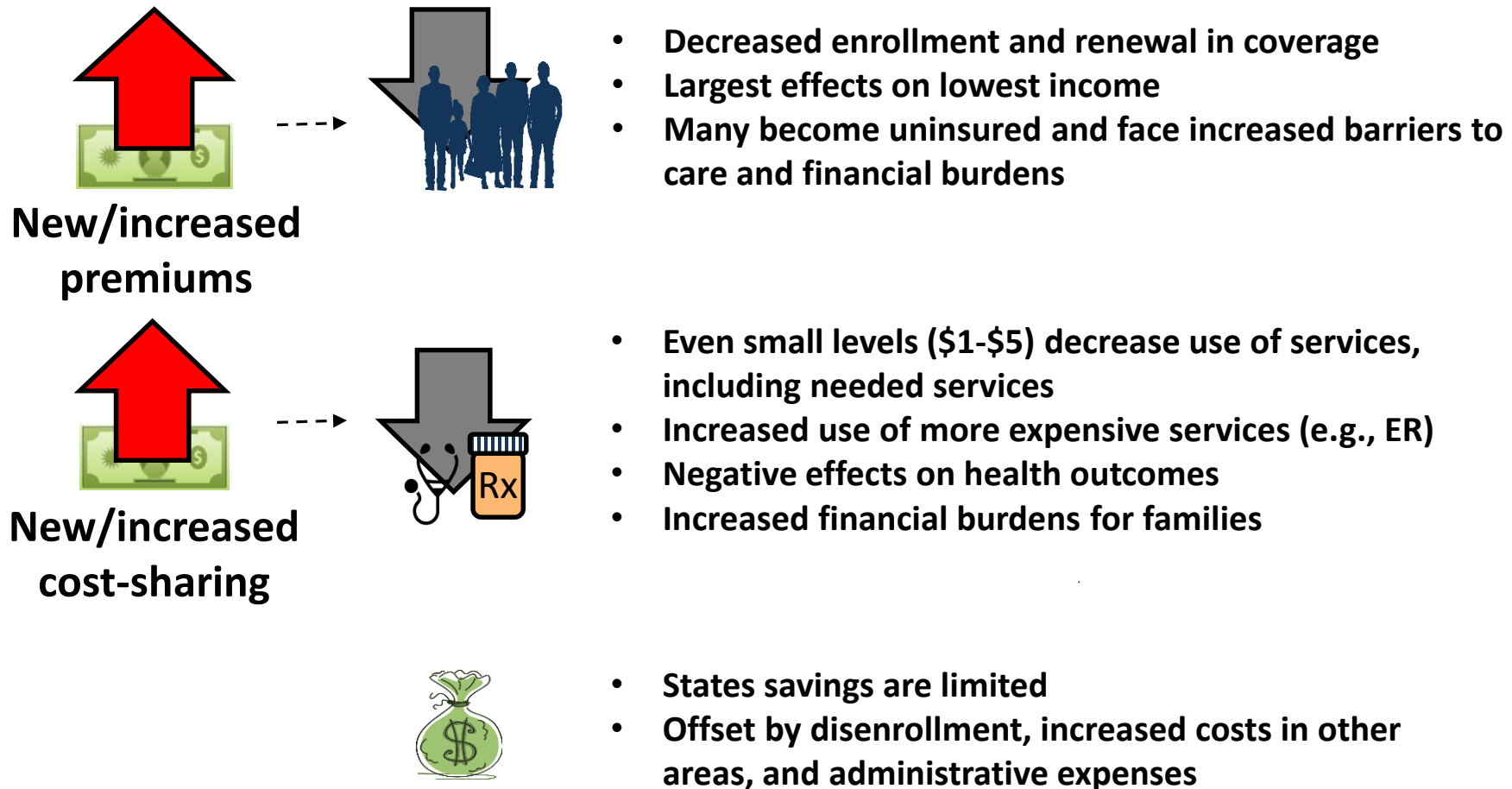
Figure 7

The TANF experience with work requirements can provide some lessons for Medicaid.

- **Health coverage through Medicaid supports enrollees' ability to work.** Many of the jobs held by enrollees do not offer health insurance.
- **Addressing barriers to work requires adequate funding and supports.** While TANF spending on work activities and supports is critiqued by some as too low, it exceeds estimates of state Medicaid program spending to implement a work requirement.
- **Implementing work requirements can create administrative complexity.** States can incur additional costs and demands on staff, and some eligible people could lose coverage.

Figure 8

States also are seeking waivers to impose premiums and cost sharing, but research shows negative effects of these policies on low-income populations.



SOURCE: KFF, [The Effects of Premiums and Cost Sharing on Low-Income Populations: Updated Review of Research Findings](#) (June 2017).

Figure 9

HHS's March 14, 2017 letter to state governors signals some Section 1115 waiver policy changes and priorities.

- Use “reasonable” public input processes and transparency guidelines
- Establish “fast track” approval of waiver extensions
- Improve “consistency” of incorporating specific waivers and approaches already approved in another state
- Approve waiver provisions related to “increas[ed] employment and community engagement”
- Approve provisions that “align Medicaid and private insurance policies for non-disabled adults”

Looking Ahead: Issues to Watch in Section 1115 Waivers

- What provisions will the Secretary deem “likely to assist in promoting the objectives of the [Medicaid] program”?
- Will CMS authorize joint Section 1115/1332 waivers allowing Medicaid funds to subsidize Marketplace initiatives?
- Will requirements for transparency, public input and budget neutrality be maintained?