

# **State Health Coverage Initiatives – Medicaid**

**NOSORH Webinar**

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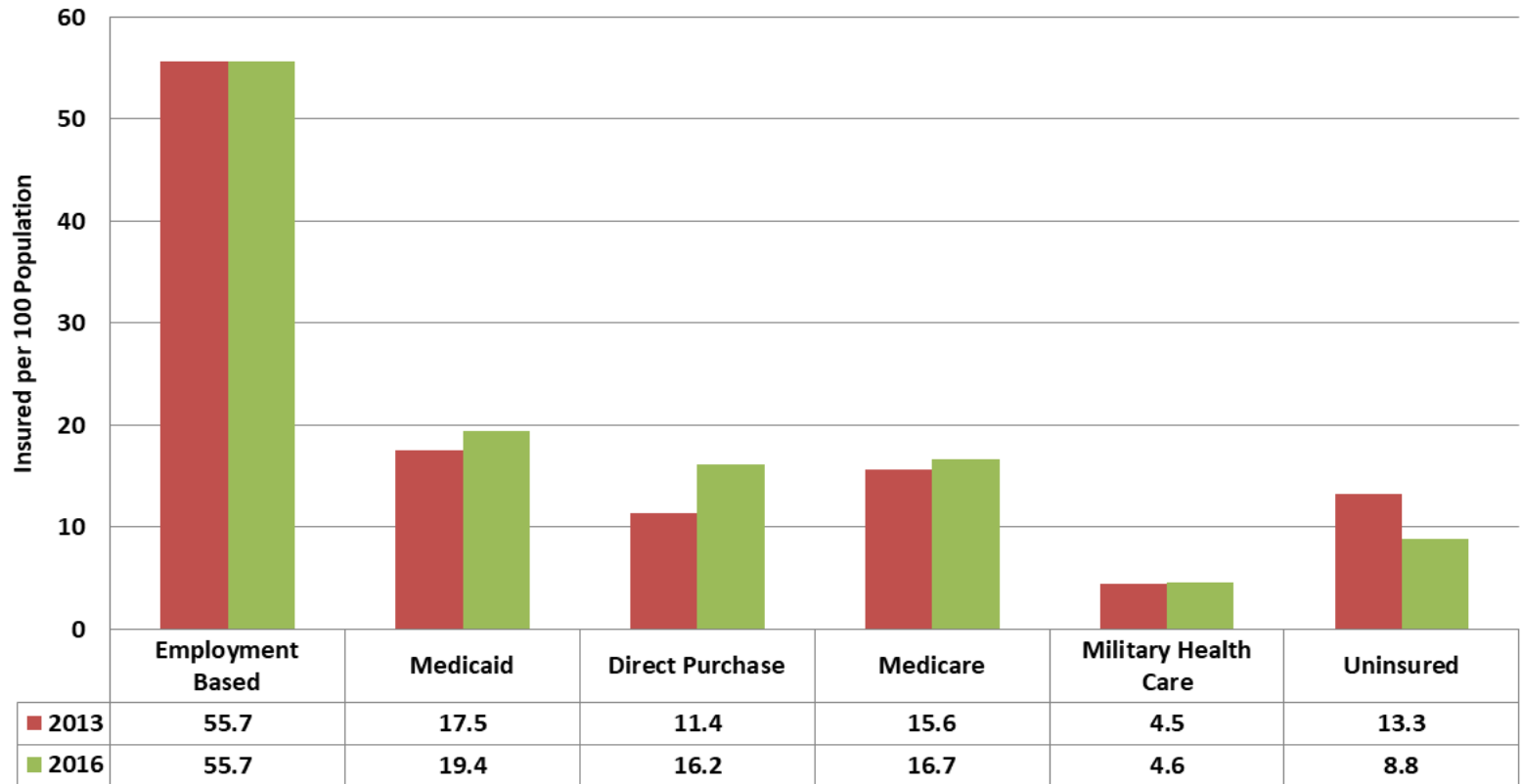
# Session Outline

- **Overview of State Initiatives.**
- **Section 1115 Waivers.**
  - **Eligibility Limits**
  - **Required Benefit Limits**
  - **Enrollee Premiums and Premium Assistance**
  - **Eligibility Determination Process**
  - **Coverage Effective Date**
- **Challenges to 1115 Waivers**

# State Decisions Which Can Impact Rural Health Systems

- State level decisions can have significant impact on the rural health system environment.
- This is particularly true given the current status of the Affordable Care Act (ACA). State decisions will likely be more important if there is any modification of the ACA.
- State level decisions have greatest impact in two parts of the market:
  - **Direct purchase individual/family health plan market** – both on and off exchange.
  - **Medicaid markets** – both managed care and fee-for-service.
- States have retained powers in these markets as well as potential additional flexibility under Medicaid waivers and ACA Section 1332 waivers.

## Estimated US Health Insurance Coverage Rates 2013-2016



**These estimates show the Census-estimated changes in US health coverage over the first 3 years of ACA implementation. Note that State policy affects a relatively small portion of the overall market compared to Federal policy. Nevertheless, these impacts have a significant influence on rural health provider sustainability.**

# Current State Decision-Making Environment

- The Centers for Medicare and Medicaid Services (CMS) has expanded opportunities for State decision-making related to Medicaid and direct purchase health coverage.
- It has approved multiple new coverage arrangements, including some State-initiated changes which had been denied under previous administrations.
- In these sessions a range of emerging State health coverage initiatives will be explored.
- Today's session will provide an overview of State Medicaid initiatives. The second session will explore ACA marketplace initiatives.
- The third and fourth sessions will be a chance to hear directly from four states about their health coverage initiatives and their impact on rural health.

# Emerging State Health Coverage Initiatives

- These sessions will cover three categories of State initiatives:
  - **Medicaid Initiatives**
    - 1115 and Other Waivers
    - State Plan Amendments
    - Administrative Decisions
  - **ACA Marketplace Initiatives**
    - 1332 Waivers
    - Other State Actions
  - **Marketplace Exceptions**
    - Federally-Permitted
    - State Initiated
- This session will explore State Medicaid initiatives.

# Types of State Medicaid Actions

- **Administrative Actions** – changes not requiring Federal oversight.
- **Medicaid Plan Amendments** – changes in operational changes requiring Federal review and approval. Documents compliance with existing statute.
- **1915 (b) Waivers** - provides states with the flexibility to modify their delivery systems by allowing CMS to waive statutory requirements for comparability, statewide impact, and freedom of choice. Managed care waivers.
- **1115 Waivers** - under Section 1115 of the Social Security Act, the Secretary of HHS can waive specific provisions of major health and welfare programs, including certain requirements of Medicaid and CHIP.
  - This authority permits the Secretary to allow states to use federal Medicaid and CHIP funds in ways that are not otherwise allowed under the federal rules, as long as the Secretary determines that the initiative is an “experimental, pilot, or demonstration project” that “is likely to assist in promoting the objectives of the program.”

# New CMS Flexibility and Previous Framework

- CMS has indicated to States that broader types of 1115 waivers will be considered. Approval can be fast-tracked.
- At the same time, language in the Affordable Care Act (ACA) made Section 1115 waivers subject to new rules about transparency, public input, and evaluation.
  - In February 2012, HHS issued new regulations that **require public notice and comment periods at the state and federal levels** before new Section 1115 waivers and extensions of existing waivers are approved by CMS.
  - The ACA also implemented **new evaluation requirements** for these waivers, including that states must have a publicly available, approved evaluation strategy.
  - States have traditionally been required to submit quarterly **reports** and must submit an annual report to HHS that **describes the changes occurring under the waiver and their impact on access, quality, and outcomes.**



# Broad Guidelines for 1115 Waivers

- A **core objective** of the Medicaid program is to **serve the health and wellness needs** of our nation's vulnerable and low-income individuals and families. In line with this, waiver requests can seek to:
  - **Improve access** to high-quality, person-centered services that produce positive health outcomes for individuals;
  - **Promote efficiencies** that ensure Medicaid's sustainability for beneficiaries over the long term;
  - **Support coordinated strategies** to address certain health determinants that promote upward mobility, greater independence, and improved quality of life among individuals; [\*]
  - **Strengthen beneficiary engagement** in their personal healthcare plan, including incentive structures that promote responsible decision-making; [\*]
  - **Enhance alignment** between Medicaid policies and commercial health insurance products to facilitate smoother beneficiary transition; [\*]
  - **Advance innovative delivery system and payment models** to strengthen provider network capacity and drive greater value for Medicaid.[\*]

# Recent State Waiver Requests

- States have submitted requests seeking flexibility in several program areas, including:
  - **Eligibility Limits**
  - **Required Benefit Limits**
  - **Enrollee Premiums and Premium Assistance**
  - **Eligibility Determination Process**
  - **Coverage Effective Date**
- A guardrail for all requests is **budget neutrality** - a longstanding component of Section 1115 waiver policy is that waivers must be budget neutral for the Federal government. The Federal government enforces budget neutrality by establishing a cap on federal funds under the waiver, putting the state at risk for any costs beyond the cap.
- Requests in each of these areas will be reviewed in detail to provide an overview of current trends.

# Requests for Eligibility Limits - 1

- **Work Requirements**

- Requests seek to condition eligibility of “able-bodied adults” on completing 20-40 hours of weekly work activities, such as paid employment, volunteering, or approved job training and search activities.
- Number of hours required, categories of approved work activities, and exempt populations vary by state.
- Request received for both expansion and non-expansion populations.
- Pending: AZ, KS, ME, MS, NC, NH, UT, WI
- Approved: KY, IN, AR

- **Partial Medicaid Expansion** [not currently authorized]

- Limit the Medicaid Expansion under the Affordable Care Act to income cut offs less than 133% FPL
- Pending: AR, MA, MI

# Requests for Eligibility Limits - 2

- **Lock Out Penalties**

- Impose a lockout penalty that bars an individual from receiving Medicaid coverage during the lockout period for non-compliance with one or more eligibility conditions (e.g., work requirements, payment of premiums, reporting requirements). Length of lockout periods varies by state, but ranges from 3-9 months
- Request received for both expansion and non-expansion populations.
- Approved: KY, IN, AR
- Pending: KS, ME, NM, UT, WI

- **Asset Test** [*not currently authorized*]

- Limit Medicaid eligibility to individuals with assets less than \$5,000 in value. The ACA eliminated the asset test for certain populations and required use of Modified Adjusted Gross Income (MAGI) instead
- Pending: ME

# Requests for Eligibility Limits - 3

- **Drug Testing** [*not currently authorized*]
  - Require individuals to complete drug screening and testing, and if test is positive, to enter treatment as a condition of eligibility
  - Request received for both expansion and non-expansion populations.
  - Pending: WI
- **Transitional Medical Assistance (TMA)** [*not currently authorized*]
  - Eliminate or modify TMA, which provides six to twelve months of coverage to families who become ineligible for Medicaid because of increased income from employment
  - Pending: KS (modify by creating optional savings account); NM (eliminate TMA coverage)

# Requests for Enrollment Limits

- **Lifetime Limits** [*not currently authorized*]
  - Limit total number of months an individual can receive Medicaid over the course of his or her lifetime. Lifetime limits vary by state, from 36 months to 60 months.
  - Request received for both expansion and non-expansion populations.
  - Pending: AZ, KS, UT, KS, ME, UT, WI
- **Enrollment Time Limit** [*not currently authorized*]
  - Impose a 6-month lockout penalty for individuals enrolled in Medicaid for 48 months. Months that a beneficiary is working do not count towards the 48- month limit
  - Pending: WI
- **Enrollment Cap** [*not currently authorized*]
  - Limit the total number of individuals enrolled in the Medicaid expansion
  - Pending: UT

# Requests Affecting Required Benefits

- **Non-Emergency Medical Transportation**
  - Eliminate coverage of non-emergency medical transportation
  - Requests cover both expansion and non-expansion enrollees.
  - Pending: AZ, MA
  - Approved: KY, IN
- **Waive EPSDT for 19 and 20 Year Olds**
  - Eliminate wellness services for older youth
  - Requests cover both expansion and non-expansion enrollees.
  - Approved: UT
  - Pending: NM
- **Closed Rx Formulary** [*not currently authorized*]
  - Limits prescription coverage for enrollees to an approved list.
  - Request covers both expansion and non-expansion enrollees.
  - Pending: MA

# Requests for Premiums and Assistance - 1

- **QHP Premium Assistance**
  - Private Option Coverage
  - Approved: AR, MI, NH
- **Premiums/Monthly Contributions**
  - Waivers covering both expansion and **non-expansion** enrollees have been approved.
  - Approved: AR, AZ, IA, IN, KY, MI, MT, **IN, KY**
  - Pending: NM, **ME, WI**
- **Disenrollment and Lock-Out for Non-Payment of Premiums**
  - Waivers covering both expansion and **non-expansion** enrollees have been approved.
  - Approved: IN, KY, MT,
  - Pending: NM, **ME, WI**



# Requests for Premiums and Assistance - 2

- **Disenrollment (Without Lock-Out) for Non-Payment of Premiums**
  - At this point only waivers of expansion enrollees have been approved.
  - Approved: AZ, IA
- **Tobacco Premium Surcharge**
  - Approved for both expansion and non-expansion enrollees.
  - Approved: IN
- **Healthy Behavior Incentives**
  - Premium incentives for screening, health education or positive health improvement.
  - Requests cover both expansion and non-expansion enrollees.
  - Approved: AZ, IA, IN, KY,MI, NM, FL
  - Pending: WI

# Requests for Changes in Eligibility Determination

- **More Frequent Eligibility Redeterminations.**
  - Shorten Medicaid eligibility period
  - Pending: AZ
- **Lock-out for Failure to Renew in a Timely Manner.**
  - Waivers covering both expansion and **non-expansion** enrollees have been approved.
  - Approved: IN, KY
- **Lock-out for Failure to Report Eligibility Changes in a Timely Manner.**
  - Waivers covering both expansion and **non-expansion** enrollees have been approved.
  - Approved: KY
- **Drug Screening and Testing as Part of Enrollment Process.**
  - Not currently authorized.
  - Pending: WI

# Changes in Eligibility Determination - 2

- **Waive MAGI Financial Methodology.**
  - Not currently authorized.
  - Pending: TX

# Requests for Changes in Coverage Effective Date

- **Presumptive Eligibility.** [*not currently authorized*]
  - Eliminate ability of hospitals to determine an individual presumptively eligible for Medicaid in order to provide coverage for unforeseen medical expenses
  - Pending: ME, UT
- **Retroactive Coverage**
  - Remove obligation of states to retroactively cover medical expenses incurred in the three months prior to date of application for individuals who would have been eligible.
  - Requests cover both expansion and **non-expansion** enrollees.
  - Pending: AZ, **ME, NM**
  - Approved: **IA, KY, UT**, IN, AR

# Changes in Coverage Effective Date - 2

- **Waive Reasonable Promptness.**

- Reasonable promptness waivers allow states to delay the start of coverage until after the 1st premium is paid or after the 60-day payment period expires.
- Requests cover both expansion and non-expansion enrollees.
- Approved: IN, KY
- Pending: NM

# Impact on Rural Health and Health Services

- State Medicaid program initiatives should be assessed by SORHs in terms of their impact on rural health and health services. This assessment can consider:
  - **Changes in population with coverage**: Will changes lead to an increase or reduction in the number of enrollees in rural areas? Will this lead to a change in the health status of rural populations?
  - **Changes in services covered**: Will changes significantly reduce key services needed by enrollees in rural areas? Will there be any impact on the health status of these enrollees?
  - **Changes in enrollee cost-sharing**: Will changes create significant financial barriers to key services for enrollees in rural areas? Will there be any impact on the health status of these enrollees?

# Litigation Challenging Recent State Initiatives

- Legal challenges to State Medicaid program changes have been filed. The challenges brought against individual States could impact others with similar initiatives.
- Courts might consider the following **questions** in weighing these challenges:
  - **Medicaid's Core Objective:**
    - Do the newly approved State initiatives actually further Medicaid's core objective?
    - Has CMS exceeded its authority in approving initiatives which address a broader objective – i.e., promoting upward mobility, patient engagement and transition to private insurance versus a narrower aim of improved health service access, quality and outcome?

# Litigation on 1115 Waivers - 2

## – Appropriate Experiments and Demonstrations:

- Do newly approved initiatives qualify as an appropriate experiment or demonstration?
- Do newly approved initiatives reflect sufficient research evidence? If the initiative is too experimental, is it “likely to assist in promoting the objectives of the program”?

## – Administrative Process:

- Has CMS followed formal notice and comment procedures in the issuance of new 1115 waiver guidance?



# Summary

- There are rapidly growing numbers of State initiatives related to their Medicaid programs. Many of these are creating limitations on enrollment and coverage.
- The impact of these initiatives on rural populations – particularly the disparate impact in rural areas – is unclear, and should be monitored.
- Similarly, the impact on rural health service providers is unclear and should be monitored.
- The impact on the rural health safety net – rural health clinics, Federally qualified health centers, Critical Access Hospitals, Disproportionate Share Hospitals and Sole Community Hospitals - is a particular concern.
- Legal challenges to Medicaid initiatives could change the current environment.
- SORHs can help the rural health safety net consider what the initiatives might mean for them and how they might respond.

# Resources on State Medicaid Initiatives - 1

- **Overview of Framework for State Medicaid Initiatives**
  - <https://www.macpac.gov/subtopic/waivers/>
- **Statutory basis of 1115 Waivers**
  - [https://www.ssa.gov/OP\\_Home/ssact/title11/1115.htm](https://www.ssa.gov/OP_Home/ssact/title11/1115.htm)
- **CMS framework for 1115 Waivers**
  - <https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html>
- **NCSL Primer on 1115 Waivers**
  - [http://www.ncsl.org/Portals/1/Documents/Health/Medicaid\\_Waivers\\_State\\_31797.pdf](http://www.ncsl.org/Portals/1/Documents/Health/Medicaid_Waivers_State_31797.pdf)
- **NCSL 1115 Waiver Resources**
  - <http://www.ncsl.org/research/health/medicaid-waivers-in-the-states-seven-faqs.aspx>

# Resources on State Medicaid Initiatives - 2

- **Kaiser Family Foundation - Overview of 1115 Waivers**
  - <https://www.kff.org/medicaid/issue-brief/section-1115-medicaid-demonstration-waivers-the-current-landscape-of-approved-and-pending-waivers/>
- **Waiver Tracking Site**
  - <https://www.kff.org/medicaid/issue-brief/which-states-have-approved-and-pending-section-1115-medicaid-waivers/>
- **Overview of Indiana Medicaid Waivers**
  - <https://www.kff.org/medicaid/issue-brief/approved-changes-in-indianas-section-1115-medicaid-waiver-extension/>
- **Study of Impact of Indiana Medicaid Premiums**
  - <https://www.fiercehealthcare.com/cms-chip/indiana-medicaid-drops-25k-from-coverage-for-failing-to-pay-premiums>

# Resources on State Medicaid Initiatives - 3

- **Overview of Kentucky Medicaid Waivers**
  - <https://www.kff.org/medicaid/issue-brief/approved-changes-to-medicaid-in-kentucky/>
- **Overview of Litigation on the Kentucky 1115 Waiver Request**
  - <https://www.kff.org/medicaid/issue-brief/a-guide-to-the-lawsuit-challenging-cmss-approval-of-the-kentucky-health-medicaid-waiver/>