



Summary of CMS' New Guidance to States on Medicaid Work Requirements

On January 11, 2018, the Centers for Medicare & Medicaid Services (CMS) announced that the federal government, for the first time, will allow states to test work or community engagement requirements as a condition of eligibility for some Medicaid enrollees. The new policy, which was widely expected, was issued in the form of a 10-page State Medicaid Director Letter to the states, outlining CMS' expectations and detailed guidance for those states interested in adding work requirements to their Medicaid program through section 1115 waiver demonstration projects. CMS and the U.S. Department of Health and Human Services (HHS) laid the groundwork for this new policy through a March 14, 2017 letter to the nation's governors affirming the Administration's commitment to working with the states to administer the Medicaid program. In the letter, CMS noted it would empower states to develop "innovative proposals to improve their Medicaid programs."

Ten states have applied for a federal waiver to add a work requirement, and several other states have expressed interest. The ten states are Arizona, Arkansas, Indiana, Kansas, Kentucky, Maine, New Hampshire, North Carolina, Utah, and Wisconsin. CMS may approve Kentucky's request as early as January 12.

To the extent possible and where appropriate, CMS encourages states to align work or work-related requirements under Medicaid with work requirements under existing programs, particularly through their Temporary Assistance for Needy Families (TANF) program (e.g., welfare) and the Supplemental Nutrition Assistance Program (SNAP). States may wish to consider certain aspects of these programs in designing their Medicaid work programs, including: excepted populations; allowable activities; protections and supports for individuals with disabilities and others who may be unable to meet the requirements; enrollee reporting requirements; the availability of work support programs (e.g., transportation or child care); and changes to requirements or allowable activities due to economic or environmental factors, such as the unemployment rate in affected areas. In addition to considering the extent to which proposed Medicaid work requirements align with aspects of the TANF or SNAP programs and whether that alignment is consistent with Medicaid objectives, CMS notes that individuals enrolled in and compliant with a TANF or SNAP work requirement must automatically be considered to be complying with the Medicaid work requirements. This includes individuals exempt from such work requirements under TANF or SNAP.

Populations Subject to Work Promotion/Community Engagement Requirements and Exceptions:

- Working-age, non-pregnant adult Medicaid beneficiaries who qualify for Medicaid on a basis other than a disability (e.g., many in the expansion population, for those states that have expanded) are generally subject to the requirements.
- However, states must comply with federal civil rights laws with respect to "non-disabled" Medicaid individuals who may have an illness or disability as defined by other federal laws (e.g., Americans with Disabilities Act [ADA], Section 504 of the Rehabilitation Act of 1973, Section 1557 of the Affordable Care Act, Title VI of the Civil Rights Act, the Age Discrimination Act, and other relevant statutes) that may interfere with their ability to meet the work requirements. States must ensure that individuals with disabilities are not denied Medicaid for inability to meet these requirements, and have mechanisms in place to ensure that reasonable modifications are provided to people who need them.

Populations Exempt from Work Promotion/Community Engagement Requirements or other considerations:

- Children, pregnant women, the elderly, and individuals eligible for Medicaid based on disability.
- Individuals determined by the state to be medically frail.
- Individuals with acute medical conditions, validated by a medical professional that would prevent them from complying with the requirements.
- In light of the nation's opioid epidemic, states will be required to take steps to ensure that eligible individuals with opioid addiction and other substance use disorders (who may not be defined as disabled under Medicaid but may be protected by disability laws) have access to appropriate Medicaid coverage and treatment services. States must make reasonable modifications for these individuals, and specifically identify such modifications in their demonstration applications. Such modifications may include counting time spent in medical treatment towards an individual's work/community engagement requirements, or exempting individuals participating in intensive medical treatment (e.g., inpatient treatment or intensive outpatient treatment) for substance use disorder from the work/community engagements requirements. CMS will also consider other reasonable modifications that states may design and propose in furtherance of their obligations under disability laws. Finally, states should identify, in their demonstrations, other strategies to support such individuals in meeting the requirements, and in obtaining access to treatment when they are ready.

Allowable Activities

CMS encourages states to consider a range of activities that could satisfy work and community-engagement activities, including subsidized and unsubsidized employment, educational and vocational programs, job search and job readiness, career planning, job training, referral, community service, caregiving, and volunteer and tribal employment programs. States should also consider aligning hours of participation with TANF or SNAP employment programs.

Beneficiary Supports and Market Forces/Structural Barriers

States must have strategies to assist beneficiaries in meeting work and community engagement requirements and to link individuals to additional resources for job training and other employment services, child care assistance, transportation, or other work supports to help beneficiaries prepare for work or increase their earnings. CMS also recognizes that states will need flexibility to take into account local employment market conditions and may need to phase in and/or suspend program features.

AMA Policy

The AMA's House of Delegates adopted new policy at the 2017 Interim Meeting opposing work requirements as a criterion for Medicaid eligibility.