



A breakdown of new policy guidance for states

Work/community engagement requirements for Medicaid

KPMG Government Institute

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Following an initial statement of intent in March 2017, the Centers for Medicare & Medicaid Services (CMS) issued further policy guidance on January 11, 2018 outlining key components for states looking to gain approval for 1115 waivers testing Medicaid work/community engagement for able bodied adults.^{1,2} The following day, CMS approved Kentucky's 1115 waiver application.³ In addition to Kentucky, nine other states have filed to include work requirements as a condition for Medicaid eligibility.

The concept of work or community engagement requirements in public assistance programs is not new. Requirements stipulating that non-exempt program recipients engage in either paid employment or volunteer, training, or caregiving activities as a condition of receiving program benefits have long been a component of programs such as the Supplemental Nutrition Assistance Program (SNAP) and Temporary Aid for Needy Families (TANF).⁴ Applying these requirements to Medicaid is new, however, and previous state applications for such requirements were consistently rejected by the Obama Administration.

This issue brief summarizes and puts into context the work/community engagement guidance provided by CMS in the Guidance Letter and briefly outlines key work/community engagement features of Kentucky's approved demonstration program.

Adhering to key application criteria

The CMS Guidance Letter touches on six specific requirements states must meet in any application to apply work/community engagement requirements to Medicaid. In addition to complying with public notice and transparency requirements, staying budget neutral and being made subject to quarterly and annual evaluations, three requirements stand out in particular and will be further covered in this brief. The Program:

1. Must be designed to further improve health outcomes
2. Must comply with federal civil rights and other applicable laws by exempting individuals with

disabilities, those who are medically frail, and those with acute medical conditions

3. Work/community engagement requirements should align with those of other programs such as SNAP and TANF

Improving health outcomes

The Guidance Letter cites research showing that employment and community engagement are associated with improved health outcomes, and on this basis, CMS finds that states may experiment with adding this requirement to Medicaid. That work requirements are properly aimed at furthering health outcomes is disputed by patient advocates and some academics, and states should be prepared for the possibility of legal challenges based on this requirement.⁵

Applying appropriate exemptions

CMS will require that state programs exempt certain groups from work/community engagement requirements, including the disabled, the elderly, and pregnant people. In its letter, CMS adopts the SNAP/TANF definitions for disabled which are broader than the definitions used to denote disability for the purpose of Medicaid and designed to align with federal civil rights laws. CMS indicates that individuals compliant with or exempt from work requirements under TANF or SNAP must automatically be considered compliant with or exempt from Medicaid work/community engagement requirements. Some open questions remain, including which of the two SNAP work programs (see Box 1) CMS is referring to when requiring adoption of SNAP/TANF exemptions (see Appendix for full list of exemptions). In addition, there appears to be some flexibility in the application of SNAP exemptions. For example, the Kentucky waiver application that was approved contains age limit and caretaker exemptions that are stricter than those in either the SNAP Work Registration or the Able Bodied Adults Without Dependent (ABAWD) Requirements.

Box 1: Summary of the two forms of SNAP work requirements

SNAP work requirements may fall into two different categories. Per CMS policy guidance, states must adopt the same exemptions as SNAP but are free to adjust the actual requirements and sanctions.

1. SNAP “Work Registration” requirements:

The Work Registration requirement requires that non-exempt recipients of SNAP register with a job placement/work registry, participate in training or workfare programs (if assigned and required), interview where referred, take a suitable job if offered, and not to quit a job without good cause. There is no set number of work/community engagement hours required to maintain benefits under this requirement. There are 11 categories of exemption from the Work Registration requirement (see Appendix), including the disabled, those working more than 30 hours a week, and primary caretakers of children under 6.

2. SNAP Able Bodied Adults Without Dependents (“ABAWD”) requirements:

The ABAWD Requirements apply to those individuals not exempt from the Work Registration requirements who are under 50, not pregnant, and live in a SNAP household with a minor. For these people to remain SNAP eligible, they must both: (1) Remain in compliance with Work Registration requirements and (2) participate in either paid employment or community engagement activities for an average of 80 or more hours per month. An ABAWD may fail to comply with ABAWD requirements for a maximum of 3 months during a 36-month period. After the third countable month, the SNAP recipient loses SNAP eligibility until the end of the 36-month period.

Aligning SNAP and Medicaid requirements

Adding work/community engagement requirements to Medicaid will require tracking compliance and applying penalties for non-compliance. Although not required, CMS suggests aligning Medicaid work/community engagement requirements with SNAP/TANF work requirements, including following SNAP/TANF allowed community engagement activities and existing verification/sanctioning processes. For states that have already developed or are developing integrated eligibility systems, these systems may facilitate implementation of streamlined application and verification processes and result in decreased administrative and verification burdens.

Although one-for-one alignment of exemptions and requirements would be most efficient, few states are likely to follow that approach. All state applications filed to date have proposed applying ABAWD-style minimum hour and reporting requirements to individuals who are currently only subject to Work Registration requirements under SNAP. Further, in states that have not expanded their Medicaid populations to include low income adults without children, a direct one-for-one translation of SNAP ABAWD work requirements and exemptions would result in no individuals being subject to a minimum number of work/community engagement hours.

Summary of Kentucky work/community engagement requirements demonstration program

CMS’s Guidance Letter issued January 11, 2018 was quickly followed by approval of Kentucky’s pending application, KY HEALTH. Kentucky’s demonstration program will apply work/community engagement requirements to non-disabled, non-pregnant people between the ages of 18 and 64 who work less than 120 hours per month.⁶ It will exempt any Medicaid beneficiary documented to be medically frail and/or that “meets the requirements of the SNAP and/or TANF employment initiatives or is exempt from having to meet those requirements.” One primary caregiver of a dependent per household can claim an exemption.

Under KY HEALTH, non-exempt Medicaid recipients will be required to participate in 80 hours of work/community engagement activities per month or their Medicaid benefits will be suspended.⁷ Medicaid recipients not exempted will be required to document their compliance with the work/community engagement requirements monthly. The state cites a broad array of activities it will consider as meeting these requirements, including job training and job search activities, education, and community service/public service.

Next steps

Several additional states have filed waiver applications proposing demonstration programs similar to KY HEALTH. Going forward, it is likely that CMS will approve more 1115 waivers requiring work/community engagement as a condition of benefits. The CMS Guidance Letter provides states with guidelines for designing these programs, but approved state plans will likely vary based on the set of factors unique to the state, including whether or not the state expanded its Medicaid population under the ACA, the existence of an integrated eligibility system, the level of automation in the state's Medicaid eligibility determinations, and the economic climate of the state. State administrators designing such programs for Medicaid should work closely with their counterparts in SNAP and TANF to align state requirements between these programs and be mindful that changes to their eligibility systems will be necessary to accommodate for inclusion of Medicaid work requirements.

Appendix

SNAP work requirements fall into two different sections of federal law. Per CMS policy guidance, states must adopt the same exemptions as SNAP but are free to adjust the actual requirements and sanctions.

1. Work Provisions ("Work Registration", see 7 C.F.R. 273.7)

Work Registration exempt SNAP recipients include people who are:

- a. Under age 16 or over age 60
- b. Age 16 or 17 and not the primary wage earner of the household
- c. Students enrolled at least half-time
- d. Working 30 or more hours per week
- e. Earning 30x the federal minimum wage per week

- f. Subject to and complying with TANF work requirement
- g. Receiving or applying for unemployment benefits
- h. Caring for a dependent child under age 6
- i. Caring for a disabled person who can not provide his or her own care (the disabled person need not live with caretaker)
- j. Physically or mentally unable to work 30 or more hours per week
- k. In a rehabilitation program.

2. Time limit for able bodied adults (ABAWD Requirements, see 7 C.F.R 273.24)

Able Bodied Adults Without Dependents are those who do not meet any of the Work Registration exemptions above and are not:

- a. Under 18 or over 50 years old
- b. A parent (natural, adoptive, or step) of a household member under age 18
- c. Residing in a household where a household member is under age 18
- d. Pregnant

For these people to remain SNAP eligible, they must both:

- i. Remain in compliance with Work Registration requirements and
- ii. Work an average of 80 or more hours per month.

An ABAWD may fail to comply with ABAWD requirements for a maximum of 3 months ("countable" months) during a 36-month period. After the 3rd countable month, the SNAP recipient loses SNAP eligibility until the end of the 36-month period.

¹Letter from HHS Secretary Thomas E. Price and CMS Administrator Seema Verma to State Governors, March 2017, Available at: <https://www.hhs.gov/sites/default/files/sec-price-admin-verma-ltr.pdf>.

²U.S. Centers for Medicare & Medicaid Services, SMD letter # 18-002, January 11, 2018. Available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf>, ("Guidance Letter")

³U.S. Centers for Medicare & Medicaid Services, "Kentucky Helping to Engage and Achieve Long Term Health" (KY HEALTH), project numbers 11-W-00306/4 and 21-W-00067/4, Approved January 12, 2018. Available at: <https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/?entry=39258> ("KY Approval").

⁴As TANF is a block grant program with significant variability between states, TANF work/community engagement requirements are not discussed in this issue brief.

⁵See, e.g. MaryBeth Musumeci, Rachel Garfield, and Robin Rudowitz, "Medicaid and Work Requirements: New Guidance, State Waiver Details and Key Issues," Kaiser Family Foundation, January 16, 2018 (available at: <https://www.kff.org/medicaid/issue-brief/medicaid-and-work-requirements-new-guidance-state-waiver-details-and-key-issues/>); Sanger-Katz, Margot, "Can Requiring People to Work Make Them Healthier?" New York Times, January 11, 2018 (available at: https://www.nytimes.com/glogin?URI=https%3A%2F%2Fwww.nytimes.com%2F2018%2F01%2F11%2Fupshot%2Fmedicaid-work-requirements-trump.html%3F_r%3D0)

⁶KY Approval Letter, page 8.

⁷KY Approval Letter, page 32.

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