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Medicaid and SCHIP Section 1115 Research and Demonstration Waivers

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Summary

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services (HHS) with broad authority to conduct research and demonstration projects under several programs authorized by the Social Security Act. Two such programs are Medicaid and the State Children's Health Insurance Program (SCHIP).

Specifically, Section 1115 allows the Secretary to waive certain statutory requirements to modify virtually all aspects of the programs as long as the changes further the goals of Titles XIX (Medicaid) and/or XXI (SCHIP). In recent years, there has been increased interest among states and the federal government in the Section 1115 waiver authority as a means to restructure Medicaid coverage, control costs, and increase state flexibility. States have used the Section 1115 waiver authority to cover non-Medicaid and SCHIP services, limit benefit packages for certain groups, cap program enrollment, among other purposes.

As of fall 2003, there were 68 operational (i.e., approved and implemented) Medicaid and SCHIP Section 1115 waiver programs. In FY2003 (the most recent data available), Section 1115 waiver federal expenditures (for Medicaid and SCHIP) totaled $22.4 billion. Section 1115 waiver programs represented nearly14% of all federal Medicaid spending in the 50 states and the District of Columbia for FY2003 (8% for SCHIP), and provided coverage to approximately 9.5 million enrollees. Of the 9.5 million total Medicaid and SCHIP waiver enrollees, 2.4 million were eligible only for a targeted benefit package such as family planning or pharmacy benefits. This report provides background information on the waiver authority, and will be updated when new data are available.

Background

Medicaid, authorized under Title XIX of the Social Security Act, is a federal-state program providing medical assistance for low-income individuals who are aged, blind, disabled, members of families with dependent children, or who have one of a few specified medical conditions. The Balanced Budget Act of 1997 established SCHIP under

a new Title XXI of the Social Security Act. SCHIP builds on Medicaid by providing health insurance to uninsured children in families with income above applicable Medicaid income standards. Each state defines the group of children who may enroll in SCHIP using factors such as geography, age, and income. States provide SCHIP children with health insurance that meets specific standards for benefits and cost-sharing, or through their Medicaid programs, or through a combination of both.

Section 1115 Waiver Authority

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services (HHS) with broad authority to conduct research and demonstration projects under several programs authorized by the Social Security Act. Two of these programs are Medicaid and SCHIP. Section 1115 also authorizes the Secretary to waive certain statutory requirements for conducting these projects without congressional approval. For this reason, the research and demonstration projects are often referred to as Section 1115 "waiver" projects. Under Section 1115, the Secretary may waive Medicaid requirements contained in Section 1902 (including but not limited to what is known as, freedom of choice of provider, comparability of services, and state-wide access).[1] For SCHIP, no specific sections or requirements are cited as "waiveable." Section 2107(e)(2)(A) of the Social Security Act states that Section 1115 of the act, pertaining to research and demonstration waivers, applies to SCHIP. States must submit proposals outlining terms and conditions for proposed waivers to CMS for approval before implementing these programs.

In recent years, there has been increased interest among states and the federal government in the Section 1115 waiver authority as a means to restructure Medicaid and SCHIP coverage, control costs, and increase state flexibility. Under current law, states may obtain waivers that allow them to provide services to individuals not traditionally eligible for Medicaid (or SCHIP), cover non-Medicaid (or SCHIP) services, limit benefit packages for certain groups, adapt their programs to the special needs of particular geographic areas or groups of recipients, or accomplish a policy goal such as to temporarily provide Medicaid assistance in the aftermath of a disaster[2], among other purposes. Whether large or small reforms, Section 1115 waiver programs have resulted in significant changes for Medicaid and SCHIP recipients nationwide, and may serve as a precedent for federal and state officials who wish to make statutory changes to these healthcare safety net programs.

While Section 1115 is explicit about provisions in Medicaid law that may be waived in conducting research and demonstration projects, a number of other provisions in

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[1] Freedom of choice refers to a requirement that Medicaid beneficiaries have the freedom to choose a provider. Comparability refers to a requirement that services be comparable in amount, duration, and scope for persons in particular eligibility groups. A waiver of the statewideness requirement allows states to provide services in only a portion of the state, rather than in all geographic jurisdictions.

[2] For more information on Section 1115 emergency Medicaid waivers, see CRS Report RL33083, *Hurricane Katrina: Medicaid Issues*, by Evelyne P. Baumrucker, April Grady, Jean Hearne, Elicia J. Herz, Richard Rimkunas, Julie Stone, and Karin Tritz.

Medicaid law and regulations specify limitations or restrictions on how a state may operate a waiver program. For example, one provision restricts states from establishing waivers that fail to provide all mandatory services to the mandatory poverty-related groups of pregnant women and children; another provision specifies restrictions on cost-sharing imposed under demonstration waivers. Other features of the Section 1115 waiver authority:

- *Federal Reimbursement for Section 1115 Demonstrations*. Approved Section 1115 waivers are deemed to be part of a state's Medicaid (or SCHIP) state plan for purposes of federal reimbursement. Project costs associated with waiver programs are subject to that state's FMAP (or enhanced-FMAP)[3]. Changes to these financing arrangements, even under a Section 1115 waiver, would require congressional action.
- *Financing and Budget Neutrality*. Unlike regular Medicaid, CMS waiver guidance specifies that costs associated with waiver programs must be *budget neutral* to the federal government over the life of the waiver program. To meet the budget neutrality test, estimated spending under the waiver cannot exceed the estimated cost of the state's existing Medicaid program under current law program requirements.[4] For example, costs associated with an expanded population (e.g., those not already covered under the state's Medicaid program), must be offset by reductions elsewhere within the Medicaid program. Several methods used by states to generate cost savings for the waiver component: (1) moving part of the Medicaid population into managed care; (2) limiting benefit packages for certain eligibility groups; (3) providing targeted services to certain individuals so as to divert them from full Medicaid coverage; and (4) using enrollment caps and cost-sharing to reduce the amounts states must pay.
- *Financing and Allotment Neutrality*. Under the SCHIP program, a different budget neutrality standard applies. States must meet an "allotment neutrality test" where combined federal expenditures for the state's regular SCHIP program *and* for the state's SCHIP demonstration program are capped at the state's individual SCHIP allotment. This policy limits federal spending to the capped allotment levels.
- *Relationship of Medicaid/SCHIP Demonstration Waivers to Other Statutes*. Section 1115 waiver projects may interact with other program rules outside of the Social Security Act; for example, employer-sponsored health insurance as described by the Employee Retirement Income Security Act (ERISA), or alien eligibility as contained in

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[3] Section 1903 describes the conditions under which federal financial participation is available. Section 1115(a)(2) stipulates that expenditures under a waiver are eligible for matching under Section 1903. The same federal reimbursement rules apply to SCHIP waiver projects. As with SCHIP state plan expenditures, SCHIP Section 1115 waiver programs are reimbursed at an enhanced federal matching rate.

[4] An exception to this guidance on budget neutrality was made by the Secretary in the recent approvals of Section 1115 emergency Medicaid waivers. For the Katrina waivers all tests of budget *and* allotment neutrality were waived.

immigration law. In cases like these, the Secretary does not have the authority to waive provisions in these other statutes.[5]

- *Program Guidance.* The Secretary can develop policies that influence the content of demonstration projects and prescribe approval criteria in three ways: (1) by promulgating program rules and regulations;[6] (2) through the publication of program guidance (e.g., the waiver program must meet a budget neutrality test);[7] and (3) waiver policy may also be implicitly shaped by the programs that have been approved (e.g., CMS approval of benefit specific waivers such as family planning waivers). Legislative action may be required if Congress chooses to further shape the Secretary's authority over the content of the demonstration programs, dictate specific Section 1115 waiver approval criteria, or otherwise limit the Secretary's waiver authority.

Program Types

As of fall 2003, CMS classified Section 1115 waiver programs into five distinct categories:

- *Comprehensive demonstrations.* These demonstrations provide a broad range of services that are generally offered statewide. As of January 2003, there were 19 operational (i.e., approved and implemented) Medicaid comprehensive state reform waivers.[8] FY2003 state-reported enrollment estimates for the comprehensive demonstration waivers

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[5] For example, states may not provide benefits to qualified aliens as a part of a Section 1115 eligibility expansion without adhering to the five-year ban on alien access to federal assistance as required by the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193).

[6] Program rules and regulations that meet specified rulemaking criteria are legally binding. To date, CMS has *not* shaped Section 1115 waiver-related policy through program rules and regulations.

[7] Unlike program rules and regulations, program guidance is not legally binding. Rather, program guidance provides a framework for the process by which states may obtain approvals and the principles under which states may operate their programs. Program guidance contains authoritative interpretation and clarification of statutory and regulatory requirements. To date the Secretary only used guidance through public notices in the *Federal Register*, as well as technical guidance distributed to state health officials and HHS regional officers or posted on the CMS website to shape Section 1115 waiver policy.

[8] States with comprehensive demonstration waivers include Arizona, Arkansas, California (Los Angeles county), Delaware, District of Columbia, Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, New York, Oklahoma, Oregon, Rhode Island, Tennessee, Utah, Vermont, and Wisconsin.

totaled approximately 7.0 million,[9] and federal expenditures for these programs were approximately $19.3 billion.

- *Family planning demonstrations*. These demonstrations provide family planning services for certain individuals of childbearing age in 17 states.[10] For the family planning demonstrations, FY2003 enrollment counts for standalone waivers totaled 2.1 million, and federal expenditures were approximately $384 million.[11]
- *SCHIP and Health Insurance Flexibility and Accountability Initiative (HIFA) Waivers*. As of fall 2003, 12 states (14 programs) had operational SCHIP and HIFA Section 1115 waivers.[12] Nine of these 14 programs (in Arizona, Colorado, Illinois, Maine, Michigan, New Jersey, New Mexico, New York, and Oregon,) are approved HIFA demonstrations.[13] HIFA demonstrations are designed to encourage states to extend Medicaid and SCHIP to the uninsured, with a particular emphasis on statewide approaches that maximize private health insurance coverage options and target populations with incomes below 200% FPL. Six of the nine HIFA programs (in Illinois, Michigan, New Jersey, New Mexico, New York, and Oregon) are Medicaid/SCHIP combined waivers. A combined HIFA waiver generally means that the state will finance changes to its Medicaid program using unspent SCHIP funds. In nine states[14] with approved SCHIP waivers, coverage is expanded to include one or more categories of adults with children, typically parents of Medicaid/SCHIP children, caretaker relatives, legal guardians, and/or pregnant women. Three states (Arizona, Michigan, and Oregon) also

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[9] In states where multiple demonstration populations are covered under a comprehensive waiver project (e.g., the project includes a family planning component, a pharmacy-only component, and/or a HIFA component, etc.), enrollee counts reported here include enrollees for whom the state reports expenditures associated with this population under the comprehensive demonstration waiver project number.

[10] States with operational family planning demonstration waivers (stand alone waivers or family planning waivers included as a part of their comprehensive demonstration project) as of January 2003 included Alabama, Arizona, Arkansas, California, Delaware, Florida, Maryland, Mississippi, Missouri, New Mexico, New York, Oregon, Rhode Island, South Carolina, Virginia, Washington and Wisconsin.

[11] Arizona, Delaware, Missouri, New York, and Rhode Island report their family planning demonstration enrollees and expenditures as a part of their comprehensive demonstration waivers. FY2003 state-reported expenditures for Florida were reported as a part of the state plan expenditures. FY2003 state-reported expenditures for Maryland were reported as a part of the state's Title XXI state plan expenditures. Mississippi's family planning waiver was implemented on October 1, 2003.

[12] State with operational SCHIP and HIFA waivers as of fall 2003 included Arizona, Colorado, Illinois, Maine, Michigan, Minnesota, New Jersey, New Mexico (two waivers), New York, Oregon, Rhode Island, and Wisconsin (2 waivers).

[13] States with operational HIFA waivers included Arizona, Colorado, Illinois, Maine, Michigan New Jersey, New Mexico, New York, and Oregon.

[14] States included Arizona, California, Colorado, Illinois, Minnesota, New Jersey, Oregon, Rhode Island, and Wisconsin.

cover childless adults under their SCHIP waivers. However, the recently enacted Deficit Reduction Act (P.L. 109-171) prohibits the approval of new waivers (approved on or after October 1, 2005) that allow the use of federal SCHIP funds for coverage of nonpregnant childless adults. In addition to expanding coverage to new populations under SCHIP waivers, some states have used this authority for other purposes. For example, New Mexico modified its cost-sharing rules for targeted low-income children under its Medicaid program. FY2003 state-reported enrollment and expenditure data show that SCHIP and HIFA demonstrations covered almost 318,000 individuals at a federal cost of approximately $1.4 billion.[15]

- *Pharmacy plus demonstrations*. These demonstrations provide comprehensive pharmacy benefits for low-income seniors and individuals with disabilities with income at or below 200% FPL.[16] The demonstrations may provide pharmaceutical products, assist individuals who have private pharmacy coverage with high premiums and cost sharing, or provide wraparound pharmaceutical coverage to bring private sources of pharmacy coverage up to the level of desired demonstration benefit coverage. Enrollees will not be eligible for the comprehensive Medicaid benefits available under the state's Medicaid plan. In FY2003, there were six approved Pharmacy Plus waivers.[17] Enrollment counts totaled approximately 117,000 at a federal cost of approximately $1.2 billion.[18]
- *Specialty services and population demonstrations*. These demonstrations generally include programs that provide cash to enrollees so that they may directly arrange and purchase services that best meet their needs. In addition, they also include waivers to provide pharmacy benefits to persons with specific conditions, such as HIV/AIDS. In FY2003, there were 11 such operational programs in eight states.[19] These demonstrations covered just under 11,000 individuals at a federal cost of approximately $100 million.[20]

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[15] FY2003 state-reported expenditure data were not available for New Mexico. FY2003 state-reported enrollment data were not available for New York. Oregon's comprehensive waiver project includes a HIFA component. Enrollee counts for whom the state reports expenditures associated with this population under the comprehensive demonstration waiver project number are not included here.

[16] The August 3, 2004 proposed regulations for the MMA Part D prescription drug benefit suggest that Pharmacy Plus waivers will become obsolete in 2006.

[17] As of fall 2003, states with approved Pharmacy Plus waivers included Florida, Illinois, Indiana, Maryland, Wisconsin, and South Carolina.

[18] Maryland reports its pharmacy expenditures as a part of the state's comprehensive demonstration program.

[19] States with specialty service and population demonstration waivers as of January 2003 included Arkansas (two waivers), Colorado (two waivers), District of Columbia, Florida, Maine (two waivers), New Jersey, Oregon, and Wisconsin.

[20] FY2003 state-reported enrollment data were not available for Wisconsin.