

New Work & Community Engagement Requirements in Medicaid

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About Manatt Health

Patricia Boozang, Deborah Bachrach, and Arielle Traub with Manatt, Phelps & Phillips, LLP prepared this presentation. Manatt Health, a division of Manatt, Phelps & Phillips, LLP, is an integrated legal and consulting practice with over 90 professionals in nine locations across the country. Manatt Health supports states, providers, and insurers with understanding and navigating the complex and rapidly evolving health care policy and regulatory landscape. Manatt Health brings deep subject matter expertise to its clients, helping them expand coverage, increase access, and create new ways of organizing, paying for, and delivering care. For more information, visit www.manatt.com/ManattHealth.aspx

Today's Objectives

- Review CMS guidance on work and community engagement requirements
- Discuss Kentucky's waiver approval and STCs
- Highlight legal, policy and operational considerations for states contemplating implementation of work and community engagement requirements

Overview of State Medicaid Directors Letter

Work & Community Engagement in Medicaid

On January 11, CMS released a State Medicaid Directors Letter with parameters for 1115 waivers that condition Medicaid eligibility on work and community engagement

- Identifies two design objectives for such waivers. States should test the first; the second may also be tested:
 1. Promoting better beneficiary mental, physical and emotional health and well-being
 2. Helping individuals and families rise out of poverty and attain independence
- Reviews factors that CMS will consider and issues states must address in applications for and implementation of 1115 waivers that impose work and community engagement requirements as a condition of eligibility for non-elderly, non-disabled adults
- Requires states to regularly monitor impact on beneficiaries and “to conduct rigorous outcomes-based evaluations”

Key Design Features

Key Design Features



Alignment with TANF & SNAP



Populations Subject to Work/Community Engagement Requirements



Range of Work and Community Engagement Activities



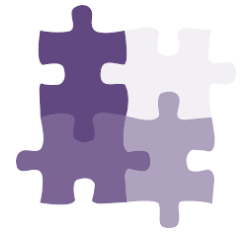
Beneficiary Supports



Attention to Market Forces and Structural Barriers

CMS will review proposed demonstrations on a case-by-case basis in order to assure that proposals meet these criteria

Alignment with TANF and SNAP



- Encourages states to align with TANF and SNAP work requirements in the following areas:
 - Exempted populations;
 - Protections for people with disabilities;
 - Allowable activities;
 - Modifications due to high unemployment in an area;
 - Reporting requirements; and
 - Work supports
- Emphasizes the efficiencies that can come from alignment, particularly from a systems perspective
- Regardless of whether they align, requires states to automatically deem individuals meeting TANF and SNAP work requirements to be compliant with Medicaid work requirements

Populations Subject to Work Requirements



- Requires states to identify demonstration populations subject to work and community engagement requirements; affirms that states may target the requirements by eligibility group
- Requires states to have mechanisms in place to:
 - Ensure reasonable modifications are available, including exemptions due to disability;
 - Make modifications to the numbers of hours of participation required; and
 - Provide support services where participation is possible with supports

Protected or Exempted Populations



- Children, pregnant women and individuals eligible for Medicaid based on disability
- Individuals determined by the state to be “medically frail”
- Individuals considered disabled under other federal statutes, including the Americans with Disabilities Act
 - “The federal disability rights laws are of particular importance, given the broad scope of protection under these laws...”
- Individuals with “acute medical conditions” that would prevent them from complying with the requirements
- Individuals with opioid addiction and other substance use disorders
 - “States must make reasonable modifications for these individuals, consistent with states’ obligations under civil rights laws...” including counting time in medical treatment towards an individual’s work/community engagement requirement
 - States must ensure such individuals have access to appropriate Medicaid coverage and treatment

Meeting these requirements will necessitate individualized assessments of beneficiary needs

Range of Work & Community Engagement Activities



- Encourages consideration of a wide range of work and community engagement activities including:
 - Career planning
 - Job training and referral
 - Job support services
 - Skills training
 - Education
 - Volunteer activities
 - Tribal employment programs
- Suggests states consider designing activities to meet the needs of Medicaid beneficiaries living in areas with high unemployment or who are assuming family caregiver responsibilities

Beneficiary Supports



- Requires states to describe in their waiver applications beneficiary support strategies (e.g., linkages to child care, transportation, etc.) to assist beneficiaries that may experience barriers to meeting work requirements
- Encourages states to include an individualized assessment of individuals' disabilities and other barriers to employment and self-sufficiency to identify appropriate activities, necessary supports, and required modifications
- States must ensure beneficiaries due process rights are protected

CMS notes that states may not use Medicaid funding to finance such supports to Medicaid beneficiaries

Attention to Market Forces & Structural Barriers



- Permits states to phase in their programs as they build the required infrastructure to support beneficiaries
- Allows states to periodically suspend work requirements in geographic areas with limited employment opportunities, lack of transportation, etc.
 - Requires states to describe their plans to assess and address such issues
- Asks states to detail how they will support individuals in meeting work requirements during times when they experience trouble complying with program requirements
 - E.g., Incorporate good cause exemptions like those used in SNAP and TANF

Budget Neutrality

Budget Neutrality

- Waiver must be budget neutral to federal government
- States will not be permitted to accrue savings from a reduction in enrollment that may result from new work or community engagement requirements
- States will be required to track expenditures related to administering work requirements

According to CMS, budget neutrality means “that federal Medicaid expenditures for a state cannot be allowed to exceed what would have occurred without the demonstration...calculated using a CMS and state agreed upon methodology with growth trends that estimate what the cost of Medicaid services would be absent the demonstration.”

Monitoring & Evaluation

Monitoring

- States must submit to CMS a draft of proposed metrics for quarterly and annual monitoring reports
- Reported metrics must reflect major elements of the demonstration, including data that applies to the work and community engagement initiatives
- CMS will monitor these programmatic metrics in coordination with general metrics to monitor beneficiary enrollment and termination for failure to meet program requirements, access to services for both groups, and overall demonstration functioning
- States must document key challenges, their root causes, and strategies for addressing the challenges, as well as their successes

Evaluation

- States must evaluate health and other outcomes both for individuals who remain enrolled in Medicaid **and** for individuals who lose eligibility
 - States must evaluate impact on “independence” if that is a goal of waiver
 - Tracking individuals no longer covered by Medicaid is a new evaluation requirement for states
- Requires states to analyze impact of work requirement on:
 - Beneficiaries’ ability to obtain *sustainable* employment and if applicable, independence;
 - The extent to which people who transition off Medicaid obtain other insurance; and
 - How transitions affect health outcomes
- Include comparison groups and appropriate statistical analyses to determine the impact of the demonstration
- Draw from multiple data sources, including beneficiary surveys (among both enrolled and those no longer enrolled as a result of the implementation of program requirements), claims data and other survey data

States must submit a draft evaluation design with their waiver application and final evaluation design for CMS approval within 180 days of waiver approval

Kentucky's Waiver Approval

Overview of Waiver Provisions



- Major coverage features applicable to new adult group, parents/caretakers, TMA enrollees, pregnant women, and former foster care youth include:
 - Premiums up to 4% of household income
 - Waiver of “prompt enrollment” (eligible individuals must pay their first premium to activate coverage)
 - Waiver of NEMT
 - Waiver of retroactive coverage
 - Six-month “non-eligibility” periods for failure to complete redetermination process and failure to report change in circumstances
 - **Community engagement as condition of Medicaid eligibility**
- Waiver of IMD exclusion and NEMT for individuals traveling to methadone treatment applicable to all Medicaid populations
- Demonstration effective 1/12/18-9/30/2023

Overview of Work & Community Engagement Requirements



Related Demonstration Goals

Assist beneficiaries to:

- Achieve better health outcomes
- Lower overall health care costs
- Promote economic self-sufficiency
- Obtain employment
- Transition to commercial health insurance



Scope of Work/Community Engagement

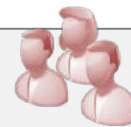
Participation in 80 hours/month of activities including:

- Employment
- Education
- Job training
- Caregiving
- Community service
- SUD treatment



Populations Subject to Requirements

- New adults ages 19-64
- Parents/caretakers ages 19-64
- TMA enrollees ages 19-64

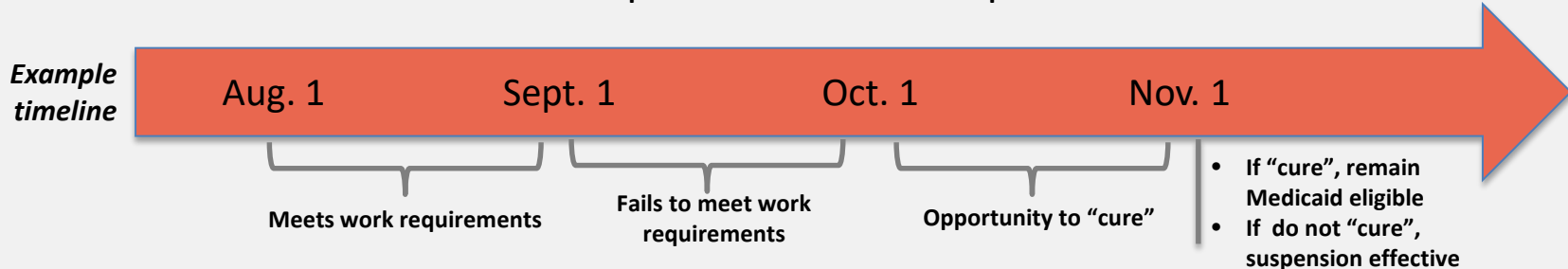


Populations Exempted

- Former foster care youth
- Pregnant women
- Primary caretaker of a dependent
- Medically frail individuals
- Individuals with an acute medical condition
- Full time students
- Enrollees meeting SNAP/TANF work requirements

Penalties for Non-Compliance

- One month grace period following month of non-compliance; enrollee can “cure” by engaging in 80 hours of work-related activity in current month, and either 1) making up hours not completed in prior month or 2) completing a health or financial literacy class
- Benefits suspended first day of month following the opportunity to cure unless enrollee demonstrates “good cause exemption” (e.g., disability, birth or death of family member in household, severe weather, hospitalization/serious illness or family emergency)
- Enrollee may reactivate benefits after meeting work/community engagement requirement in a month or taking a financial or health literacy course
- Enrollee will be dis-enrolled if suspension remains in place at next renewal



State Assurances

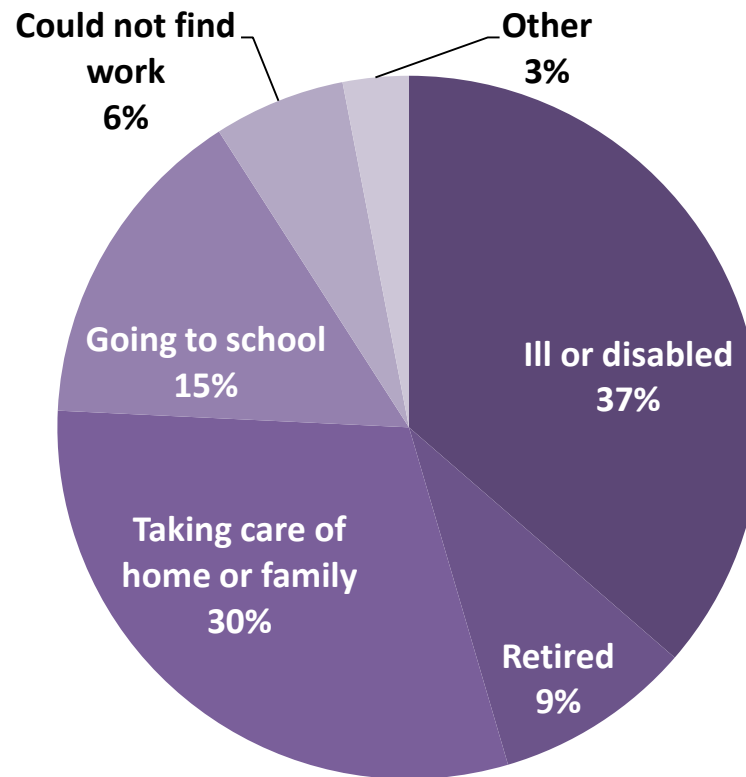
Before imposing community engagement requirement, state must assure:

- System capabilities to operationalize suspension, denial of eligibility and eligibility reinstatement, including coordination with MCOs and other public programs;
- Ability to provide written notice to beneficiaries including with respect to exemptions, activities to satisfy requirements, available supports, and appeals;
- Availability of activities to reasonably meet community engagement requirements and to “cure” a suspension;
- Beneficiary protections, including full appeal rights;
- Connections to beneficiary supports to meet community engagement requirements;
- A system to ensure modifications to meeting community engagement requirements for beneficiaries with disabilities as defined in the ADA; and
- A process for ensuring individual is not eligible for Medicaid on any other basis before disenrollment effectuated.

Considerations for States

Most Medicaid Enrollees Work or are Subject to Exemption

Main reasons for not working among non-SSI, adult Medicaid enrollees (2016)



Total = 9.8 million

Sixty percent of the 24.6 million non-elderly adults without SSI work full or part time. The remaining 40 percent do not work for a variety of reasons.

Source: <http://files.kff.org/attachment/Issue-Brief-Understanding-the-Intersection-of-Medicaid-and-Work>

Court Challenges to Work Requirements Likely

***“This is going to go to court
the minute the first
approval comes out.”***

**Matt Salo, Executive Director of
the National Association of State
Medicaid Directors**

Source: https://www.washingtonpost.com/national/health-science/trump-administration-opens-door-to-let-states-impose-medicaid-work-requirements/2018/01/11/d6374482-f628-11e7-a9e3-ab18ce41436a_story.html?utm_term=.6aa63c4dbdbb



Thank You

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Appendix

States' Proposed & Approved Work and Community Engagement Requirements

	Scope of work/community engagement	Populations subject to requirements	Exempted populations	Penalties for non-compliance
AZ	≥20 hours/week of community engagement and employment activities	Expansion adults ages 19-54 with incomes from 0-138% FPL	Native Americans, former foster care children <age 26, women who recently gave birth, individuals with a SMI, individuals receiving temporary or permanent disability benefits, full time students, victims of domestic violence, homeless individuals, individuals recently impacted by a catastrophic event, parents or caregivers of a child <age 13, caregivers of a family member enrolled in Arizona's long-term care program, and medically frail individuals	Dis-enrolls individuals who fail to comply with work requirements after a 6 month grace period; individuals may re-enroll upon meeting work requirements for 30 consecutive days; five-year lifetime Medicaid enrollment limit for individuals subject to work requirements who do not comply
AR	≥80 hours/month of community engagement and employment activities	Expansion adults ages 19-49 with incomes from 0-138% FPL	Pregnant women, individuals with short-term incapacitation, individuals physically/ mentally unfit for work, and individuals caring for a dependent child, among others	Dis-enrolls individuals who fail to comply with work requirements for 3 consecutive or non-consecutive months within a plan year; may not re-enroll until start of next plan year
IN	Employed avg. of 20 hours/week over 8 months of eligibility period, attending school, or participating in Gateway to Work program	Expansion adults and parents/caretakers ages 19-59	Pregnant women, medically frail individuals, primary caregivers of a dependent, individuals with short-term incapacitation, individuals in active SUD treatment, among others	Dis-enrolls individuals who fail to comply with work requirements; individuals may re-enroll upon meeting work requirements for 1 month or meeting an exemption
KS	20-30 hours/week of community engagement and employment activities for 1-income households; 35-55 hours/week for 2-income households	Non-disabled adults ages 19-64, including parents/caretakers	Pregnant women, caretakers for dependent < age 6 or adult with disabilities, individuals who use long-term care, individuals receiving SSI, among others	Dis-enrolls individuals who fail to comply with work requirements for 3 months within 36-month time; may re-enroll upon compliance with work requirements

States' Proposed & Approved Work and Community Engagement Requirements, cont.

	Definition of work/community engagement	Populations subject to requirements	Exempted populations	Penalties for non-compliance
KY	≥80 hours/month of community engagement and employment activities	Adults ages 19+, including expansion adults with incomes from 0-138% FPL and parents/caretakers	Former foster care youth, pregnant women, primary caretakers of a dependent, medically frail individuals, individuals with an acute medical condition, and full time students, and individuals meeting SNAP or TANF employment requirements	Suspends benefits for individuals who fail to comply; re-activated upon meeting requirements for 1 month or completing financial/health literacy course. Permits one-month grace period; individuals can re-enroll by meeting current month obligation and either meeting prior month obligation or completing a health/financial literacy course. Imposes 6-month dis-enrollment for individuals who “intentionally” fail to report a change in circumstance, with opportunity for early re-enrollment.
ME	≥20 hours/week of community engagement and employment activities	Adults age 19+, including parents/caretakers with incomes from 0-105% FPL	Pregnant women, individuals receiving disability benefits, individuals participating in a SUD treatment program or individuals physically/mentally unable to meet work requirements, among others	Dis-enrolls individuals who fail to comply with work requirements for 3 months within 36-month time period; individuals may re-enroll upon meeting work requirements
MS	≥20 hours/week of paid employment or self-employment, participation in Office of Employment Security activities, or volunteering with an approved agency	Parents/caretakers and TMA enrollees ages 19-64	Individuals with mental illness, individuals receiving SSDI, primary caregivers of a dependent, individuals physically or mentally unable to work, individual receiving unemployment insurance, individuals participating in drug or alcohol treatment, and some students, among others	Dis-enrolls individuals who fail to comply; may re-enroll upon meeting work requirements (those who do not comply within 6 months required to submit a new application upon meeting work requirements)

States' Proposed & Approved Work and Community Engagement Requirements, cont.

	Definition of work/community engagement	Populations subject to requirements	Exempted populations	Penalties for non-compliance
NC	Must participate in employment activities (hours/month not specified in waiver)	Expansion adults with incomes from 0-138% FPL	Individuals caring for a dependent child or adult disabled dependent, individuals caring for an adult disabled parent, individuals receiving SUD treatment, and medically frail individuals	Not specified
NH	Graduated thresholds of employment activities based on lifetime enrollment in Medicaid ranging from 20 to 30 hours/week	Expansion adults ages 19-64	19-year old full time students and individuals who are: temporarily incapacitated, participating in a state-certified drug court program, caring for dependent < age 6, or acting as a caretaker for a dependent with medical needs	Dis-enrolls individuals who fail to comply
UT	Participation in online job search and training program within first 3 months of Medicaid enrollment; must participate 1 time/year to maintain eligibility	Childless adults with incomes from 0-100% FPL and parents/caretakers with incomes from 60-100% FPL ages 19-59 receiving a limited benefit package	Individuals determined mentally/physically unable to work, primary caregivers of a child < age 6 or incapacitated person, individuals in active SUD treatment, half-time students, individuals who meet SNAP work requirements	Dis-enrolls individuals who fail to comply; may re-enroll upon completing online job search or training program or meeting an exemption
WI	≥80 hours/month employment activities	Childless adults ages 19-49 with incomes from 0-100% FPL	Individuals who are: diagnosed with a mental illness, receive SSDI, are physically or mentally unable to work, or are taking part in a SUD treatment program, among others	Any given month when an individual participates in ≥80 hours/month employment or job training activities will not count towards proposed 48-month Medicaid eligibility time limit; not participating in ≥80 hours/month employment or job training activities in a given month will count towards 48-month Medicaid eligibility time limit