

Work and Community Engagement Requirements in Medicaid: CMS Guidance and Waiver Special Terms and Conditions

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In January 2018, the Centers for Medicare & Medicaid Services (CMS) released a State Medicaid Director Letter (SMDL) providing guidance to states as to the circumstances under which CMS would approve 1115 demonstration waivers making work/community engagement (CE) requirements a condition of Medicaid eligibility. Since then, CMS has approved state work/CE waivers in Arkansas, Indiana, Kentucky, and New Hampshire, and additional states have submitted or are poised to submit similar waivers. Work/CE programs are complicated and costly to implement, and how states implement work/CE programs will determine whether beneficiaries find jobs, maintain or lose health insurance coverage, and experience improved health and well-being.

This chart identifies key requirements in CMS' SMDL and approved demonstration special terms and conditions (STCs) that guide states' implementation responsibilities.¹ The STCs governing the four approved waivers are similar, but not identical. This chart provides a summary overview of common provisions that states must have the capacity to operationalize, but it does not capture all distinctions among the four approved state programs. Other work/CE-related charts identifying features of approved state work/CE waivers; Medicaid application, eligibility and enrollment requirements; information technology business requirements; and state costs associated with implementing work/CE requirements are available in the full publication, [Work and Community Engagement Requirements in Medicaid: State Implementation Requirements and Considerations](#).

CMS Guidance and Waiver Special Terms and Conditions

Consumer Outreach and Education

Notices	<p>STCs:</p> <ul style="list-style-type: none">› States must provide beneficiaries with timely and adequate notices about:<ul style="list-style-type: none">›› Timing of a beneficiary becoming subject to work/CE requirements and required number of hours to comply›› Exemption availability, status, and how to seek exemptions, including good cause exemptions›› Right to reasonable modifications›› Activities that satisfy requirements, how hours will be counted, and how to report compliance›› Differences between SNAP/TANF and Medicaid work/CE requirements›› Failure to comply with work/CE requirements in a particular month and how to come into compliance›› Suspension/termination for failure to meet work/CE requirements›› Appeals rights (upon suspension, termination, good cause exemption denial, if applicable)›› Other sources of care if eligibility is terminated›› Resources to help connect beneficiaries to opportunities for work/CE activities›› Beneficiary supports
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Eligibility Operations: Exemptions, Compliance, and Penalties

<p>Identify Populations Subject to Requirements</p>	<p>SMDL:</p> <ul style="list-style-type: none"> > States must identify populations subject to work/CE requirements; states may target requirements by eligibility group and may tailor requirements to sub-groups within each eligibility group > States must establish mechanisms to: <ul style="list-style-type: none"> » Ensure reasonable modifications are available, including exemptions due to disability » Make modifications to the number of hours of participation required » Provide support services where participation is possible with supports > States may phase in programs as states build required infrastructure to support beneficiaries
<p>Exempt Populations</p>	<p>SMDL:</p> <ul style="list-style-type: none"> > States must exempt the following populations: <ul style="list-style-type: none"> » Children, pregnant women, adults age 65 or older, 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 » Individuals who are exempt from TANF or SNAP work requirements > States may exempt additional populations
<p>Standard Eligibility and Enrollment Functions</p>	<p>STCs:</p> <ul style="list-style-type: none"> > Ensure application assistance is available to beneficiaries (including in person and by phone) > Maintain ability to report on and process applications in person, via phone, via mail, and electronically > Assure that termination, disenrollment, or denial of eligibility only occur after an individual has been screened and determined ineligible for all other bases of Medicaid eligibility and reviewed for eligibility for insurance affordability programs in accordance with 42 CFR 435.916(f) > Maintain an annual redetermination process, including systems to complete ex parte redeterminations and use of notices that contain prepopulated information known to the state, consistent with all applicable Medicaid requirements > Maintain timely processing of applications to avoid further delays in accessing benefits once the disenrollment period is over > Assure timeliness of transfers between Medicaid and other insurance programs at any determination, including application, renewal, or non-eligibility period > Maintain compliance with coordinated agency responsibilities under 42 CFR 435.1200
<p>Range of Covered Activities</p>	<p>SMDL:</p> <ul style="list-style-type: none"> > States must define qualifying activities for compliance > States should consider a wide range of activities to satisfy work/CE requirements, including career planning, job training and referral, job support services, skills training, volunteer activities, tribal employment programs, and SUD treatment <p>STCs:</p> <ul style="list-style-type: none"> > Ensure that specific activities to satisfy CE requirements are available during a range of times and through a variety of means (e.g., online, in person) at no cost to the beneficiary

Eligibility Operations: Exemptions, Compliance, and Penalties

Alignment of Policy and Reporting with SNAP and TANF

SMDL:

- › States must automatically deem individuals who are compliant with, or exempt from, TANF or SNAP work requirements to be compliant with, or exempt from, Medicaid work/CE requirements; states should make a reasonable effort to align good cause exemptions
- › States should communicate to beneficiaries any differences in program requirements that individuals will need to meet in the event they transition off of SNAP or TANF, but remain subject to a Medicaid work/CE requirement
- › States may align work/CE programs with SNAP and TANF in the following areas: exempted populations, protections, and supports for people with disabilities; allowable activities; modifications due to economic or environmental factors; beneficiary reporting requirements; and the availability of work supports

STCs:

- › Assure that beneficiaries do not have to duplicate requirements to maintain access to all public assistance programs that require CE and employment

Compliance Reporting and Verification

STCs:

- › Ensure that there are processes and procedures in place to seek data from other sources, including SNAP and TANF, and systems to permit beneficiaries to report hours or obtain an exemption (in accordance with 42 CFR 907(a), 435.916(c), and 435.945)
- › Provide reasonable accommodations for beneficiaries with disabilities who are unable to report, or have difficulty reporting, work/CE activities. If state is unable to provide such modification, then the state must provide a modification in the form of an exemption

Suspension and Termination

STCs:

- › Maintain system capabilities to operationalize suspension and denial/termination of eligibility, as well as lifting of suspensions
- › Maintain mechanisms to stop payment to beneficiary's health plan upon suspension (if applicable) and/or termination, as well as trigger payments once suspension is lifted
- › Determine eligibility for other Medicaid eligibility groups or other insurance affordability programs prior to disenrollment
- › Provide full appeal rights in accordance with 42 CFR Part 431, subpart E, prior to suspension (if applicable) and termination/disenrollment; maintain eligibility for beneficiaries who submit an appeal request or report a good cause exemption prior to disenrollment

Re-enrollment

STCs:

- › Permit re-enrollment subject to meeting criteria established in STCs

Beneficiary Supports

Beneficiary Supports

SMDL:

- › States must describe beneficiary support strategies and must link individuals to such supports (e.g., job training, child care, transportation, etc.) in waiver application
- › Medicaid financing is not available for such supports
- › States must design programs to protect beneficiary due process rights
- › States may offer individualized assessment of individuals' disabilities, medical diagnoses, and other barriers to employment and self-sufficiency to identify appropriate activities, necessary supports, and reasonable modifications

STCs:

- › Make good faith efforts to connect beneficiaries to existing community supports that are available to assist beneficiaries in meeting work/CE requirements, including available non-Medicaid assistance with transportation, child care, language access services and other supports
- › In addition to providing reasonable modifications, make good faith efforts to connect beneficiaries with disabilities with services and supports necessary to enable them to meet work/CE requirements

Beneficiary Supports

Reasonable Modifications

SMDL:

- › States must comply with all federal civil rights laws (e.g., Americans with Disabilities Act)
- › States must provide reasonable modifications (e.g., exemptions from participation, modification in the number of hours, provision of support services) for people who need them, including individuals with disabilities and individuals with a SUD
- › States must evaluate individuals' ability to participate and the types of reasonable modifications and supports needed
- › States may not use Medicaid funding for supportive services that may be necessary as reasonable modifications

STCs:

- › Provide beneficiaries with written notice of the rights of people with disabilities to receive reasonable modifications related to meeting work/CE requirements
- › Maintain a mechanism/system that provides reasonable modifications related to meeting the work/CE requirement to beneficiaries with disabilities
- › Assure compliance with protections for beneficiaries with disabilities under the ADA, Section 504, and Section 1557
- › Ensure that the state will assess whether people with disabilities have limited job or other opportunities for reasons related to their disabilities; address these barriers if they exist

Attention to Market Forces and Structural Factors

SMDL:

- › States may phase in or periodically suspend requirements in geographic areas with limited employment opportunities, lack of transportation, etc.
- › States should detail how they will support individuals in meeting work/CE requirements during times when they experience trouble complying with program requirements due to market forces or structural barriers

STCs:

- › Ensure the state will assess areas within the state that experience high rates of unemployment, areas with limited economies and/or educational opportunities, and areas with lack of public transportation to determine whether there should be further exemptions from the work/CE requirements and/or additional mitigation strategies, so that the work/CE requirements will not be unreasonably burdensome for beneficiaries to meet

Other Implementation Considerations

Budget Neutrality

SMDL:

- › States may not accrue waiver savings from a reduction in enrollment that may occur as a result of work/CE requirements

Monitoring and Evaluation

SMDL:

- › States will be required to develop monitoring plans and submit regular monitoring reports to monitor and evaluate program changes to assure that stated objectives are advanced in both the short- and long-term
- › Monitor enrollment and termination of eligibility for failure to meet work/CE requirements
- › Evaluate the impact on individuals who remain in the program as well as those who lose Medicaid coverage and either gain other coverage or become uninsured

STCs:

- › Certain states must submit an eligibility and enrollment monitoring plan within 90 calendar days after approval of the work/CE amendment of this demonstration
- › Assure processes are in place to identify various data points related to implementation of work/CE requirements

KEY

ADA = Americans with Disabilities Act
CE = Community engagement

SMDL = State Medicaid Director Letter
SNAP = Supplemental Nutrition Assistance Program

STC = Special terms and conditions
TANF = Temporary Assistance for Needy Families

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ABOUT MANATT HEALTH

This brief was prepared by Patricia Boozang, Allison Orris, Mindy Lipson, and Deborah Bachrach. Manatt Health integrates legal and consulting expertise to better serve the complex needs of clients across the healthcare system.

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Endnotes

1. Centers for Medicare & Medicaid Services. *State Medicaid Director Letter, SMD 18-002: Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries*. Washington, DC: U.S. Department of Health and Human Services; 2018. <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf> Accessed July 9, 2018.