

***Stewart v. Azar* and Medicaid Work Requirements**

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Issue

This report summarizes [a U.S. District Court for the District of Columbia decision](#) in a challenge to Kentucky's implementation of new community engagement requirements in its Medicaid program (*Stewart v. Azar*, 313 F. Supp. 3d 237 (2018)). Generally, to comply with such requirements, Medicaid enrollees must engage in a specified number of hours of work, education, or other activities or risk losing their Medicaid coverage. The report also discusses implications for other states. The Office of Legislative Research is not authorized to give legal opinions and this report should not be considered one.

Summary

In July 2017, Kentucky submitted a waiver application to the Centers for Medicare and Medicaid Services (CMS) seeking approval to impose community engagement requirements for certain Medicaid recipients, among other things. CMS approved the waiver in January 2018, but the approval was challenged in federal court. On June 29, 2018, the court found that CMS did not adequately consider whether its waiver would promote Medicaid's primary objective to furnish citizens with medical assistance and therefore, CMS's approval of the waiver was arbitrary and capricious. The court vacated CMS's approval and remanded the issue back to the agency for further review.

CMS has not appealed the court's decision, which allows CMS to reconsider its Kentucky determination and requires that such reconsideration address concerns raised by the court. Instead, it reopened a second comment period on the waiver application.

The decision only directly applies to Kentucky's waiver and does not prevent other states from submitting waivers to implement Medicaid work requirements, nor does it preclude CMS from approving such waivers.

Kentucky HEALTH Provisions

Kentucky's community engagement requirement provisions are part of a program called Kentucky HEALTH, which is itself part of a larger program called KY HEALTH that the state submitted as a Section 1115 waiver to CMS in August 2016. Kentucky HEALTH primarily applies to enrollees who received coverage as part of the state's Medicaid expansion authorized under the federal Affordable Care Act. Under Kentucky HEALTH, enrollees must spend at least 80 hours per month on qualifying activities (e.g., employment, job-skills training, education, community service, substance use disorder treatment) or lose their Medicaid coverage. Other provisions include:

1. limits on retroactive eligibility;
2. monthly premiums;
3. limits on non-emergency medical transportation;
4. reporting requirements;
5. lockouts from coverage; and
6. commercial market health insurance features, including a deductible account and an incentive and savings account.

1115 Demonstrations

Section 1115 of the federal Social Security Act allows CMS to approve experimental, pilot, or demonstration projects that it finds likely to assist in promoting the objectives of the Medicaid program. Among other requirements, Section 1115 waivers must be "budget neutral" from the federal perspective, meaning that federal Medicaid expenditures for the waiver cannot exceed what federal spending would have been without the waiver.

Decision

Among other things, the plaintiffs argued that CMS's approval of Kentucky HEALTH was arbitrary and capricious (and therefore in violation of the federal Administrative Procedures Act (APA)) because (1) the purpose of the federal Medicaid Act is to provide coverage and care, generally free of charge, to the most vulnerable and (2) CMS failed to consider adequately the impact of Kentucky HEALTH on Medicaid coverage, including a state estimate that 95,000 people would lose coverage under the program.

The court agreed, finding that (1) plaintiffs have standing to bring the lawsuit, (2) the court can review CMS's approval of the waiver under the APA, and (3) CMS's approval of the waiver was arbitrary and capricious.

According to the decision, CMS considered several factors related to whether the waiver would improve health outcomes, for example by encouraging enrollees to engage in their own health care or by familiarizing enrollees with benefit designs typical in the commercial market. The court found this analysis omitted any consideration of whether Kentucky HEALTH would help provide health coverage for Medicaid enrollees. Among other things, the decision held that the goal of improving health and wellness is not the same as, and cannot be substituted for, the goal of covering health costs, and that this second goal is Medicaid's central objective.

In response to public commenters concerned with loss of coverage, CMS cited various protections for vulnerable individuals (e.g., exempting the medically frail from the community-engagement requirement). The court held that CMS must consider coverage to all groups enrolled in Kentucky HEALTH, not only vulnerable individuals. The court also rejected CMS's argument that those who lose Medicaid coverage will transition to employer-sponsored and commercial coverage, noting lack of evidence or research for this claim.

CMS identified Kentucky HEALTH's limits on retroactive eligibility as one element of the program that might promote health coverage by encouraging enrollees to maintain health coverage even when healthy. The court disagreed, noting as an "obvious counterargument" that restricting retroactive eligibility by definition reduces coverage for those not currently enrolled in Medicaid.

According to the decision, when evaluating Kentucky HEALTH for approval, CMS principally considered (1) health and well-being, (2) cost considerations, and (3) self-sufficiency. The court found that these factors do not justify the failure to consider whether the project would help provide health coverage in line with the requirements of the Medicaid program.

Based on these findings, the court held CMS's approval of Kentucky HEALTH invalid, but left other parts of the KY HEALTH waiver intact (e.g., a separate substance abuse program).

Kentucky HEALTH Status

CMS had until the end of August 2018 to file a notice of appeal with the U.S. Circuit Court of Appeals for the DC Circuit. The agency took no action.

The court's decision allows CMS to reconsider its Kentucky HEALTH determination and requires that such reconsideration address concerns raised by the court. CMS [reopened a second comment period](#) on the waiver application that ended August 18. Generally, Kentucky cannot implement community engagement requirements and other aspects of Kentucky HEALTH unless and until CMS approves a waiver allowing it to do so.

Implications for Other States

The decision only directly applies to Kentucky's waiver and does not prevent other states from submitting waivers to implement Medicaid work requirements, nor does it preclude CMS from approving such waivers. The decision states:

“That is not to say, of course, that the Secretary can never approve demonstration projects that might adversely affect Medicaid enrollment or reduce healthcare coverage. After all, the point of the waivers is to give states flexibility in running their Medicaid programs, and experimental projects may (at least inadvertently) adversely affect healthcare access. While there may be limits to how much loss is too much, [...] the Court need not answer that question now. Rather, it holds today only that the Secretary must adequately consider the effect of any demonstration project on the State's ability to help provide medical coverage. He never did so here.”

Since the decision, CMS approved [an amendment to Wisconsin's waiver](#) that adds community engagement requirements. At least three states ([Alabama](#), [Michigan](#), and [South Dakota](#)) have submitted work requirement waiver applications to CMS after the *Stewart v. Azar* decision and several more are pending CMS approval since before the decision.

The decision also does not directly affect waivers CMS previously approved, including in [Arkansas](#), [Indiana](#), and [New Hampshire](#). (Arkansas's waiver is subject to a separate but similar legal challenge in [Gresham v. Azar](#).)

Resources

CMS, [“Arkansas Work Section 1115 Demonstration Fact Sheet.”](#) March 5, 2018

CMS, [“Healthy Indiana Plan Section 1115 Medicaid Demonstration Fact Sheet.”](#) February 1, 2018

CMS, [“Letter to Casey Himebauch, Wisconsin Department of Health Services.”](#) October 31, 2018.

CMS, [“New Hampshire Health Protection Program Premium Assistance Section 1115 Medicaid Demonstration Fact Sheet.”](#) May 7, 2018

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