

Kentucky's Medicaid Waiver Will Lead to Tens of Thousands of Kentuckians Losing Health Insurance

By Dee Mahan

The Center for Medicare and Medicaid Services' approval of Kentucky's Medicaid waiver on January 12, 2017, opens a new front in the Trump Administration's campaign to roll back the gains in coverage and health care achieved under the Affordable Care Act and Medicaid. This time the target is Medicaid—both the ACA's Medicaid expansion and the broader Medicaid program.

The administration is using the waiver process to sidestep Congress and rewrite Medicaid law through the backdoor, making Medicaid coverage less reliable and less affordable for low-income families. As a result of this, and other pending waivers, millions of low-income people stand to lose their health coverage.

CMS's action approves Kentucky's request to "waive" many Medicaid requirements through Section 1115 of the Social Security Act. This section, titled "Demonstration Projects," is often referred to as "1115 waivers" for short. Section 1115 lets the Secretary of Health and Human Services waive certain Medicaid requirements for "experimental or demonstration projects" that are likely to promote Medicaid's objectives. Those objectives, set in law, are to furnish health and rehabilitative and support services to low income individuals. [As we've written before](#), the HHS Secretary's 1115 waiver authority is limited by statute and does not include the authority to add new program requirements.

Why this waiver is different

Over the years, we've seen waivers we thought promoted good health policy, and some that did

not. But the Kentucky waiver, and the alarming and growing number of similar state requests queued up at CMS for approval, go beyond simply bad health policy. With this approval, CMS has taken it upon itself to redefine Medicaid law, distort Medicaid's objectives, and lawlessly redefine what it has the authority to approve through waivers.

The waiver does not promote Medicaid's objectives

Most of the items approved in Kentucky's waiver are not related to furnishing care to low-income individuals. In fact, many of the provisions will make it harder for individuals to keep coverage. One particularly harmful provision is that individuals who do not receive or successfully complete their annual Medicaid renewal paperwork in time will be "locked out" of coverage for six months. For people who have changed addresses, who have language access problems, who have a mental illness or who are homeless, completing the renewal on time is typically challenging or impossible.

And Medicaid is the only kind of health insurance that requires annual redetermination of eligibility in this way, making the lockout both unfair and bad policy.

The waiver poses a real harm to Kentuckians enrolled in Medicaid. The state's own estimates—which we believe are low—are that tens of thousands will lose Medicaid coverage as a result of this waiver. Most will likely become uninsured.

Disenrolling and locking out beneficiaries for failure to complete renewal paperwork or meet a work requirement has nothing to do with the objectives of the Medicaid program, which is ensuring Medicaid beneficiaries have access to good care.

The waiver poses a real harm to Kentuckians enrolled in Medicaid

With the waiver, CMS is giving Kentucky permission to disenroll individuals and lock them out of coverage for a host of things—missing renewal deadlines, not notifying the state of a change in financial or family circumstances within 10 days, missing premium payments, being unemployed. [The state's own estimates—which we believe are low](#)—are that tens of thousands will lose Medicaid coverage as a result of this waiver. Most will likely become uninsured.

The waiver adds new requirements that are outside Medicaid law

The waiver makes coverage for enrollees contingent on work status, with a [deeply problematic](#) “community service” alternative. However, Medicaid is a health insurance program that pays doctors, hospitals, and other health providers who treat enrollees. Medicaid enrollees never receive direct

monetary compensation from Medicaid, and there is no connection, legal or otherwise, between work status and Medicaid. CMS does not have the authority to add whatever requirements it might like to the program without congressional action.

Granting a waiver doesn't change the law

Setting up for the Kentucky waiver approval, CMS rewrote its description of Medicaid objectives for purposes of 1115 waivers on its website, Medicaid.gov. But regardless of what the Medicaid website says, that doesn't change what the law is. And it is CMS's job to execute the law as it exists *in statute*.

Waiver approvals aimed at taking Medicaid coverage away from millions of low-income people are going to continue to roll out. It's all part of the administration's push to make Medicaid less secure for enrollees, and to make sure that low-income people don't start getting used to the idea that they deserve secure health coverage.

As this happens, we'll be watching this new line of health care sabotage and providing support to advocates and others fighting and litigating waivers at the state and federal level through our [State Waiver Resource and Tracking Center](#).