

Requiring Waiver Approval Before Expansion Would Significantly Delay People Getting Coverage: Timelines: 1115 Waivers vs. State Plan Amendments

As more states consider expanding Medicaid, it is important for legislators and policy-makers to understand that adding expansion features which require federal approval—like a work requirement—will delay people from receiving health coverage, and the state’s receipt of any enhanced federal matching funds.

Requiring waiver approval by the Centers for Medicare & Medicaid Services (CMS) before implementing Medicaid expansion will add significant delays. Table 1 shows the steps required to approve a Medicaid expansion through an 1115 waiver versus a straight state plan amendment (SPA). An 1115 waiver is required to include a work requirement or enrollee reporting requirements, among other elements, whereas a SPA is the mechanism for how states expand Medicaid if the program changes do not require federal approval.¹

Table 1. Steps in the Approval Process: 1115 Waivers vs. SPAs

Steps in the process	Medicaid expansion through 1115 waiver with work requirement	Medicaid expansion through state plan amendment (SPA)
State legislation	Whether legislations is needed depends on state law and state political landscape.	Whether legislation is needed depends on state law and state political landscape.
Document preparation	Required documents: Data and lengthy narrative describing how the request will support Medicaid’s objectives and budget.	No narrative, data, or budget is required—just filing a simple form.
Thirty-day state notice and comment period (30 days)	Federal law requires a written comment period and public hearings on draft waiver before submission to CMS.	Not federally required

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Steps in the process	Medicaid expansion through 1115 waiver with work requirement	Medicaid expansion through state plan amendment (SPA)
State review of comments	State must review and address comments received in documents submitted to CMS. Revisions may be possible based on comments.	None
Document submission to CMS, and CMS review for completeness	CMS has up to 15 days to determine whether or not the state submission is complete.	No completeness review
Thirty-Day federal comment period (30 days)	Required	None
CMS review	CMS must consider all comments filed. The legal review (anticipating potential litigation) can take months.	Up to 90-day review process is specified in statute. “Requests for Additional Information” can delay but have never done so for straight Medicaid expansion amendments.
CMS approval time	No less than six months. Several states have had proposals under review for more than a year and counting.	Median: 82 days ²

Work requirements are among the program elements that require a federal waiver. Table 2 shows the time that state work requirement waivers have been pending at CMS after the close of the federal comment period. At the time of writing, most of those waivers had not been approved. The time frame for

approval of work requirement waivers was a minimum of six months to more than a year from the time federal comments closed. This does not include the state waiver drafting, comment period, state comment review, and federal comment period.

Table 2. 1115 Waivers for Work Requirement: Status as of the end of December 2018, and Time Pending at CMS After Close of Federal Comments

State	CMS comment period ended	Status as of December 2018, and time at CMS
Alabama (nonexpansion state)	October 21, 2018	Pending (two months)
Arizona	February 5, 2018 This is the third work requirement submission. The prior two were during the Obama administration and were rejected.	Pending (11 months)
Arkansas	August 1, 2017	Approved March 2018 (seven months to approval) Currently in litigation
Indiana	July 31, 2017	Approved February 2018 (six months to approval)
Kansas (nonexpansion state)	January 27, 2018	Approved with no mention of work requirement (11 months to approval)
Kentucky	The comment period for the first request ended October 4, 2016. Kentucky filed a second waiver request in August 2017. Kentucky's comment period was reopened in August 2018 following stay of implementation pending court hearing.	Approved January 2018 and re-approved November 2018; implementation blocked in June 2018 Kentucky has been filing materials with CMS for over two years. The case is in litigation.
Maine*	September 15, 2017	Approved December 2018 (15 months to approval)

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State	CMS comment period ended	Status as of December 2018, and time at CMS
Mississippi (nonexpansion state)	The first waiver comment period closed February 22, 2018. During the negotiation process, the state filed an amended waiver, and comments closed August 2018.	Pending (10 months since initial application)
Michigan*	October 26, 2018	Approved Dec. 2018 (2 months to approval)
New Hampshire	December 5, 2017	Approved May 2018 (six months to approval)
North Carolina	December 5, 2017 Request for pre-approval of work requirement if the state expanded coverage.	Request denied October 2018 (10 months)
Ohio	June 14, 2018	Pending (6 months)
Utah	Sept. 29, 2017 (initial proposal) Aug. 4, 2018 (second request)	Pending (14 months since initial proposal when withdrawn by the state)
Wisconsin (nonexpansion state)	July 15, 2017	Approved October 2018 (15 months to approval)

Time frames do not include time to pass legislation (if applicable) in state, waiver drafting, state comment period, state comment review before submission to CMS, CMS review for completeness, or 30-day federal comment period.

*Maine and Michigan waivers were approved after the production of this table, in approvals that appeared to be timed before the inauguration of new Democratic governors. Maine's approval took place after 15 months and Michigan's approval came after two months.

Even if CMS accelerates its waiver approvals, additional steps are required by law that will make the waiver process take longer.

How much longer a waiver takes will vary. But consider examples from two states: Virginia and Kentucky.

Virginia passed its Medicaid expansion in June 2018. Initial implementation is based on a SPA, not a waiver. The SPA for the expansion was approved in October 2018, and expansion enrollment began November 1, 2018.³ On January 1, 2019, less than six months after the expansion was signed into law, Virginians will start receiving expansion coverage, and the state will start receiving an enhanced federal match for expansion enrollees.

Compare Virginia's short timeline to complete expansion implementation with Kentucky's long timeline simply to get final approval of its waiver

request. Kentucky's Medicaid expansion was in operation when Gov. Matt Bevin's administration submitted a waiver to add a work requirement to the program. Kentucky initially submitted its waiver request in July 2016. As of November 2018, 16 months later, the waiver was in litigation and not implemented. This example shows how long expansion implementation could drag on if it is delayed until after the waiver process is finished.

Virginia is filing a waiver associated with its Medicaid expansion, but it isn't making its residents wait months or longer through the waiver approval process before they get health coverage.

In states considering Medicaid expansion, state policy-makers have the ability to decide how long their state residents wait for health coverage. If those policy-makers decide to delay coverage until a waiver is approved, wait they will.

Endnotes

¹ The waivers required for states to include work requirements, premiums, or a variety of other program elements in their Medicaid expansion are 1115 demonstration waivers. The rules for their approval are governed by Section 1115 of the Social Security Act. 1115 waivers have federal requirements for public notice and comment that must be observed before approval. See Mahan, D. (2017). 1115 waiver transparency requirements and developing a waiver advocacy strategy. Washington, DC: Families USA. Available online at <https://familiesusa.org/product/1115-waiver-transparency-requirements-and-developing-waiver-advocacy-strategy>.

² Median approval was 82 days in 2016. The Trump administration is working to reduce that time frame. In the first quarter of 2018, 84 percent of SPAs were approved within the first 90 days of review. See Hill, B. (2018, Aug. 16). CMCS informational bulletin: Update on state plan amendment and Section 1915 waiver process improvements. Baltimore, MD: Center for Medicaid & CHIP Services. Available online at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib081618.pdf>.

³ O'Connor, K. (2018, Oct. 18). State secures federal permission for Medicaid expansion and prepares to start enrollment Nov. 1. Virginia Mercury. Available online at <https://www.virginiamercury.com/2018/10/18/virginia-secures-federal-permission-for-medicaid-expansion-and-prepares-to-start-enrollment-nov-1/>.

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