

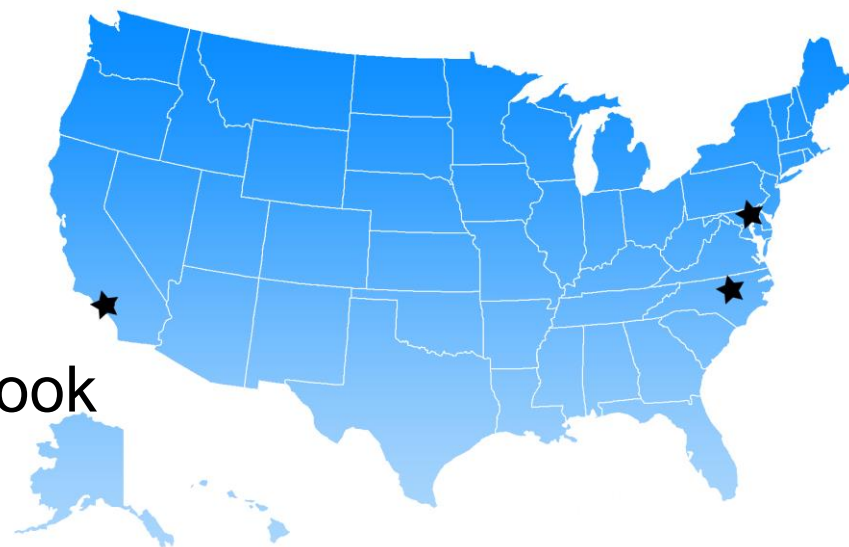


# **Section 1115 Waivers: Legal Framework & Litigation**

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# About NHeLP

- National non-profit committed to improving health care access and quality for low income and underserved individuals and families
- State & local partners:
  - Disability rights advocates – 50 states + DC
  - Poverty & legal aid advocates – 50 states + DC
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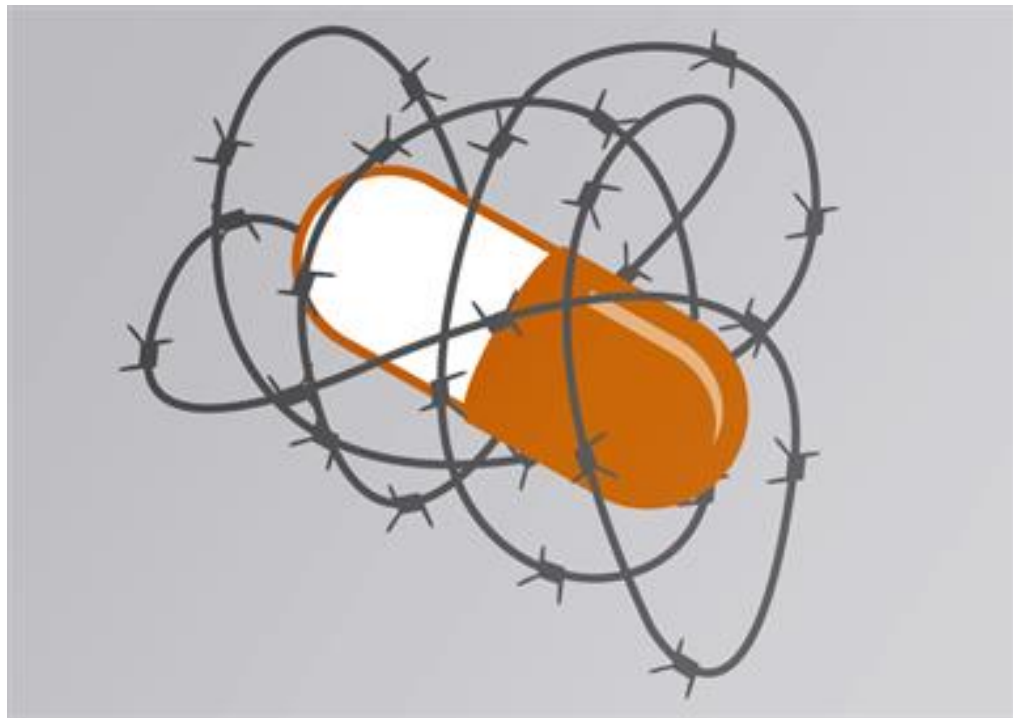
**KEEP  
CALM  
AND  
READ THE  
STATUTE**

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# Key Legal Limits of § 1115 Statute

1. § 1115 project must be “experimental”
2. Must “promote the objectives of Medicaid”



# More Statutory Requirements § 1115

3. Can only waive to “extent and for period” necessary to carry out project
4. Only items in one section can be waived (§ 1902)
5. Any cost-sharing waiver must comply with additional requirements (in § 1916(f))
6. Must meet transparency requirements



# Kentucky Litigation Overview



- Class action with 15 plaintiffs
- Filed against HHS, CMS, and leadership
- Filed in U.S. District Court, DC
- Co-counsel: Kentucky Equal Justice Center, Southern Poverty Law Center
  - Additional help from law firm Jenner & Block
- Asking the court to (1) declare waivers illegal and (2) enjoin the waivers

# Kentucky Litigation: Legal Claims

## 1. Constitutional: “Take Care Clause”

- The Executive branch can *implement* Congress’s laws, but not *re-write* the law

## 2. Federal Law: Administrative Procedure Act

- Federal agency actions cannot be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”
- Multiple claims: One for each waiver and one for the work requirements guidance

# Going Forward

- Each state will be a separate case
- Litigation will not be a “one and done” solution
- Litigation is just one piece of a larger campaign that is needed to stop bad waivers & protect the integrity of the Medicaid program





# Helping Litigation

Damning facts



Harmful policies



Illegal waivers



# § 1115 Application Transparency - Comments & Hearings (42 CFR 431.420)

## State Level

- Notice & “comprehensive description” of demonstration
- Min. 30 day comment period
- At least 2 public hearings
- Summary & response to public comments, including any changes made



## Federal Level

- 15 days to determine completeness
- Min. 30 day comment period
- CMS approval/denial no sooner than 15 days after comments close
- Usually negotiations last longer

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