National MLTSS Health Plan Association

White Paper: Medicaid Work Requirements and Beneficiaries with Disabilities

Introduction

In January 2018, CMS issued a guidance letter to State Medicaid Directors encouraging states to test new community engagement and work requirements for "able-bodied adults" enrolled in Medicaid.[1] As states seek to implement Medicaid work requirements, lawmakers and state healthcare agencies must define the scope of the work requirements and determine which populations should be exempt from these mandates. These challenges are particularly relevant to individuals who use long-term services and supports (LTSS).

States developing new Section 1115 waivers should take care that Medicaid enrollees with functional limitations are not unduly burdened by new community engagement requirements. States should define work exemptions that cover not only individuals who are eligible for Medicaid on the basis of disability, but also individuals in optional and/or Expansion populations who have functional impairments and LTSS needs. States should also ensure that individuals with disabilities have the supports they need to remain independent regardless of eligibility pathway, empowering enrollees without threatening coverage. Finally, exempt individuals who choose to work should receive the LTSS and case management services they need to remain engaged in their communities.

Who are the Medicaid Enrollees with Disabilities?

Medicaid provides health insurance coverage for a wide range of people. Broadly speaking, there are two primary pathways through which individuals can enroll in Medicaid: "categorical eligibility," which covers individuals who have low income and belong to one or more mandatory eligibility categories (such as older adults, people with significant disabilities, or low-income families and children), as well as individuals who below to optional eligibility groups covered by Medicaid waivers (such as individuals eligible for home- and community-based services under Section 1915 waivers); and "Medicaid Expansions" which cover individuals not included in categorical Medicaid through ACA provisions broadening states' options for defining Medicaid eligibility. Both categorical and Expansion Medicaid cover individuals with disabilities and functional limitations, but the characteristics of enrollees vary between these Medicaid pathways.

[1] Centers for Medicare and Medicaid Services (2018). *CMS announces new policy guidance for states to test community engagement for able-bodied adults.* Available at: https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2018-Press-releases-items/2018-01-11.html

Categorical Medicaid

Individuals enrolled in Medicaid eligibility groups for people with disabilities are generally persons with physical, intellectual, developmental, behavioral health or substance use disorders or older adults with chronic illness and/or dementia. To qualify for traditional Medicaid, these individuals must be below the state's income and asset criteria and must also be determined to meet disability criteria, which is often based on the Social Security Administration (SSA) criteria.[2] The financial criteria may differ based upon the specific eligibility group, but eligibility is most often limited to those individuals who qualify for Supplemental Security Income (SSI).

Individuals with disabilities may also become eligible for Medicaid if they require a level of care that qualifies them to receive services through a home and community based services (HCBS) waiver or in a Medicaid institution and have income below a threshold set by the state.[3] If individuals qualify for the state-determined level of care criteria, they can receive LTSS to assist with basic activities of daily living (e.g., bathing, dressing, eating) and instrumental activities of daily living (e.g. shopping, cooking, money management).

Medicaid Expansion

Enactment of the Affordable Care Act (ACA) gave states the option to expand Medicaid to cover nonpregnant individuals under the age of 65 who are not eligible for Medicare or for any other mandatory Medicaid eligibility groups and who have income at or below 138% of the federal poverty level (FPL). As of January 2018, 32 states and the District of Columbia have implemented the ACA Medicaid Expansion.[4] Many adults included in the Expansion population have disabilities and functional limitations.[5] People with disabilities may receive coverage through the Expansion while they are waiting for a disability determination, may currently be in the two-year waiting period for Medicare, may have a disability that does not meet the SSA criteria, or may not meet SSI financial eligibility.[6]

State Demonstrations and Work Requirements

Since CMS's January 2018 guidance letter to State Medicaid Directors, 10 states have pending or approved Section 1115 demonstrations proposing new community engagement and/or work

[2] The law defines disability as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

[3] This is referred to as the "Special Income Group" and is codified at 42 CFR 435.236 for institutional care and 42 CFR 435.217 or 42 CFR 435.219 for HCBS.

[4] The Henry J Kaiser Family Foundation (2018). *Status of State Action on the Medicaid Expansion Decision.* https://www.kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

[5] Musumeci, M., Foutz, J. and Garfield, R. (2018). *How Might Medicaid Adults with Disabilities Be Affected By Work Requirements in Section 1115 Waiver Programs?* [online] The Henry J. Kaiser Family Foundation. Available at: https://www.kff.org/medicaid/issue-brief/how-might-medicaid-adults-with-disabilities-be-affected-by-work-requirements-in-section-1115-waiver-programs/

[6] Musumeci, M., Foutz, J. (2017). *Medicaid Restructuring Under the American Health Care Act and Nonelderly Adults with Disabilities.* The Henry J. Kaiser Family Foundation. Available at: https://www.kff.org/medicaid/issue-brief/medicaid-restructuring-under-the-american-health-care-act-and-nonelderly-adults-with-disabilities/

requirements for Medicaid enrollees.[7] As of May 2018, four states (Indiana, Kentucky, Arkansas, and New Hampshire) have received approval for their work requirement waivers. All four states proposed applying these requirements to Expansion Medicaid enrollees, with two states also applying these requirements to categorical Medicaid enrollees. All four waivers included exemptions for enrollee categories such as older adults, people with disabilities, people receiving drug treatment, and family caregivers. One additional state (Arizona) has proposed a waiver only targeting Expansion adults. Five states (Kansas, Maine, Mississippi, Utah, and Wisconsin) have proposed waivers only targeting subsets of the categorical Medicaid population. Of states proposing requirements for only categorical Medicaid enrollees, four would apply work requirements to parents of children who qualify for categorical Medicaid.

How Will States Define and Apply Exemptions?

People who qualify for categorical Medicaid on the basis of disability have already met the categorical criteria established by the Social Security Administration (SSA) or the state in which they live. Exemptions for this population should be based on these criteria. Indeed, most state waivers already propose excluding categorical Medicaid enrollees with disabilities, older adults, and medically frail adults from work requirements.

However, trying to create similar work exemptions for individuals with disabilities who enroll as part of the Expansion population creates unique challenges. It is difficult for states to accurately identify Expansion enrollees who should be exempt, as enrollment in state Medicaid Expansions is not dependent on a determination of functional status. States implement processes to identify enrollees who meet the medically frail status,[8] but do not otherwise collect systemic information on Expansion enrollees' disabilities or functional impairments. Many enrollees who are not medically frail may also have functional impairments that affect their ability to work. Without collecting comprehensive functional impairment data, states will encounter definitional and logistical hurdles. States will need to create and apply new definitions for which Expansion enrollees are considered to have a disability, and what level of disability or functional impairment is required to grant enrollees an exemption from these requirements. States will need to decide whether to rely on the disability determination of local SSA offices to inform their exemption criteria, or whether they prefer to create new determination processes to be performed by state Medicaid agencies or managed care plans.[9] Once criteria have been selected, states will need to implement processes for administering their chosen assessment of disability as it relates to an individual's ability to work.

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[7] Wynne, B., Cowey, T. (2018). *State Waivers As A National Policy Level: The Trump Administration, Work Requirements, And Other Potential Reforms In Medicaid.* Health Affairs Blog. Available at: https://www.healthaffairs.org/do/10.1377/hblog20180202.543483/full/

[8] Enrollees who meet the "medically frail" status are exempt from the alternative benefit plan even if they receive Medicaid eligibility through the Expansion.

[9] Under some states' 1115 waivers, including IN and KY, managed care plans also perform additional medical frailty determinations that help decide members' program benefits. Both states have specified that members deemed medically frail by these MCO processes will be exempt from work requirements.

LTSS Supports That Enable Work

CMS has indicated that, while states should include reasonable accommodations and support services to individuals with disabilities who participate in new community engagement/work requirements, no Federal Medicaid funding will be available for "employment support" services such as job training, child care, or transportation. In fact, in its guidance CMS explicitly notes that the 1115 demonstrations can only include referrals to employment supports and not the supports themselves.[10]

"Employment supports" are not necessarily what people with disabilities need to be able to work and engage with their communities. The nature of work has changed dramatically over the last two decades, making it easier for persons with cognitive or physical disabilities to participate in the workforce. Assistance with daily activities such as bathing or dressing may be sufficient to help persons with disabilities to remain engaged in community, volunteer, and/or work activities. For many such people with disabilities who could and would like to work, a significant barrier to living independently and working is the high cost of LTSS and the lack of available private insurance that covers these supports. Therefore, they must rely on Medicaid LTSS benefits.

In the categorical Medicaid program, people who are categorically eligible for LTSS by virtue of disability and lack of income have demonstrated that they are unable to engage in substantial gainful activity (SGA).[11] While people who fall within this Medicaid category can choose to work, and might do so if they receive LTSS supports such as supported employment, the SGA limit set by the Social Security Administration prescribes the total amount of income each person can receive while maintaining their benefits. Because most Medicaid enrollees cannot receive LTSS insurance coverage outside of Medicaid, SGA limits impact categorically eligible individuals' ability to increase their work hours.

Expansion enrollees with disabilities and functional limitations are not required to demonstrate an inability to work. In fact, many Expansion adults with disabilities are already in the workforce and would like to remain employed. In 2016, 23 percent of adult Medicaid Expansion enrollees with disabilities were working either full or part-time.[12] Nearly all of those not working had a functional limitation and more than two-thirds had two or more chronic conditions.[13] However, most states do not offer LTSS to Expansion enrollees. Thus, community engagement demonstrations covering the Expansion population may subject people with disabilities to work requirements without ensuring access to LTSS supports critical for success in the workforce.

Most (45) states also offer Medicaid Buy-In (MBI) – an optional program that enables people with disabilities who have earnings in excess of what is permitted under categorical Medicaid to purchase

[10] Some populations, such as people with ID/DD covered by 1915(c) or 1915(i) waivers, do receive employment services through Medicaid. These services will not be affected by CMS's new guidance, which only indicates that states may not offer new employment services through Medicaid 1115 waivers.

[11] Substantial gainful activity (SGA) is generally defined as work that earns more than a certain maximum amount per month, but can also include non-paid work such as volunteer hours.

[12] Musumeci, Foutz, and Garfield (2018)

[13] Musumeci, M., Garfield, R., Rudowitz, R. (2018). *Medicaid and Work Requirements: New Guidance, State Waiver Details and Key Issues.* The Henry J. Kaiser Family Foundation. Available at: https://www.kff.org/medicaid/issue-brief/medicaid-and-work-requirements-new-guidance-state-waiver-details-and-key-issues/

Medicaid coverage for the LTSS they need to remain independent and working.[14] However, MBI also has flaws that prevent it from adequately supporting all working individuals with disabilities, including unrealistic income/asset limits that create a disincentive to SGA; a lack of interstate portability or uniformity of benefits and requirements; short unemployment grace periods; and administrative burdens that create barriers for some enrollees to successfully apply or remain enrolled.

As states develop their 1115 work requirements, which may include individuals with functional limitations, it is important to create access to the essential LTSS benefits Medicaid enrollees need to remain independent and productive. Without access to these LTSS benefits through either the Medicaid Expansion or MBI, many individuals with disabilities will find it difficult to enter and remain in the workforce.[15]

Policy Recommendations

Encouraging work without threatening coverage

To achieve HHS's stated goals of encouraging work and economic independence, empowering low-income Americans, and facilitating smoother beneficiary transitions,[16] Medicaid should consider incentivizing and supporting individuals to engage in work through expanded service offerings rather than threatening to withdraw coverage from those enrollees who most struggle to retain their independence. There are several policy options for incentivizing and supporting work, including:

Strengthening the Medicaid Buy-In Program: To better support working individuals, the federal government could create uniform national eligibility requirements, standardized services and supports including child care supports for people with young children, or institute interstate reciprocity to facilitate worker mobility.[17]

Including LTSS in Medicaid Expansion programs: Many Expansion enrollees with disabilities face similar barriers to work as categorical Medicaid enrollees, but lack access to services and supports which address these barriers. States could support these individuals' workforce participation by providing LTSS benefits to Expansion participants. To ensure benefit adequacy, the federal Department of Health and Human Services should consider defining a package of "essential LTSS benefits" for Expansion enrollees including, but not limited to, personal attendant services, homemaker services, and employment supports. States such as California have already incorporated LTSS benefits in their Medicaid Expansion programs,[18] and could serve as examples of successful state implementation.

Supporting exempt enrollees who choose to work: Some individuals with disabilities who are exempt from Medicaid work requirements may nonetheless choose to work. Such individuals should be provided the opportunity to work if they choose to do so, without restricting access to the LTSS services

[14] Perriello, M. (2015). *Ensuring Access to Long-Term Services and Supports for People with Disabilities and Chronic Conditions.* Available at: http://ssdisolutions.org/sites/default/files/perriello.pdf

[15] These supports can be offered consistent with CMS's January 2018 guidance, as LTSS are not employment services even though they may facilitate gainful employment among Medicaid participants.

[16] Rosenbaum, S. (2017). *The Trump Administration Re-Imagines Section 1115 Medicaid Demonstrations – And Medicaid.* Health Affairs Blog. Available at: http://www.healthaffairs.org/do/10.1377/hblog20171109.297738/full/

[17] Perriello (2015)

[18] Disability Rights California (2016). *What is Adult Expansion/MAGI Medi-Cal?* Available at: https://www.disabilityrightsca.org/system/files/file-attachments/555101.pdf

they may need to fully engage in the workforce. Some current state and federal work incentives programs encourage people with disabilities to work while maintaining their benefits, and new 1115 demonstrations should take similar steps to support enrollees. If Medicaid LTSS services facilitate enrollees' ability to work, restrictions on those services could sharply limit their community engagement and contribute to Medicaid churn.

Additionally, benefits counseling services, such as those available through the Work Incentives Planning and Assistance (WIPA) program, can help enrollees understand how work may affect their benefit eligibility and facilitate more successful transitions to employment. Enrollees eligible for benefits counseling should be encouraged to access these services to help them make educated work decisions.

Exempt enrollees who choose to work can also be supported through comprehensive case management across social services. It is important to not only help low-income populations navigate health care and entering the workforce, but also to provide longer-term assistance once individuals enter employment. Comprehensive case management would help such individuals manage the implications of increased wages, such as losing eligibility for services on which they rely (TANF, SNAP, and even Medicaid), connect them with community resources as they come off subsidized programs, and help them avoid backsliding into unemployment.

Work exemptions that cover both categorical and Expansion-enrolled individuals with disabilities

Though many states have proposed work exemptions for members with disabilities, it remains unclear whether these exemptions will apply only to the categorical Medicaid population defined as having a disability through SSI, or also to Expansion enrollees with disabilities. Many Expansion enrollees with disabilities face barriers to work, even if they do not meet the SSI definition of disability.

States should define exemptions so that no individual who has a limited ability to work due to functional limitations, age, medical frailty, or similar circumstances is required to do so, whether they are enrolled in categorical Medicaid or a Medicaid Expansion. The Americans with Disabilities Act (ADA) provides guidance for how states might implement such an exemption. The ADA defines a person with a disability as someone who has a physical or mental impairment that substantially limits one or more major life activities, or who has a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability.[19]

The definition of "disability" used in the ADA is more expansive than the SSI eligibility definition, and could be used to identify members with disabilities among both categorical and Expansion enrollees. The ADA also identifies work as a "major life activity," allowing states to exempt individuals who experience functional limitations impacting their ability to work from Medicaid work requirements. States should also collaborate with local and national stakeholders to further develop exemption criteria that serve the needs of individuals with disabilities.

[19] ADA National Network (n.d.) *What is the definition of disability under the ADA?* Available at: https://adata.org/faq/what-definition-disability-under-ada

Conclusion

If states do not design Section 1115 demonstrations carefully, new community engagement and/or work requirements for Medicaid participants could have a disproportionate negative impact on people with disabilities who already struggle to maintain their independence and autonomy. By taking a measured approach to defining disability, identifying functional limitations among "non-disabled" Medicaid populations, and providing adequate access to LTSS services, states can better achieve HHS's stated goals of encouraging economic independence and empowering low-income Americans.