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## HHS Approves Harmful Section 1115 Waiver in Kentucky: Effects on People with Disabilities

By [David Machledt](#)

Earlier today, HHS approved the “Kentucky HEALTH” section 1115 waiver.<sup>1</sup> The approved project is effectively a cut that will worsen or eliminate access to Medicaid for low-income individuals. By the state’s own estimates, tens of thousands of Kentuckians living below the poverty level or nearly in poverty will lose Medicaid. It is a step backwards for Kentucky’s Medicaid expansion, which had been held out as a national model.

Under the law, HHS may only approve section 1115 proposals that are valid experiments likely to promote the objective of Medicaid — to help *furnish* health services to low-income individuals. Kentucky’s approved waiver, in contrast, will undoubtedly harm low-income Kentuckians, making it harder to access needed services and stay covered.

Kentucky’s new waiver mostly applies to adults in the Medicaid expansion, a catchall group that includes millions of people with disabilities as well as low-wage workers, parents, and other caretakers. In Ohio, about [one in five](#) newly eligible expansion enrollees had claims histories that correspond to a serious disability. Other studies show about 3 in 10 expansion enrollees live with behavioral health conditions.

A typical expansion enrollee could be, for example:

- a young adult injured in a crash who is still in the lengthy process of obtaining a formal disability determination from the Social Security Administration (SSA);
- a [coal miner](#) with lung disease who lost his health and pension benefits when his employer filed for bankruptcy; or
- a person with bipolar disorder who may not meet Medicaid’s strict disability definition but needs medications to function effectively and hold down a job.

Though Kentucky sells its proposal as primarily affecting childless, unemployed adults, many of the approved provisions will impact everyone in the expansion group, including people with disabilities. First, the state will have to create a brand new screen to identify enrollees who should be exempt from certain policies based on a disability or medical frailty. This process increases administration costs, complicates enrollment, and will likely leave some people with significant disabilities out. Second, even those who qualify for exemptions due to disability or medical frailty must document their status, a process that increases red tape and makes it harder for people with disabilities to get covered and stay covered. Taken together, these changes will make it harder for people with disabilities to get the supports and services they need.

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<sup>1</sup> Centers for Medicare and Medicaid Services, Kentucky Health Approval Letter and Special Terms and Conditions (Jan. 12, 2018), <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ky/ky-health-ca.pdf>.

The features of Kentucky's new program that most impact people with disabilities are:

**Work requirements for enrollees to maintain access to Medicaid coverage.**

Kentucky will suspend or discontinue Medicaid eligibility for parents and adults in its Medicaid expansion program who do not meet "community engagement" requirements or qualify for an exemption. Only two years ago, HHS reviewed the possibility of work requirements in Medicaid through 1115 demonstrations and concluded the agency lacks the legal authority to approve such waivers.

- Nearly [4 in 5](#) adult Medicaid enrollees live in a working household, and 60 percent are working themselves. Almost all of those not working have a disabling condition, care for a child or an older adult who needs help, or are students or retirees. Yet this new work requirement forces everyone to jump through more hoops to maintain access to needed medical care through Medicaid.
- Work requirements create more red tape for all Medicaid enrollees, *including people with disabilities who might be exempt on paper*. All expansion enrollees must prove they are working or exempt. Every exemption requires someone to fill out a form, complete a screen, or any number of other requirements that add red tape and make it harder to stay enrolled. Many people will not even know they have to file paperwork, others will struggle to get the verification documents. This adds bureaucratic costs for individuals and the state.
- Experience shows that provided adequate supports, many people with disabilities build successful careers. But it takes significant investment and adequate supports – from personal care to appropriate wheelchairs to necessary employer accommodations. In contrast, Kentucky's 1115 waiver provides exceedingly few resources for employment supports that facilitate work. It simply takes away coverage from those who cannot comply.

**Coverage lock-outs.** Individuals who fail to file renewal paperwork or make premium payments on time, or who fail to quickly report income or employment changes, will be disenrolled and locked out of Medicaid for 6 months. Outreach and notice for the renewal process is often lacking. It can be especially challenging for some people with disabilities who require accommodations, such as large print or screen readable electronic documents. No one should lose essential coverage simply due to administrative snafus. And locking people out of coverage directly contradicts the objective of Medicaid – to furnish coverage.

- Even if enrollees correct paperwork or payment errors, they face coverage lockouts unless and until they jump through additional bureaucratic hoops, such as taking a class. This may apply even if individuals are in the middle of cancer treatment or have an ongoing critical health need, such as kidney dialysis, unless they are able to qualify for an exception.

**Waiting periods for enrollment.** Under Medicaid law, states must promptly enroll every eligible applicant. However, Kentucky will subject some applicants living in poverty to a waiting period of up to two months before they are enrolled. People with disabilities with immediate care needs may not be properly screened and end up stuck in this waiting period with no access to care.

**Premiums with terminations for nonpayment.** Medicaid law prohibits premiums for Medicaid enrollees with incomes under 150% of the federal poverty level, including anyone eligible through the adult Medicaid expansion. HHS has allowed Kentucky to charge premiums to these individuals *and* terminate a subset of enrollees if they fail to keep up with payments. People with disabilities eligible through Medicaid expansion could easily lose coverage.

**Retroactive coverage eliminated.** Many eligible individuals apply for Medicaid *after* an accident or serious illness that requires urgent treatment. Federal law requires states to provide retroactive coverage so treatment received prior to enrollment is covered.

- Retroactive coverage helps protect consumers and medical providers (such as hospitals) from bankruptcies due to expensive, uninsured care. People with chronic conditions, who are more likely to be hospitalized or require emergency care, are strongly impacted by this waiver.
- Kentucky's waiver seeks to save the state money by reducing access to care and shifting costs onto low-income families. Several states requesting this waiver suggested that retroactive coverage encourages low-income people to avoid coverage until they are sick, but this is a red herring. Few low-income individuals know retroactive coverage is available, so this is likely no deterrent to enrollment.

**Other restrictions.** For some enrollees, the Kentucky project will also eliminate transportation services. This policy will reduce access to care, sometimes with deadly consequences, and has no experimental value.

For more specific information on the approved proposal, see [NHeLP's HHS Approves Harmful Section 1115 Waiver Project in Kentucky – Including Work Requirements, Lockouts, and Waiting Periods](#). Other fact sheets also detail the impact of this waiver on women and on people of color.

**Additional Issue Briefs can be found below:**

- [HHS Approves Harmful 1115 Waivers in Kentucky – Including Work Requirements, Lockouts, and Waiting Periods](#)
- [Kentucky's Section 1115 Medicaid Waiver & Its Impact on Health Equity](#)
- [HHS Approves 1115 Waiver in Kentucky – Harming Medicaid Enrollees Who Need Reproductive Health Services](#)
- [HHS Approves Harmful Section 1115 Waiver in Kentucky: Effects on People with Disabilities](#)