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From Ballot Initiative to Waivers: What is the Status of Medicaid Expansion in Utah?

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Summary

Since Utah voters approved a November 2018 ballot measure to adopt the Affordable Care Act (ACA) Medicaid expansion up to 138% of the federal poverty level (FPL), the state legislature has taken steps to roll back the full expansion. The state enacted a law in February 2019 that amended the voter-approved ballot measure, requiring the state to submit a series of Section 1115 waiver requests limiting the expansion to 100% FPL, first at its regular matching rate and then requesting the enhanced federal matching rate of 90%. The first waiver, the "Bridge Plan," was approved in March 2019, and allowed the state to implement a coverage expansion to 100% FPL beginning April 1, 2019, at the state's regular matching rate. The approved waiver also included an enrollment cap and a work requirement. On July 31, 2019, Utah submitted to CMS its "Per Capita Cap" proposal for a new waiver that would continue a number of provisions already approved as well as a request for the enhanced match for partial expansion and a limit on enhanced federal funding. CMS issued a general statement in late July and a letter to the state in mid-August confirming that they would not approve the enhanced matching rate for an expansion that does not go to 138% FPL or that includes an enrollment cap.[1]

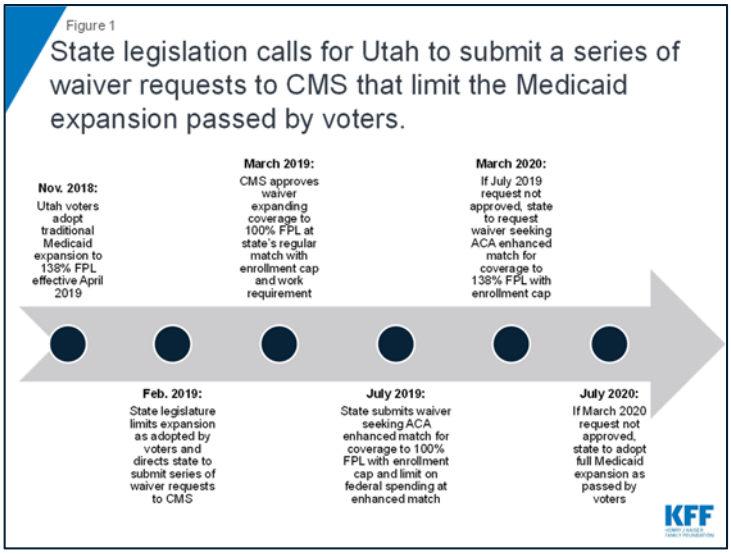
Given CMS guidance about partial expansion, it seems clear that some provisions of the Per Capita Cap waiver will not be approved, but CMS says it is reviewing the other provisions. If CMS does not approve Utah's July 2019 waiver submission, the state is required to submit a subsequent waiver, the "Fallback Option," that would seek the enhanced match for coverage to 138% FPL and continue some other provisions in the earlier waivers, including an enrollment cap. If CMS does not approve the Fallback Option by July 1, 2020, Utah must adopt the full Medicaid expansion without restrictions as required by the ballot initiative. This brief provides additional detail about the ballot measure, the state legislation, the status of the required waiver submissions, and the broader implications of Utah's waivers for other states.

Utah Ballot Initiative and Subsequent Legislation

As in Idaho and Nebraska, Utah voters supported a November 2018 ballot measure to adopt the full Medicaid expansion as set out in the ACA. Utah voters approved a full ACA expansion to cover nearly all adults with income up to 138% of the federal poverty level (FPL, $17,236/year for an individual in 2019), an April 1, 2019, implementation date, and a state sales tax increase as the funding mechanism for the state's share of expansion costs. By implementing a full ACA expansion, Utah would qualify for the substantially enhanced (93% in 2019 and 90% in 2020 and thereafter) federal matching funds. The

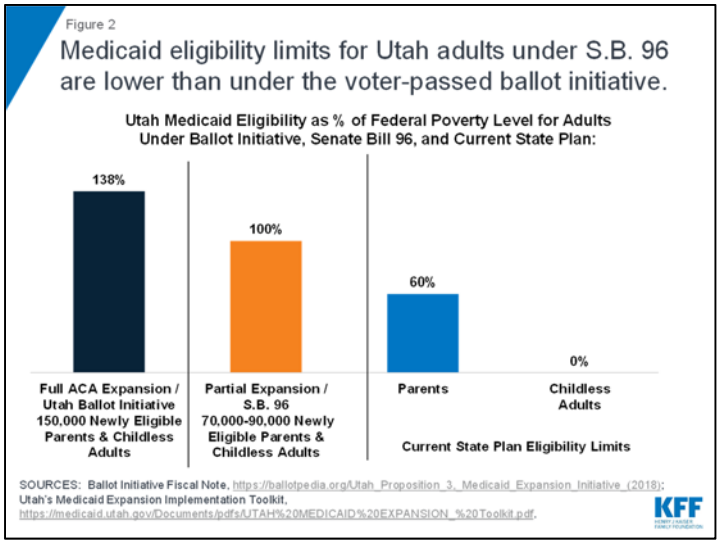
expansion population in Utah includes childless adults ages 19-64 with income from 0% to 138% FPL and parent/caretakers ages 19-64 with income from 60% to 138% FPL.[2] The fiscal note from the ballot initiative estimated that approximately 150,000 newly eligible individuals would enroll in Medicaid in fiscal year 2020.

However, the Utah legislature significantly changed and limited the coverage expansion that the voters adopted. Utah is one of 11 states (out of the 21 states that allow state laws to be adopted via a ballot initiative) that have no restrictions on how soon or with what majority state legislators can repeal or amend voter-initiated statutes. Utah Governor Gary Herbert signed Senate Bill 96 into law on February 11, 2019. The state released an implementation toolkit that follows the legislation in calling for multiple steps to implement an expansion of Medicaid coverage to adults in ways that differ from a full ACA expansion (Figure 1).

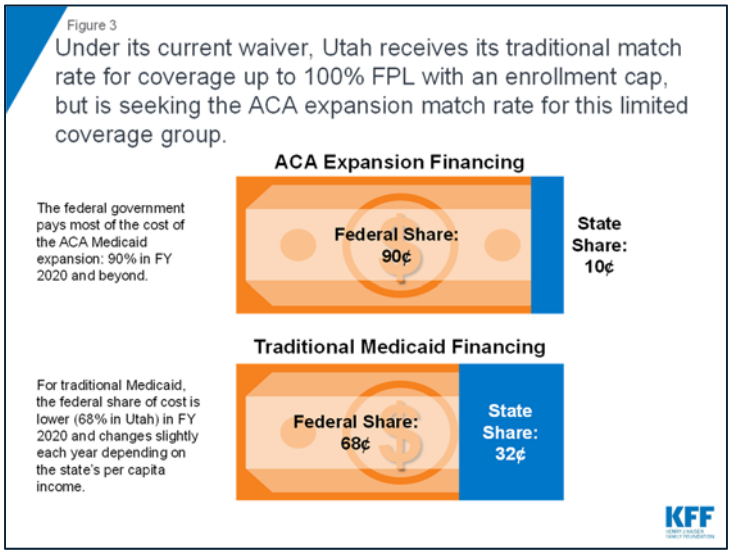


Utah's Amended Waiver Approved March 2019

On March 29, 2019, CMS approved an amendment to Utah's existing Section 1115 demonstration waiver to expand Medicaid to a capped number of adults with income up to 100% FPL beginning on April 1, 2019, at the state's regular Medicaid matching rate, not the enhanced ACA matching rate.[3] The authority to cover this "Adult Expansion Population" expires on January 1, 2021. The Adult Expansion Population under the waiver includes childless adults ages 19-64 with income from 0 to 100% FPL[4] and parent/caretakers ages 19-64 with income from 60% FPL to 100% FPL,[5] a more limited coverage expansion than the 138% FPL approved by the voters (Figure 2). The state estimates that approximately 70,000 to 90,000 people will be covered under the waiver with financial eligibility limited to 100% FPL, about 40,000 fewer compared to a full ACA expansion to 138% FPL.[6]



Instead of the 90% enhanced federal matching rate tied to newly eligible adults under a full ACA expansion, Utah is receiving its current, traditional federal matching rate of 68%. This lower matching rate will result in higher state costs for expanding coverage to 100% FPL than for a full expansion to 138% FPL (Figure 3).[7] Utah refers to the March 2019 waiver amendment as the "Bridge Plan" because the state is seeking further waiver amendments as required by Senate Bill 96 and described in the text below. Utah's pre-ACA coverage expansion, authorized by its waiver prior to the Bridge Plan amendment, is described in Box 1 below.



Utah's amended waiver includes an enrollment cap to be imposed at state option on the Adult Expansion Population, meaning that not all eligible people may be able to enroll in coverage. The waiver allows the state to close enrollment for the Adult Expansion Population, which could limit enrollment further than the coverage estimates noted above. The waiver does not specify a pre-determined maximum number of people to be covered but instead allows the state to stop enrolling eligible people "if projected costs exceed state appropriations." If the enrollment cap is reached, the state will not maintain a waiting list; instead, eligible individuals will have their applications denied and will have to reapply for coverage when enrollment re-opens. Consequently, individuals who apply at the beginning of a state fiscal year could be more likely to gain coverage than those who apply later in the fiscal year, even though they are otherwise eligible, if the state imposes the enrollment cap. It is possible that individuals with lower incomes or higher needs, compared to those already enrolled, might be barred from enrolling in coverage as a result of the timing of their application due to the enrollment cap.

No other state currently has approval for an enrollment cap on adults who are eligible under the ACA Medicaid expansion. As explained in Box 1, enrollment caps are no longer necessary to ensure federal budget neutrality because the ACA now allows states to access federal Medicaid funds for this coverage directly through the creation of the new adult eligibility pathway and the availability of federal matching funds.

Box 1: Coverage Expansion under Utah's Waiver Prior to the ACA

In 2014, the ACA for the first time authorized federal Medicaid matching funds for coverage for nearly all nonelderly adults. Prior to 2014, federal Medicaid funds could only be used to cover pregnant women, parent/caretakers, children, seniors, and people with disabilities. Adults without dependent children were ineligible for Medicaid, no matter how poor they were. Before the ACA, some states used Section 1115 waivers to establish coverage expansions beyond the limits of federal law. Because federal Medicaid funds could not be accessed directly to cover these adults, these waivers included provisions to generate savings to fund coverage expansions, such as limited benefit packages, premiums, and/or mandatory managed care enrollment, and sometimes enrollment caps as a way to limit federal spending and ensure federal budget neutrality.[8] However, budget neutrality is no longer a consideration for such coverage expansions under waivers now that federal Medicaid law, as amended by the ACA, includes an eligibility pathway and allows states to receive federal Medicaid matching funds to cover nearly all nonelderly adults, including those without dependent children, up to 138% FPL without the need for a waiver.

Utah's existing Section 1115 waiver was first approved in 2002 and included a pre-ACA coverage expansion (called the Primary Care Network, PCN) to parents with income above the state plan limit (60% FPL) and childless adults (for whom no state plan coverage was available). As of March 2019, the PCN income limit was 100% FPL. The PCN coverage expansion provided a limited benefit package of primary and preventive services[9] to a capped number of these adults and was funded by reduced benefits for traditional low-income (categorically and medically needy) parents. The March 2019 waiver amendment suspends authority for Utah's pre-ACA PCN coverage expansion and moves the 17,500 parents and childless adults in the PCN group as of March 2019 to the new "Adult Expansion Population" (described in the text above) effective April 1, 2019.[10]

Utah's amended waiver also includes a work requirement as a condition of eligibility for the Adult Expansion Population, beginning no sooner than January 1, 2020.[11] In Utah, individuals subject to the work requirement must complete certain activities within the first three months of each 12-month eligibility period or qualify for an exemption. Possible exemptions include age of 60 or older, pregnancy, responsibility to care for a dependent under age six in the same household or a disabled person, and physical or mental inability to meet the work requirement as determined by a medical professional, among others. Those who fail to do so will lose coverage for the rest of the year or until they fulfill the requirement. Qualifying activities include registering for work through the state's online system, completing an online employment training needs assessment, completing online job training modules identified through the assessment, and applying for work with at least 48 potential employers.

Utah's Per Capita Cap Waiver Submitted July 2019

In accordance with SB 96, Utah submitted its "Per Capita Cap" (PCC) waiver application to CMS on July 31, 2019, which includes a request to receive the 90/10 ACA enhanced matching rate for expansion adult coverage up to 100% FPL; however, CMS guidance states that such a policy would not be approved.[12] The waiver would move all expansion adults (parents 60-100% and childless

0-100%, including the Targeted Adult group) and the waiver services provided to these populations from the existing waiver to the new waiver. The Targeted Adult population includes adults ages 19-64 without dependent children with income up to 5% FPL who are chronically homeless or involved in the criminal justice system and in need of substance use or mental health treatment.

In a public statement days before Utah's submission, CMS indicated that it would not approve the 90/10 ACA enhanced matching rate for an expansion population smaller than the full group up to 138% FPL, with the rationale that such policies would "invite continued reliance on a broken and unsustainable Obamacare system."[13] Therefore, the result of no partial expansion is similar to the prior administration, but for very different reasons.[14] In its submission letter, the state provided several reasons for submitting the waiver as envisioned in SB 96, including the unknown outcome of the *Texas vs U.S.* litigation challenging the ACA, value in getting a formal response from CMS, and the state's hopes for approval of other waiver provisions.

CMS also indicated that it would not authorize an enrollment cap with enhanced ACA matching funds for the expansion group, as Utah requested. In an August 16, 2019, letter[15] to Utah following the state's waiver submission, CMS further noted that, if implemented, an enrollment cap would "have the effect of limiting enrollment to less than the full group otherwise eligible for Medicaid, which would be tantamount to 'partial expansion.'" CMS noted that it would therefore not authorize the enhanced matching rate if the enrollment caps were implemented. The current waiver allows for a separate enrollment cap for the Targeted Adult group or any subset, which may be closed to new enrollment at the state's election.

The waiver also requests a limit on enhanced federal funding through what the state describes as a "per capita cap" funding mechanism. Under the waiver request, an aggregate annual per capita cap would be calculated based on the weighted total of separate per capita caps for three enrollment groups: targeted adults and enrollees receiving IMD services for substance use disorder (SUD), expansion parents, and expansion adults without children.[16] Expenditures in excess of the total per capita cap but within budget neutrality would receive the State's traditional FMAP rather than the enhanced matching rate.[17] The state would establish per enrollee amounts for each group for a base year and apply a trend rate for future demonstration years.

Unlike federal legislative per capita cap proposals, the PCC waiver request would not impose a cap on all federal Medicaid dollars. The state request would apply only to the enhanced matching dollars and not all federal matching dollars, include a mechanism for automatic rebasing, and allow for adjustments for unforeseen events like a public health emergency, natural disaster, major economic event, new federal mandate, or any subsequent waivers approved by CMS that affect the populations under this waiver. The state assumes a "with waiver" per capita cap growth rate of 4.2%, lower than the anticipated "without waiver" per member per month cost growth rate of 5.3%.

Among other provisions, the PCC waiver proposal also includes a lockout period for "Intentional Program Violations" (IPV) committed when documenting Medicaid eligibility. The state seeks waiver authority to impose a six-month coverage lockout period if an individual commits an IPV. Utah defines an IPV as occurring when there is "clear and convincing evidence that the individual knowingly, willingly, or recklessly provided false or misleading information with an intent to receive benefits to which he or she was not eligible to receive" and may find the individual responsible to repay any medical assistance received for which he or she was not eligible. An IPV would include not reporting a change in eligibility within ten days with the intent to obtain benefits to which the enrollee is not entitled.

The waiver request includes other eligibility, benefit, and process changes. The PCC waiver's other new provisions include expenditure authority for housing-related services and supports and authority to provide up to 12-month continuous Medicaid eligibility. However, the state asks for waiver authority to limit these provisions to certain geographic areas or populations that are not specified in the waiver. The waiver also seeks authority to not allow hospitals to make presumptive eligibility determinations and to allow the state to continue a limited benefit package for expansion parents. Finally, the waiver seeks to waive some managed care rules, including advance CMS approval of actuarially sound rates, managed care contracts, and directed payments.

In addition to the new provisions, the PCC waiver seeks to maintain authority to implement provisions approved in March 2019, including the enrollment cap (currently approved at the regular federal matching rate) and the work requirement for the expansion population. As noted above, CMS has indicated that it would not approve the enhanced federal matching rate for the ACA expansion in the context of enrollment caps. Based on its experience with SNAP work requirements, the state estimates that approximately 70 percent of expansion adults (49,000-63,000 individuals) will meet an exemption to the work requirements. The state further projects that, among individuals who do not meet an exemption or good cause reason, approximately 75-80 percent will comply with the work requirements. Other provisions that were approved in March 2019 include dental benefits for Targeted Adults receiving SUD treatment, SUD treatment in institutions for mental disease (IMD), a targeted SUD residential withdrawal pilot in Salt Lake County, and a waiver of EPSDT for 19- and 20-year-olds.

What is Next?

The "Per Capita Cap" (PCC) waiver is currently under consideration at CMS. Given CMS guidance about partial expansion, it seems clear that some provisions under review will not be approved, but CMS says it is reviewing the other requests. In the meantime, the state could withdraw this proposal and submit the "Fallback Waiver."

If CMS does not approve the PCC plan by January 1, 2020,[18] the state will submit another waiver amendment request seeking authority for a coverage expansion up to 138% FPL with the ACA enhanced matching funds and an enrollment cap. Like the PCC waiver, this "Fallback Plan" would include coverage lockouts for intentional program violations and elimination of hospital presumptive eligibility. The Fallback Plan would continue the work requirement but would not seek a per capita cap on

federal funds at the enhanced matching rate. CMS indicated in its August 16, 2019, letter to Utah that the enhanced matching rate with an enrollment cap would not be approved, as the cap "would also have the effect of limiting enrollment to less than the full group otherwise eligible for Medicaid, which would be tantamount to 'partial expansion.'"

If CMS does not approve the Fallback Plan by July 1, 2020, Utah will adopt the full Medicaid expansion plan with no restrictions as set out by the ACA and approved in the ballot initiative. This plan would include coverage of all eligible adults up to 138% FPL at the ACA enhanced matching rate and would use a state plan amendment instead of waiver authority. It would not include a work requirement, enrollment cap, or per capita caps as proposed in the waiver proposals described above.[19]

As Utah seeks waiver authority for a per capita cap funding mechanism, CMS guidance related to capped financing waivers is under review at the Office of Management and Budget (OMB). This guidance is expected to outline how states can pursue such waivers. In response to state legislation, Tennessee just released a waiver request with capped financing that is open for state comment. The HHS Secretary's authority to approved capped financing waivers is unclear, as the matching rate cannot be waived under Section 1115. Federal financing caps for Medicaid were debated as part of legislative efforts to repeal and replace the ACA in 2017. Such efforts failed in Congress but have continued to appear in the President's budget, indicating that such a policy is still a priority for the administration.

Endnotes

[1] CMS statement released July 29, 2019 and CMS letter to Governor Herbert on August 16, 2019: https://www.cms.gov/newsroom/press-releases/cms-statement-partial-medicaid-expansion-policy, https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ut/per-capita-cap/ut-per-capita-cap-correspondence-ltr-20190816.pdf

[2] Under a full expansion, certain Targeted Adult populations currently covered through state waivers would transition to coverage under the expansion group.

[3] The March 2019 waiver amendment was approved based on the state's June 2018 pending amendment request, which sought to cover adults ages 19 to 64 up to 95% FPL (effectively 100% FPL with the 5 percentage point FPL disregard) at the ACA enhanced match with an enrollment cap and a work requirement. The June 2018 waiver amendment request also sought to waive EPSDT for 19 and 20 year olds and authority for mandatory Medicaid premium assistance for individuals with access to employer sponsored insurance.

[4] Utah's waiver continues to cover the Targeted Adult population, which was added in 2017, and includes adults ages 19-64 without dependent children with income up to 5% FPL who are chronically homeless or involved in the criminal justice system and in need of substance use or mental health treatment. The waiver provides that the Targeted Adult group or any subset may be closed to new enrollment at the state's election.

[5] Members of the Adult Expansion Population who are childless adults receive full state plan benefits. Members of the Adult Expansion Population who are parent/caretakers receive the same benefit package as traditional low-income parents under Utah's waiver, which is more limited than Utah's state plan benefit package. For example, private duty nursing, long-term care, eyeglasses, and non-emergency medical transportation are not covered, and dental services are generally covered only in emergencies. There also are additional surgical exclusions, a limit of 16 physical and occupational therapy visits per year, hearing aids only for congenital hearing loss, and some excluded medical supplies and equipment. Utah's waiver continues to not provide EPSDT treatment services for 19 and 20 year olds. In addition, the March 2019 waiver amendment authorizes services for all Medicaid-eligible individuals who are primarily receiving substance use disorder treatment and withdrawal management services as short-term "institution for mental disease" residents. Individuals in the Adult Expansion Population with access to employer sponsored insurance must enroll in that coverage and receive Medicaid premium assistance as of January 1, 2020.

[6] UT Dep't of Health, *Utah's Medicaid Expansion Implementation Toolkit* at 2.

[7] Benjamin Wood, *Salt Lake Tribune*, "Lawmakers' rejection of Proposition 3 is costing Utahns $2.5M each month, state Medicaid director says" (August 23, 2019), https://www.sltrib.com/news/politics/2019/08/23/lawmakers-rejection/.

[8] Under long-standing federal policy, Section 1115 waivers must be budget neutral to the federal government, meaning that federal costs under the waiver cannot exceed what federal costs would have been without the waiver.

[9] Covered services included primary care physician, lab, radiology, durable medical equipment, emergency room services, pharmacy, dental, and vision, often with different limitations than the state plan benefit package. Inpatient hospital, specialty care, and mental health services were not covered.

[10] UT Dep't of Health, *Utah's Medicaid Expansion Implementation Toolkit* at 3.

[11] The approval came two days after a federal district court set aside waivers in Arkansas and Kentucky that included work and reporting requirements. The case is now on appeal.

[12] The request for the enhanced ACA match would also apply to the Targeted Adult population.

[13] CMS statement released July 29, 2019, https://www.cms.gov/newsroom/press-releases/cms-statement-partial-medicaid-expansion-policy.

[14] CMS guidance issued in 2012 concludes that "Congress directed that the enhanced matching rate be used to expand coverage to [138%] of FPL. The law does not provide for a phased-in or partial expansion.", https://www.cms.gov/CCIIO/Resources/Files/Downloads/exchanges-faqs-12-10-2012.pdf

[15] CMS letter to Utah Governor Gary Herbert on August 16, 2019, https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ut/per-capita-cap/ut-per-capita-cap-correspondence-ltr-20190816.pdf.

[16] Some expenditures would be excluded from the per capita caps including emergency only funding for non-citizens, expenditures for enrollees in federally recognized tribes and inpatient stays for incarcerated individuals.

[17] A number of enrollment groups are included in the overall waiver and subject to budget neutrality calculations, but excluded from the per capita cap funding calculations.

[18] This is only contingent on CMS approval of the partial expansion to 100% FPL with an enrollment cap and enhanced ACA matching funds; it does not require CMS approval of the financing "per capita cap." The Fallback Plan waiver amendment request must be submitted to CMS by March 15, 2020.

[19] The full expansion also would provide traditional Medicaid benefits under an alternative benefit plan as required under the ACA. It would not limit benefits for expansion parents as described in endnote 3 and would not waive EPSDT for 19 and 20 year olds.