

REGULATORY INTELLIGENCE

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Health Policy Tracking Service - Issue Briefs
Medicaid
Medicaid Waivers

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I. INTRODUCTION

Most waivers in 2022 continued to pertain to activity surrounding Medicaid expansion and the implementation of work requirements as an eligibility criterion. While the Trump administration approved waiver requests by states seeking to impose work requirements, the Biden administration opposes such programs and has revoked prior approval.

II. STATE ACTIONS IN 2016

Disabled and Mental Health Services

Selected Activity

Alabama

- Effective May 15, 2022, 2022 AL REG TEXT 600672 (NS) et al. amend Chapter 580-5-30, Intellectual Disabilities Services. The changes are necessary to authorize and support Alabama's new Community Waiver Program (CWP) recently approved by the Center for Medicaid and Medicare Services (CMS). Further, the proposed changes are necessary to comply with the federally mandated Home and Community Based Settings Rule, which governs all waiver programs administered by the department.
- Effective May 15, 2022, 2022 AL REG TEXT 606747 (NS) adds a chapter regarding the home and community-based service community waiver program (CWP) for persons with intellectual disabilities.

Alaska

On February 18, 2022, 2022 AK REG TEXT 601147 (NS) provided notice of public comment to proposed changes to Level-of-Care Determination for Community First Choice, Home and Community-Based Waiver, and ICF/IID Services.

California

- On August 19, 2022, 2022 CA REG TEXT 622529 (NS) provided notice of the Department of Developmental Services' intent to seek renewal for the 1915(c) HCBS Waiver from the federal Centers for Medicare and Medicaid Services (CMS).
- On August 19, 2022, 2022 CA REG TEXT 622530 (NS) provided notice that the Department of Health Care Services (DHCS) intends to submit a Home and Community Based Services Waiver (HCBS) amendment for federal approval. This is an amendment to the California Medicaid 1915(c) Developmental Disabilities Waiver to implement rate changes funded in the 2022-23 budget act and informed by the 2019 service provider rate study.

Colorado

On September 30, 2022, 2022 CO REG TEXT 625790 (NS) amends [10 CO ADC 2505-10:8.100](#) (Medical Assistance Eligibility) to add the HCBS-DD waiver to the other waiver types that can be accessed when an individual is eligible under the Medicaid Buy-In Program for working Adults with Disabilities.

Delaware



On May 1, 2022, 2022 DE REG TEXT 613454 (NS) provided public notice and elicit public input regarding Delaware's proposed amendment to its current 1915 (c) HCBS Lifespan Waiver that serves individuals with intellectual and developmental disabilities (IDD).

District of Columbia

- Effective April 15, 2022, 2022 DC REG TEXT 605988 (NS) amends Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).
- Effective August 12, 2022, 2022 DC REG TEXT 571751 (NS) adopts amendments to Sections 1915-1916, 1920, 1922, 1929-1931, 1934, 1936, 1939, and 1941 of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities), of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Florida

On February 4, 2022, 2022 FL REG TEXT 606972 (NS) provided notice of a proposed rule that would clarify the process and criteria for crisis enrollment onto the Agency for Persons with Disabilities' ('Agency') iBudget Florida system for the delivery of Medicaid Home and Community Based Services Waiver services to clients with developmental disabilities.

Georgia

On March 15, 2022, 2021 GA H.B. 1404 (NS) was amended/substituted. It would require that the Department of Health submit a waiver request to the federal Centers for Medicare and Medicaid Services to authorize private institutions for mental disease to qualify for Medicaid reimbursement.

Illinois

On January 31, 2022, 2021 IL H.B. 5403 (NS) was introduced. It would make changes regarding the DHFS behavioral health waiver.

Minnesota

On March 4, 2022, 2021 MN [S.F. 2774](#) (NS) was adopted. It realigns provisions regarding HCBS and disability waiver rate setting.

Montana

Effective November 20, 2021, 2021 MT REG TEXT 586618 (NS) amends [MT ADC 37.34.3005](#) (Reimbursement for Services of Medicaid Funded Developmental Disabilities Home and Community-Based Services (HCBS) Waiver Programs).

Nebraska

On January 20, 2022, 2021 NE L.B. 1243 (NS) was introduced. It would change priorities relating to funding the Medicaid home and community-based services waivers for persons with developmental disabilities. ^[FN2]

New Mexico

Effective April 1, 2022, 2022 NM REG TEXT 598665 (NS) amends various sections regarding the developmental disabilities HCBS waiver.

North Dakota

- On January 1, 2022, 2022 ND REG TEXT 589720 (NS) was introduced. It would amend [ND ADC 75-03-39-02](#) (Eligibility for services under the Medicaid autism spectrum disorder birth through thirteen waiver).
- On October 1, 2022, 2022 ND REG TEXT 613963 (NS) proposed changes regarding Provision of Home and Community-Based Services Under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program.

Tennessee

On October 5, 2022, 2022 TN REG TEXT 626307 (NS) provided a rulemaking hearing notice regarding TennCare Long-Term Care Programs; Definitions; Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled Under Section 1915(c) of the Social Security Act (Statewide MR Waiver); Home and Community Based Services Waiver for Persons with Mental Retardation Under Section 1915(c) of the Social Security Act (Arlington MR Waiver); Tennessee's Self-Determination Waiver Under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver Program); TennCare Employment and Community First CHOICES (ECF CHOICES) Program.

Texas

- On June 10, 2022, 2022 TX REG TEXT 616668 (NS) provided public notice that the Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare and Medicaid Services (CMS) to amend the state plan application for the Adult Mental Health s.1915(i) Home and Community-based Services (HCBS) State Plan benefit.
- On September 30, 2022, 2022 TX REG TEXT 625364 (NS) provided notice of a public hearing regarding proposed payment rates for Individualized Skills and Socialization services in the Deaf-Blind with Multiple Disabilities Waiver (DBMD), Home and Community-Based Services Waiver (HCS) and Texas Home Living Waiver (TxHmL) programs.



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Utah

On January 24, 2022, 2022 UT H.B. 212 (NS) was introduced. It would amend the Medical Assistance Act, requiring the Division of Medicaid and Health Financing to apply for Medicaid waivers or state plan amendments to provide wraparound services to qualified individuals with a disability.

Virginia

- On February 8, 2022, 2022 VA S.B. 231 (NS) was amended/substituted. It would amend waivers providing services for individuals with developmental disabilities. ^[FN3]
- Effective March 4, 2022, 2022 VA REG TEXT 604650 (NS) repeals the regulation associated with the Alzheimer's Assisted Living Waiver, which was developed to provide care and support to help aging Virginia residents who have been diagnosed with Alzheimer's disease or other related memory disorders and was ended effective June 30, 2017.

Washington

- Effective February 9, 2022, 2022 WA REG TEXT 552057 (NS) enacts [WA ADC 388-845-2019](#) (What modifications to waiver services apply during the COVID-19 outbreak?) on an emergency basis to make temporary modifications to developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers to control the spread of the COVID-19 virus and to meet immediate health and safety needs.
- Effective August 17, 2022, 2022 WA REG TEXT 621962 (NS) seeks public comment for proposed developmental disabilities administration HCBS waiver amendments.
- Effective August 27, 2022, 2022 WA REG TEXT 613529 (NS) increases the personal needs allowance for clients eligible to receive home and community services waiver services.
- Effective September 1, 2022, 2022 WA REG TEXT 624566 (NS) makes changes to chapter 388-845 WAC to implement amendments to the developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers as approved by the federal Centers for Medicare and Medicaid Services (CMS). Major changes to the chapter: Adjust the yearly limits applicable to certain waivers; add assistive technology to multiple waivers; remove the positive behavior support and consultation service from all waivers except the community protection waiver; amend the definition of the specialized evaluation and consultation service; and make other changes necessary to implement amendments to DDA's HCBS waivers as approved by CMS.
- Effective September 7, 2022, 2022 WA REG TEXT 623627 (NS) provided notice of revised public comment for proposed Developmental Disabilities Administration (DDA) HCBS waiver amendments.

Home- and Community-Based Services

Selected Activity

Alabama

Effective May 15, 2022, 2022 AL REG TEXT 606748 (NS) amends [AL ADC 560-X-52-.15](#) (HCBS Waiver Appeal Process).

Alaska

- Effective September 18, 2022, 2022 AK REG TEXT 601213 (NS) changes regulations on Medicaid coverage dealing with the requirements for home and community-based waiver services and personal care services.
- On April 20, 2022, 2021 AK H.B. 292 (NS) was amended/substituted. It would make changes relating to home and community-based waiver services.

Arizona

On February 24, 2022, 2022 AZ [S.B. 1536](#) (NS) was engrossed. It relates to appropriations for home and community-based services.

Colorado

- On February 10, 2022, 2022 CO REG TEXT 607182 (NS) provided notice that various amendments will be made regarding HCBS Waivers.
- On March 7, 2022, 2022 CO H.B. 1188 (NS) was adopted. It authorizes money in the ARPA American Rescue Plan Act to be used for home and community-based services that are ineligible for a federal match but otherwise authorized.
- On February 25, 2022, 2022 CO REG TEXT 608449 (NS) provided notice that a public meeting will be held on Friday, March 11, 2022, regarding proposed HCBS Waiver amendments.
- On August 10, 2022, 2022 CO REG TEXT 621544 (NS) provided notice regarding HCBS waiver amendments.

District of Columbia

Effective August 12, 2022, 2022 DC REG TEXT 574188 (NS) adopts a new Chapter 90 (Home and Community-Based Services Waiver for Individual and Family Support), of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).



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Georgia

On May 9, 2022, 2021 GA S.B. 610 (NS) was adopted. It requires the Department of Community Health to conduct a comprehensive review of provider reimbursement rates for home and community based services covered by the waiver programs.

Louisiana

- Effective January 20, 2022, 2022 LA REG TEXT 596907 (NS) makes changes regarding the New Opportunities HCBS Waiver.
- Effective January 20, 2022, 2022 LA REG TEXT 596908 (NS) makes changes regarding the Residential Options HCBS Waiver.
- Effective January 20, 2022, 2022 LA REG TEXT 596909 (NS) makes changes regarding the Supports HCBS Waiver.
- Effective June 20, 2022, 2022 LA REG TEXT 610044 (NS); 2022 LA REG TEXT 610045 (NS) and 2022 LA REG TEXT 610046 (NS) adopt amendments to Part XXI of Title 50 regarding a Supports HCBS waiver for dental services.
- Effective July 31, 2022, 2022 LA REG TEXT 621088 (NS) adopts [LA ADC 50:XXI.2901](#) (Adult Day Health Care (ADHC) Direct Support Worker Wages, Other Benefits, and Workforce Retention Bonus Payments) regarding the HCBS Adult Day Health Care waiver.
- Effective July 31, 2022, 2022 LA REG TEXT 621090 (NS) adopts [LA ADC 50:XXI.9503](#) (Direct Support/Service Worker Wages, Other Benefits, and Workforce Retention Bonus Payments) regarding the HCBS Community Choices waiver.
- Effective July 31, 2022, 2022 LA REG TEXT 621091 (NS) amends [LA ADC 50:XXI.14301](#) (Unit of Reimbursement) regarding HCBS New Opportunities waiver direct service worker wages and bonus payments.
- Effective July 31, 2022, 2022 LA REG TEXT 621092 (NS) amends [LA ADC 50:XXI.16903](#) (Direct Service Worker Wages and Bonus Payments) regarding the HCBS Residential Options waiver.
- Effective July 31, 2022, 2022 LA REG TEXT 621093 (NS) adopts [LA ADC 50:XXI.553](#) (Workforce Retention Bonus Payments) regarding HCBS waivers.
- Effective July 31, 2022, 2022 LA REG TEXT 621094 (NS) amends [LA ADC 50:XXI.6101](#) (Unit of Reimbursement) regarding the HCBS Supports Waiver.
- Effective August 20, 2022, 2022 LA REG TEXT 550005 (NS) amends provisions governing the ADHC Waiver, the CCW, and LT-PCS throughout the COVID-19 public health emergency declaration, and clarifies that the HCBS waiver provisions which correspond to Louisiana's section 1915(c) Appendix K waiver will remain in effect for the duration of the Emergency Rules published in the April 20, 2020 Louisiana Register or until the Appendix K waiver termination date of January 26, 2021, whichever is later, in order to continue the provisions of the Emergency Rule adopted on August 25, 2020.
- On September 20, 2022, 2022 LA REG TEXT 624489 (NS) proposed to adopt LAC 50:XXI.Chapter 29 regarding HCBS waivers—adult day health care waiver—direct support worker wages and bonus payments in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.
- On September 20, 2022, 2022 LA REG TEXT 624491 (NS) proposed to adopt [LAC 50:XXI.9503](#) regarding HCBS waivers—community choices waiver—direct support/service worker wages and bonus payments in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.
- On September 20, 2022, 2022 LA REG TEXT 624492 (NS) proposed to amend [LAC 50:XXI.14301](#) regarding HCBS waivers—new opportunities waiver—direct service worker wages and bonus payments in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.
- On September 20, 2022, 2022 LA REG TEXT 624493 (NS) proposed to amend [LAC 50:XXI.16903](#) and adopt s.16905 regarding HCBS waivers—residential options waiver—direct service worker wages and bonus payments in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.
- On September 20, 2022, 2022 LA REG TEXT 624494 (NS) proposed to adopt [LAC 50:XXI.553](#) regarding HCBS waivers—support coordination workforce retention bonus payments in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.
- On September 20, 2022, 2022 LA REG TEXT 624495 (NS) proposed to amend [LAC 50:XXI.6101](#) regarding HCBS waivers—supports waiver—direct service worker wages and bonus payments in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

Maine

- On November 30, 2021, 2021 ME H.P. 1324 (NS) was introduced. It would make MaineCare rules pertaining to global HCBS waiver programs.
- On January 5, 2022, 2021 ME H.P. 1379 (NS) was introduced. It would provide clarity and assistance to rural Maine providers in the implementation of the HCBS waiver rule.



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- Effective January 19, 2022, 2022 ME REG TEXT 591308 (NS) implements the federal requirements for Maine's Section 1915(c) home and community-based waiver programs as set forth in [42 CFR s.441.301\(c\)](#), and includes requirements for person-centered service planning and for settings in which home and community-based waiver services are provided, including requirements for provider-owned or controlled residential settings.

Maryland

On May 29, 2022, 2022 MD [S.B. 28](#) (NS) was adopted. It requires the Department to apply to CMS for an amendment to the home and community-based services waiver.

Massachusetts

Effective May 27, 2022, 2022 MA REG TEXT 606992 (NS) makes certain changes regarding HCBS waiver services.

Minnesota

- On March 7, 2022, 2021 MN H.F. 4096 (NS) was introduced. It would establish a presumptive eligibility process for home and community-based waiver services and alternative care applicants.

- On March 9, 2022, 2021 MN S.F. 3813 (NS) was introduced. It would establish a presumptive eligibility process for home and community-based waiver services and alternative care applicants.

Ohio

- Effective January 1, 2022, 2021 OH REG TEXT 596543 (NS) amended and adopted rules regarding HCBS waivers.

- Effective March 1, 2022, 2022 OH REG TEXT 608588 (NS) adopts [OH ADC 5160-1-90](#) (One-time Medicaid provider relief payments: home and community-based waiver providers).

- Effective May 17, 2022, 2022 OH REG TEXT 612370 (NS) amends [OH ADC 5123-9-29](#) (Home and community-based services waivers - home-delivered meals under the individual options, level one, and self-empowered life funding waivers).

- Effective July 1 2022, 2022 OH REG TEXT 612225 (NS) adopts [OH ADC 5160-59-05.2](#) (OhioRISE Home and Community-Based Services Waiver).

- Effective July 1, 2022, 2022 OH REG TEXT 612229 (NS) amends [OH ADC 5160:1-2-03](#) (Medicaid: request for home and community-based services (HCBS) waiver).

- Effective September 16, 2022, 2022 OH REG TEXT 618198 (NS) amends [OH ADC 5123-9-40](#) (Home and community-based services waivers - administration of the self-empowered life funding waiver).

- Effective October 13, 2022, 2022 OH REG TEXT 619647 (NS) amends various sections regarding the assisted living HCBS waiver program.

Oklahoma

- On January 20, 2022, 2021 OK H.B. 4084 (NS) was pre-filed. It relates to applications for certain home and community-based support waivers. ^[FN4]

- On May 3, 2022, 2021 OK S.B. 1134 (NS) was adopted. It repeals certain residency requirement for home and community-based services.

- Effective September 12, 2022, 2022 OK REG TEXT 606811 (NS) makes changes relating to employment services through HCBS waivers.

South Dakota

On January 3, 2022, 2022 SD REG TEXT 603020 (NS) provided notice of a proposed renewal to the Assistive Daily Living Services (ADLS) 1915 (c) HCBS waiver.

Texas

- On June 10, 2022, 2022 TX REG TEXT 616669 (NS) provided public notice that the Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare and Medicaid Services (CMS) to amend the waiver application for the Home and Community based Services (HCS) Program.

- On June 10, 2022, 2022 TX REG TEXT 616670 (NS) provided public notice that the Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare and Medicaid Services (CMS) to amend the waiver application for the Texas Home Living Program.

- On July 15, 2022, 2022 TX REG TEXT 619491 (NS) provided notice that the Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare and Medicaid Services (CMS) to amend the waiver application for the Home and Community based Services (HCS) Program. CMS has approved the HCS waiver application through August 31, 2023. The new proposed effective date for this amendment is December 1, 2022.



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- On July 15, 2022, 2022 TX REG TEXT 619492 (NS) provided notice that the Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare and Medicaid Services (CMS) to amend the waiver application for the Texas Home Living Program. HHSC administers the TxHmL Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the TxHmL waiver application through February 28, 2027.
- On October 21, 2022, 2022 TX REG TEXT 627149 (NS) provided notice that the Health and Human Services Commission (HHSC) submitted a request to the Centers for Medicare and Medicaid Services to amend the waiver application for the Community Living Assistance and Support Services (CLASS) waiver program through an Appendix K.
- On October 21, 2022, 2022 TX REG TEXT 627150 (NS) provided notice that due to the public health emergency resulting from COVID-19, the Health and Human Services Commission (HHSC) submitted a request to the Centers for Medicare and Medicaid Services for an amendment to the Home and Community-based Services (HCS) waiver under s.1915 (c) of the Social Security Act through an Appendix K.

Utah

- Effective December 30, 2021, 2021 UT REG TEXT 599386 (NS) implements a definition for extraordinary care to use in the evaluation and authorization of caregiver compensation in applicable home and community-based services (HCBS) waiver programs.
- Effective March 1, 2022, 2022 UT REG TEXT 609862 (NS) continues rules establishing general eligibility requirements for HCBS waivers, sets forth eligibility for institutionalized individuals and community spouses, and specifies who may become eligible for each HCBS waiver under the Medicaid program.
- On October 1, 2022, 2022 UT REG TEXT 625435 (NS) proposed changes regarding the transfer of resources for institutional Medicaid HCBS waivers.

Virginia

On September 26, 2022, 2022 VA REG TEXT 625059 (NS) provided notice of a public comment period regarding the submission to the U.S. Centers for Medicare and Medicaid Services (CMS) amended applications for the following 1915(c) Home and Community Based Services (HCBS) Medicaid Waivers: Community Living (CL) Waiver; Family and Individual Supports (FIS) Waiver; and Building Independence (BI) Waiver.

Washington

- Effective December 15, 2021, 2022 WA REG TEXT 568056 (NS) rescinds emergency rules regarding DDA HCBS waivers.
- Effective January 22, 2022, 2022 WA REG TEXT 592252 (NS) amends [WA ADC 388-845-2110](#) (Are there limits to the supported employment services you may receive?) regarding HCBS waivers.
- Effective July 1, 2022, 2022 WA REG TEXT 619679 (NS) amends [WA ADC 182-515-1509](#) (Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility) increasing the personal needs allowance for people receiving home and community-based waiver services to an amount no less than 300 percent of the federal benefit rate.
- Effective August 27, 2022, 2022 WA REG TEXT 613529 (NS) increases the personal needs allowance for clients eligible to receive home and community services waiver services.

West Virginia

On July 15, 2022, 2022 WV REG TEXT 619601 (NS) provided notice that the home and community-based waiver penalty will now begin when the client becomes financially and medically eligible and enrolled in a slot.

Traumatic Brain Injuries

Selected Activity

Indiana

On August 3, 2022, 2022 IN REG TEXT 621001 (NS) provided public notice regarding an amendment to the traumatic brain injury waiver.

Mississippi

On January 17, 2022, 2022 MS [S.B. 2317](#) (NS) was introduced. It would direct the Division of Medicaid to apply for necessary waivers to provide HCBS to the aged/disabled, physically disabled and recipients with traumatic brain/spinal cord injuries to eliminate any waiting period for services. ^[FN5]

Medicaid Expansion or Reform

State News

Supreme Court Tosses Arkansas/New Hampshire Medicaid Work Requirement Case



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The Supreme Court won't be rescheduling arguments in the fight over work requirements for Medicaid beneficiaries that had been sitting in limbo at the court for over a year.^[FN6] The justices on Monday agreed the cases disputing the Trump administration's approval of work rules in Arkansas and New Hampshire are now moot, and sent them back to the trial court with instructions to wipe the decisions off the books and dismiss them.

Though the Biden administration is opposed to Medicaid work rules, the Justice Department took the unusual step of asking the justices to vacate lower court rulings that invalidated them. Some health law scholars say the appeals court rulings could have been used in the future to limit the authority the Health and Human Services secretary has to test new policies for the Medicaid program.

The HHS notified the states March 17, 2021, that the agency was withdrawing the Trump administration's prior approvals of the rules that require Medicaid beneficiaries to work, go to school, or volunteer in their community to remain in the program. Michigan and Wisconsin's were also withdrawn shortly thereafter. Arizona and Indiana were notified theirs were being withdrawn in letters sent June 24, 2021. Each state was given 30 days to file a written notice of appeal.

Missouri GOP Plan to Hamper Medicaid Expansion Reaches House Floor

A Missouri legislative budget panel has approved a constitutional amendment proposal that would subject Medicaid expansion to annual appropriations by the General Assembly, which could defund it.^[FN7] The proposal passed by a 22-9 vote and next heads to the full House for a vote.

Expansion was approved by a voter referendum in 2020 and the state Supreme Court ruled last year that the legislature must provide money for expansion. Democrats say the latest end-around by Republicans is just another effort to hurt poor people who need health coverage. 'All we're doing is kicking off people who qualify,' said Rep. Peter Merideth, D-St. Louis, who is the ranking member of the House Budget Committee. House Budget Committee Chairman Rep. Cody Smith, R-Carthage, argued that his proposed constitutional change wouldn't necessarily cut all expansion costs. Rather, he said, it would allow lawmakers more flexibility to manage Medicaid spending.

In addition to making expansion an optional funding line in the budget, the proposed referendum also would institute a requirement for Medicaid recipients to work or do qualified community engagement for 80 hours a month. The proposed work requirements would apply to applicants between ages 19 and 65 and allow for some exemptions.

If the proposal is approved by the House, it would then go to the state Senate for further deliberations. The proposal also would have to win approval from President Joe Biden's administration, which announced in February 2021 that it would remove all work waivers the government granted during the Trump administration.

Possible Medicaid Expansion Vote in NC Later This Year

An up-or-down vote on broad Medicaid expansion in North Carolina could occur before the November elections, key Republican legislators recently said.^[FN8] A joint House-Senate panel created in the current budget law has been tasked with studying health care access and possible expansion. The committee could submit proposed legislation to the full General Assembly before this year's session ends, the budget law says.

While there's no guarantee that North Carolina will accept expansion — many House Republicans still oppose the idea — more Senate Republicans have warmed to the concept in 2021. Support has grown in part because of a financial sweetener from the federal government above and beyond what it already pays to cover conventional recipients. Hundreds of thousands of additional people would be anticipated to join the Medicaid rolls, which is already at 2.7 million in the state.

Democrats led by Gov. Roy Cooper are strong expansion supporters, with Cooper pitching the idea since taking office in 2017.

Medicaid Expansion Gets Initial Senate Approval in North Carolina

A wide-ranging health care access bill penned by Republicans that includes covering hundreds of thousands of additional North Carolina adults through Medicaid has received nearly unanimous initial Senate approval.^[FN9] The bill's anchor — Medicaid expansion — represents a dramatic turn for its prospects in the state after being blocked for a decade by GOP elected officials.

Still, House Republicans are not interested in considering expansion during the annual work session expected to end around July 1, Speaker Tim Moore said recently, potentially leaving the issue for the fall or 2023. A final Senate vote is expected soon before the bill moves to the House. After the ACA was enacted, Senate leaders were opposed to adding adults to the Medicaid rolls arguing that Medicaid was broken and that the federal government could not be trusted to keep paying 90% of costs. Now, those same leaders are open to expansion since they feel the program is more fiscally sound.

The expansion proposal would likely cover 500,000 or 600,000 people whose income reaches up to 138% of federal poverty guidelines. Although about 2.7 million North Carolina residents are now enrolled in Medicaid, some current consumers whom the state has been required to keep on the rolls during the COVID-19 pandemic would ultimately be covered by expansion. The state's 10% share of expansion expenses would be paid through a new assessment on hospitals.

North Carolina Tries Again to Expand Medicaid



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Another attempt to expand Medicaid to nearly 600,000 North Carolinians is being made. ^[FN10] Republicans in the state House of Representatives are not ready to embrace the policy whole hog. Instead, there will be one more study and more planning, while the lawmakers campaign for elections in November.

The proposal to create a legislative committee with members from both chambers that will hear a Medicaid Modernization Plan to be developed by the state Department of Health and Human Services comes out of negotiations between state House and Senate leaders over a spending plan for the coming fiscal year. The new way forward toward embracing Medicaid expansion, according to SB 408, would add Medicaid coverage for adults with annual incomes up to 133% of the federal poverty level, or slightly more than \$17,000 in earnings for an individual.

If negotiations with federal regulators produces a plan that the General Assembly is happy with, lawmakers have said they would return to Raleigh no later than Dec. 15 to have the actual, final vote on the plan. "In December, should this go into law, there will be a vote," Tim Moore, the Republican from Kings Mountain who's speaker of the state House of Representatives, told the House Rules committee on Tuesday. In the past, bills to expand Medicaid have made it through the House committee hearing process only to never reach a vote on that chamber's floor.

As a plan is developed to bring back to lawmakers, it will be learned from the federal government and teams of lawyers if the state can add a work requirement to the expansion rules, something that has failed in every other state that has proposed it. It can also figure out a parachute for the state to opt out if the federal government tries to cut back on its funding share of 90% for every new Medicaid expansion beneficiary.

Medicaid Expansion to Appear on November South Dakota Ballot

The South Dakota Secretary of State's office has announced that a proposal to expand Medicaid eligibility in the state will appear on the ballot in November. ^[FN11] The measure, known as Constitutional Amendment D, was validated after a requisite number of signatures were collected.

South Dakota is one of 12 states that has yet to expand Medicaid. So far, Medicaid expansion initiatives put on the ballot have only failed once in Montana (but the state legislature later approved it). If expansion is approved in South Dakota, it would provide an additional 42,500 residents with access in the first year.

There is an additional sticking point. If a different ballot measure passes in June, the November expansion measure could require 60% approval, instead of the usual 50%, since it would raise taxes or spending by at least \$10 million.

South Dakota Senate Rejects Medicaid Expansion

A proposal to expand Medicaid health coverage eligibility was recently defeated in the South Dakota Senate, leaving the decision to voters in the November election. ^[FN12] The Republican-controlled Senate rejected the bill on a 12 to 23 vote.

However, a campaign backed by the state's major health care systems is trying to get voters to pass a constitutional amendment to expand Medicaid eligibility on the November ballot. "It's clear that the only path to expanding Medicaid in South Dakota is by letting the people vote on it directly," said Zach Marcus, the manager for the campaign, in a statement.

The proposal would allow 42,500 more people to access health care coverage and bring \$1.3 billion in federal money to the state.

Selected Activity

Alabama

- Effective May 15, 2022, 2022 AL REG TEXT 600680 (NS) amends [AL ADC 580-5-30-.14](#) (Eligibility and Level of Care Determinations for Medicaid Waiver Programs).
- Effective May 15, 2022, 2022 AL REG TEXT 600679 (NS) amends [AL ADC 580-5-30-.13](#) (Program Enrollment/ADMH Medicaid Waiver Programs).

Florida

On March 2, 2021, 2021 FL H.B. 201 (NS) was introduced. It would increase income eligibility threshold for coverage under Florida Kidcare program; authorize AHCA to seek federal waiver approval or submit state plan amendments as necessary; require agency to examine graduated family contribution rates for newly qualifying families under program; provide guidelines for such rates and require agency to increase income eligibility threshold for coverage under program each fiscal year until meeting specified income threshold. ^[FN13]

Mississippi

- On January 4, 2022, 2022 MS H.B. 97 (NS) was introduced. It would require the Governor and Division of Medicaid to negotiate to obtain federal waiver to expand Medicaid coverage. ^[FN14]
- On January 17, 2022, 2022 MS H.B. 1000 (NS) was introduced. It would expand Medicaid eligibility for individuals satisfying waiver criteria to receive services through a provider sponsored health plan. ^[FN15]



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Pennsylvania

- On March 8, 2022, 2021 PA H.B. 2379 (NS) was introduced. It would require the secretary to apply to CMS each year for a waiver to institute a work requirement.
- On March 9, 2022, 2021 PA H.B. 2393 (NS) was introduced. It would require that the department request federal approval from CMS for a demonstration waiver regarding medical assistance eligibility.

Utah

On January 25, 2022, 2022 UT H.B. 220 (NS) was introduced. It would require the Division of Medicaid and Health Financing to request from CMS a Medicaid waiver or state plan amendment, or both, to expand eligibility for the Medicaid program to certain pregnant women and extend the duration of postpartum coverage.

Other Waivers

Selected Activity

Alaska

On February 18, 2022, 2022 AK REG TEXT 601213 (NS) provided notice of public comment regarding COVID flexibilities made permanent for Medicaid coverage and waiver services.

Colorado

On June 7, 2022, 2022 CO H.B. 1114 (NS) was adopted. It provides nonmedical transportation services to persons who are enrolled in certain Medicaid waiver programs.

Indiana

On September 14, 2022, 2022 IN REG TEXT 624055 (NS) provided notice of intent to adopts rules regarding assisted living Medicaid waiver services.

Minnesota

- On February 24, 2022, 2021 MN S.F. 3388 (NS) was introduced. It would prohibit private agencies from providing case management services to persons receiving certain waiver services.
- On February 28, 2022, 2022 MN REG TEXT 608535 (NS) provided notice requesting comments on the Reform 2020 Section 1115 Medicaid Waiver Amendment.

Washington

Effective May 23, 2022, 2022 WA REG TEXT 552057 (NS) enacts [WA ADC 388-845-2019](#) (What modifications to waiver services apply during the COVID-19 outbreak?).

APPENDIX A

Overview

The Social Security Act authorizes multiple waiver and demonstration authorities to allow states flexibility in operating Medicaid programs. ^[FN16] **Each authority has a distinct purpose, and distinct requirements. The three primary waivers are:**

- Section 1115 Research & Demonstration Projects: This section provides the Secretary of Health and Human Services broad authority to approve projects that test policy innovations likely to further the objectives of the Medicaid program.
- Section 1915(b) Managed Care/Freedom of Choice Waivers: This section provides the Secretary authority to grant waivers that allow states to implement managed care delivery systems, or otherwise limit individuals' choice of provider under Medicaid.
- Section 1915(c) Home and Community-Based Services Waivers: This section provides the Secretary authority to waive Medicaid provisions in order to allow long-term care services to be delivered in community settings. This program is the Medicaid alternative to providing comprehensive long-term services in institutional settings.

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services broad authority to authorize experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Flexibility under Section 1115 is sufficiently broad to allow states to test substantially new ideas of policy merit. These projects are intended to demonstrate and evaluate a policy or approach has not been demonstrated on a widespread basis. Some states expand eligibility to individuals not otherwise eligible under the Medicaid program, provide services that are not typically covered, or use innovative service delivery systems.

There are two types of Medicaid authority that may be requested under Section 1115:

- Section 1115(a)(1) ? allows the Secretary to waive provisions of section 1902 to operate demonstration programs, and



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- Section 1115(a)(2) ? allows the Secretary to provide Federal financial participation for costs that otherwise cannot be matched under Section 1903.

Projects are generally approved to operate for a five-year period, and states may submit renewal requests to continue the project for additional periods of time. Demonstrations must be 'budget neutral' over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

Section 1915(b) waiver authority allows states to operate programs that impact the delivery system of some or all of the individuals eligible for Medicaid in a state:

- by mandatory enrollment of beneficiaries into managed care programs (although states have the option, through the Balanced Budget Act of 1997 to enroll certain beneficiaries into mandatory managed care via a State Plan Amendment), or
- creating a 'carve out' delivery system for specialty care, such as behavioral health care.

Section 1915(b) waiver programs do not have to be operated statewide. They may not be used to expand eligibility to individuals not eligible under the approved Medicaid state plan. States also have the option to use savings achieved by using managed care to provide additional services to Medicaid beneficiaries not typically provided under the state plan.

To implement these programs, the Secretary may waive certain Medicaid requirements (statewide, comparability of services, and freedom of choice of provider.) There are four types of authorities under Section 1915(b) that states may request:

- (b)(1) mandates Medicaid Enrollment into managed care
- (b)(2) utilize a 'central broker'
- (b)(3) uses cost savings to provide additional services
- (b)(4) limits number of providers for services

States may offer a variety of services to consumers under an HCBS waiver program (Section 1915(c)) and the number of services that can be provided is not limited. These programs may provide a combination of both traditional medical services (i.e. dental services, skilled nursing services) as well as non-medical services (i.e. respite, case management or environmental modifications). Family members and friends may be providers of waiver services if they meet the specified provider qualifications. However, in general spouses and parents of minor children cannot be paid providers of waiver services.

States have the discretion to choose the number of consumers to serve in a HCBS waiver program. Once approved by CMS, a state is held to the number of persons estimated in its application but has the flexibility to serve greater or fewer numbers of consumers by submitting an amendment to CMS for approval.

The State Medicaid agency must submit to CMS for review and approval an application for an HCBS waiver, and the State Medicaid Agency has the ultimate responsibility for an HCBS waiver program, although it may delegate the day-to-day operation of the program to another entity. Initial HCBS waivers are approved for a three-year period, and waivers are renewed for five-year intervals.

Provisions Waived Under Section 1915(c)

Section 1902(a)(1), regarding statewideness. This allows states to target waivers to particular areas of the state where the need is greatest, or perhaps where certain types of providers are available.

Section 1902(a)(10)(B), regarding comparability of services. This allows states to make waiver services available to people at risk of institutionalization, without being required to make waiver services available to the Medicaid population at large. States use this authority to target services to particular groups, such as elderly individuals, technology-dependent children, or persons with mental retardation or developmental disabilities. States may also target services on the basis of disease or condition, such as Acquired Immune Deficiency Syndrome.

Section 1902(a)(10)(C)(i)(III), regarding income and resource rules applicable in the community. This allows states to provide Medicaid to persons who would otherwise be eligible only in an institutional setting, often due to the income and resources of a spouse or parent. States may also use spousal impoverishment rules to determine financial eligibility for waiver services.

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[FN2]

Indefinitely postponed.

[FN3]

Left in appropriations.



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[FN4]

Vetoed.

[FN5]

Died in committee.

[FN6]

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[FN13]

Died in committee.

[FN14]

Died in committee.

[FN15]

Died in committee.

[FN16]



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