

Overview: Medicaid 1115 Waivers and Block Grants



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Section 1115 Waivers: The Basics

- Section 1115 of the Social Security Act authorizes the HHS Secretary to waive certain statutory requirements of major health and welfare programs, including Medicaid and CHIP, provided the Secretary deems the initiative as a “research and demonstration project” that also “furthers the purposes” of the program.
- The waiver authority is broad, but there are some limits.



Budget Neutrality

- While there is no statutory or regulatory requirement for all 1115 waivers to be “budget neutral,” however, longstanding policy requires 1115 waiver initiatives to be budget neutral.
- Budget neutrality –
 - Federal costs under the waiver cannot exceed what would have been spent in the state without the waiver.
 - Enforced by establishing a cap on federal funds.



Medicaid 1115 Waivers – Brief History

- Broad Waivers (Mid -1990's -2001) – Medicaid managed care expansion.
 - (Examples: TennCare, Oregon Health Plan)
- CHIP Waivers (2001 and beyond) – Expanded CHIP coverage to parents, childless adults (no longer permitted), and pregnant women.
- HIFA Waivers (2001) – Provided state flexibility to reduce benefits and impose cost-sharing.



Medicaid 1115 Waivers – Brief History cont.

- Reform Waivers (2005 and beyond) – Provided state flexibility to broaden access.
 - Example: Massachusetts
- Emergency Waivers – Helps states provide expedited Medicaid and CHIP services in emergency situations.
 - Example: 911, Katrina



Block Grants



What is a block grant?

- Consolidation of existing discretionary programs and funding streams into one grant.
 - Total funding will usually be less than the funding of all the programs added together.
 - Provides more program flexibility to states.
 - May include set-asides and/or maintenance of effort requirements.
- Transforms an individual entitlement program to an entitlement to states.
 - Caps federal expenditures in some way.
 - Eliminates the individual entitlement.
 - Provides more flexibility to states.



Health, Welfare and Social Services Block Grants

Health

- Children's Health Insurance Program (CHIP)
- Maternal and Child Health Block Grant
- Preventive Health Block Grant (Eliminated in 2010)
- Mental Health Services Block Grant/Substance Abuse Block Grant -Administratively joined/Funding reduced

Welfare

- Temporary Assistance for Needy Families (TANF)

Social Services

- Social Services Block Grant (SSBG)



TANF

- Established in 1996, better known as “welfare reform,” this block grant is an entitlement to states and provides funding to states to provide cash assistance and services to low-income families.
- States receive \$16.5 billion annually in federal funds and must provide at least \$10.4 billion in state funds under a maintenance of effort (MOE) agreement. Funding has remained the same since 1996.
- TANF requires states to require 50% of all families and 90% of two-parent families to participate in work activities. Failure to meet the requirements could result in financial penalties.



Medicaid Block Grant - U.S. Territories

- Block grant is an entitlement to the territory.
- 55% federal match (increased from 50% in the Patient Protection and Affordable Care Act).
- Includes an annual inflation increase.
- Territories continue to want the block grant program transformed into the Medicaid program operated in the 50 states and the District of Columbia.



Medicaid in the 50 States

- State/Federal Partnership
- Federal match ranges from 50% - 78% based primarily on state per capita income (rolling average over 3 years)
- Individual entitlement
- Minimum requirements for:
 - Eligibility (MOE – PPACA)
 - Services
 - Reimbursement (some providers)



Medicaid Block Grants We Have Known

- Reagan (1981)
 - Federal Cap & Inflation related to Gross National Product (GNP)
 - Morphed into "The Swap"
 - Effort abandoned
- Gingrich/Clinton (1995-1997)
 - Medigant
 - Adopted by Congress, vetoed by President Clinton
 - TANF Block Grant (Adopted in 1996)
 - Welfare Reform



Medicaid Block Grants We Have Known

- Bush (2003)
 - Per Capita Grants (Medicaid/CHIP)
 - More Funds Up Front/Less Funds in the out years
 - Budget neutral over 10 years
 - Precursor to existing "global budget" demonstration grants



Medicaid Block Grants - 2011

- Representative Ryan (R-WI) proposed a Medicaid Block Grant as part of his FY 2012 budget proposal.
 - No details.
 - No bills have been introduced by authorizing committees in the House or Senate.



WHAT ARE THE ISSUES?

- MEDICAID FORMULA/FEDERAL MATCH
 - INCREASES (INFLATION, GNP, POPULATION GROWTH...)
- INDIVIDUAL V STATE ENTITLEMENT
- MINIMUM REQUIREMENTS
- MAINTENANCE OF EFFORT
- TREATMENT OF UNDOCUMENTED IMMIGRANTS
- STATE FLEXIBILITY
- PRIVATE RIGHTS OF ACTION



Issues - Minimum Requirements

- In the absence of an individual mandate.....
 - Required Services
 - Nursing facility care/oversight
 - Special populations
 - Children, Pregnant Women, People with Disabilities, Elderly, Native Americans
 - Link to foster care, adoption assistance, SSI
 - Premiums/Cost-Sharing
- Entities that receive special treatment
 - Disproportionate Share Hospitals
 - Community Health Centers



Issues - Premiums & Cost-Sharing

- State Flexibility
 - Premiums
 - Cost-Sharing & Family Responsibility
 - Mandatory Services
 - Optional Services
 - Nursing Facility & other Institutional Care
 - Residency Requirements



Treatment of Undocumented Immigrants

- Federal Funding for:
 - Emergency Health Services
 - Public Health Emergencies
 - Childhood Immunizations



As We Move Forward

- Budget Deficit Discussions
- Patient Protection and Affordable Care Act
- Pending Medicaid Issues in the Courts
 - Private Rights of Action
 - U.S. Supreme Court
 - HHS Pending Regulations regarding "Access"
 - PPACA Medicaid Expansion
 - U.S. Supreme Court



U.S. Supreme Court - Pending

- Douglas v. Independent Living Center of Southern California, Douglas v. California Pharmacist Association, and Douglas v. Santa Rosa Memorial Hospital (consolidated) - Oral Arguments - October 3, 2011
 - The questions presented are:
 - Whether Medicaid recipients and providers may maintain a cause of action under the Supremacy Clause to enforce § 1396a(a)(30)(A) by asserting that the provision preempts a state law reducing reimbursement rates?
 - Whether a state law reducing Medicaid reimbursement rates may be held preempted by § 1396a(a)(30)(A) based on requirements that do not appear in the text of the statute?
- NCSL filed an amicus brief opposing a cause of action for recipients and providers



Resources

- *The Role of Section 1115 Waivers in Medicaid and CHIP: Looking Back and Looking Forward*, Kaiser Commission on Medicaid and the Uninsured, March 2009 (Issue Paper)
- *Medicaid and SCHIP Section 1115 Research and Demonstration Waivers*, Congressional Research Service (CRS) Report (RS21054), Evelyne P. Baumrucker (September 11, 2008)
- *Temporary Assistance for Needy Families (TANF) Block Grant: Responses to Frequently Asked Questions*, Gene Falk, CRS Report RL32760, October 11, 2011