

# Disability and Aging Collaborative Webinar

## Trends in 1115 Waivers Impacting Seniors and People with Disabilities

October 13, 2017



National Council on Aging

*Improving the lives of 10 million older adults by 2020*

# Disability and Aging Collaborative

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- ADAPT
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- Disability Rights Education & Defense Fund
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- United Cerebral Palsy
- United Spinal Association
- VNAA –Visiting Nurse Associations of America

# Support

## Community Living Policy Center University of California, San Francisco

(Grant Number #90RT5026)

[www.communitylivingpolicy.org](http://www.communitylivingpolicy.org)



Funded by the Administration for Community Living, National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR).

# Power Point

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- Will an Archive of the webinar be available?

**YES! YES! YES!**

- You will receive copies in a follow up e-mail early next week. Please share with others!
- Or visit [www.ncoa.org/hcbswebinars](http://www.ncoa.org/hcbswebinars)

# Questions and Comments



**All Lines Will Be Muted During the Call  
To Ask A Question Use the Chat Function**

# Webinar Overview

- Speakers:
  - Judy Solomon  
Vice President for Health Policy  
Center on Budget and Policy Priorities
  - David Machledt, Ph.D.  
Policy Analyst  
National Health Law Program
- Questions and Answers

# Trends in Medicaid Waivers

Disability and Aging  
Collaborative

**Judith Solomon**

October 13, 2017



# Purpose of Section 1115 Medicaid Waivers

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*“Experimental, pilot or demonstration project”  
that “in the judgment of the secretary, [is] likely  
to assist in promoting the objectives of the  
program.”*

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## Statutory Objectives of Medicaid

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*So states can “furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care.”*

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# Key Requirements for 1115 Waivers

- Must be an experimental, pilot or demonstration project
- Project must be likely to assist in promoting the objectives of the Medicaid statute
- Project must be budget neutral to the federal government
- State may “waive” provisions in section 1902 of the Medicaid statute, which lists requirements for state Medicaid plans, but only to the extent necessary to carry out the demonstration

# HHS Criteria for Evaluating Whether Waivers Promote Medicaid's Objectives\*

Demonstration project must do one or more of following:

- Increase and strengthen overall coverage
- Increase or strengthen access to providers
- Improve health outcomes for Medicaid and low-income populations
- Increase efficiency and quality of care

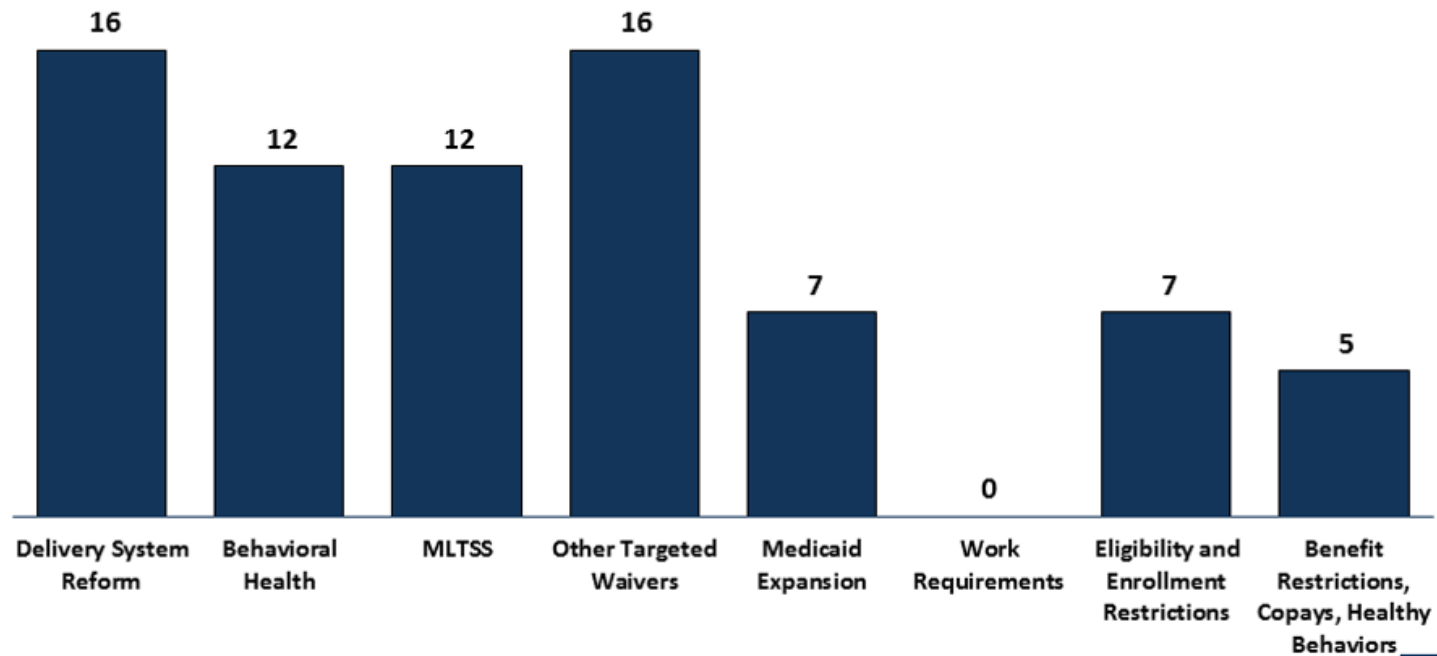
# Price/Verma Letter to Governors Suggests New Approach\*

- Make SPA and waiver process “more efficient”
- Support “innovative approaches” to increase employment
- Align Medicaid and private insurance
  - Alternative benefit designs and cost-sharing models including HSAs
  - Enforceable premiums
  - Emergency room co-payments
  - Waive non-emergency medical transportation (NEMT)
  - Waive presumptive eligibility and retroactive coverage

Figure 2

## States with Approved Section 1115 Medicaid Demonstration Waivers, September 2017

### Landscape of Approved Section 1115 Medicaid Waivers



Notes: Some states have multiple approved waivers, and many waivers are comprehensive and may fall into a few different areas.

# Pending Medicaid Waivers Include Provisions That Have Never Been Approved

- Work requirements (AR, AZ, IN, KY, ME, WI)
- Drug screening and testing (WI)
- Time limit on coverage (AZ, ME, WI)
- Limit Medicaid expansion coverage to people below poverty line (AR)
- Lock-out for failure to renew eligibility (IN, KY)

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# **1115 Demonstrations: Impacts on Older Adults and People with Disabilities**

**David Machledt, Sr. Policy Analyst**

[www.healthlaw.org](http://www.healthlaw.org) @NHeLP\_org

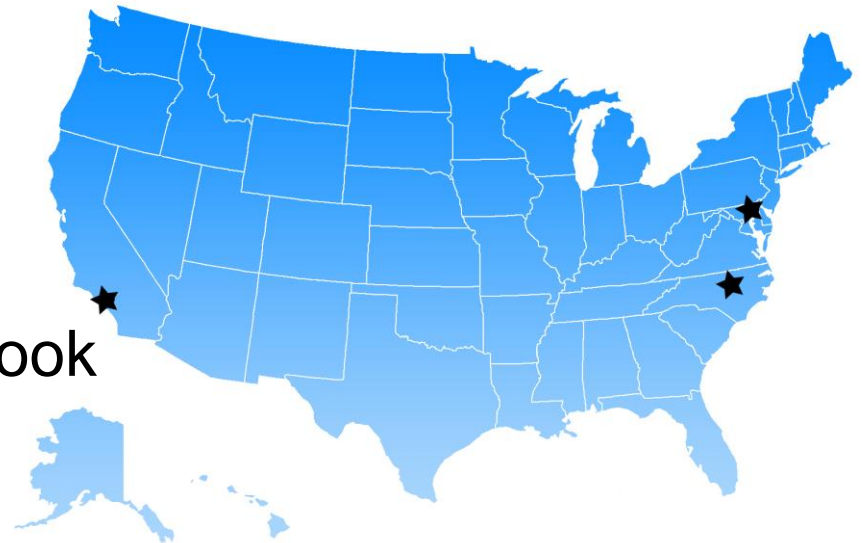
October 13, 2017



# About NHeLP

- National non-profit committed to improving health care access and quality for low income and underserved individuals and families
- State & local partners:
  - Disability rights advocates – 50 states + DC
  - Poverty & legal aid advocates – 50 states + DC

- Follow us on Social Media  
@nhelp\_org on Twitter &  
@NHeLProgram on Facebook



# 1115 Waivers: Innovation or Erosion?

Medicaid is tailored for low-income populations

- e.g. Low cost sharing and premiums
- Transportation to medical appointments, if needed
- Robust services for children and adolescents (EPSDT)

Innovations can drive better, more efficient care, but...

Waiving key guardrails can have predictable consequences.



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# IMPACTS ON OLDER ADULTS & PEOPLE WITH DISABILITIES

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# Impacts on Older Adults & People with Disabilities

Coverage for older adults and people with disabilities = large share of Medicaid costs = attractive target for budget cuts.

- Direct Threats
- Waiver Creep
- Collateral damage – Purged by Paperwork

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# Direct Threats

States have already waived or proposed waiving Medicaid provisions affecting older adults and people with disabilities, such as:

- Retroactive eligibility (IA, ME)
- Changing transfer penalty rules for assets (ME)
- Managed care for Long-term Supports & Services
- Blanket waivers of IMD exclusion (MA)

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# Waiver Creep

States have already waived a provision for one population seek to expand to others:

- Premiums/Cost sharing
- Non-emergency Medical Transportation (NEMT)
- Plans with more limited benefits

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# Collateral Damage – Purged by Paperwork

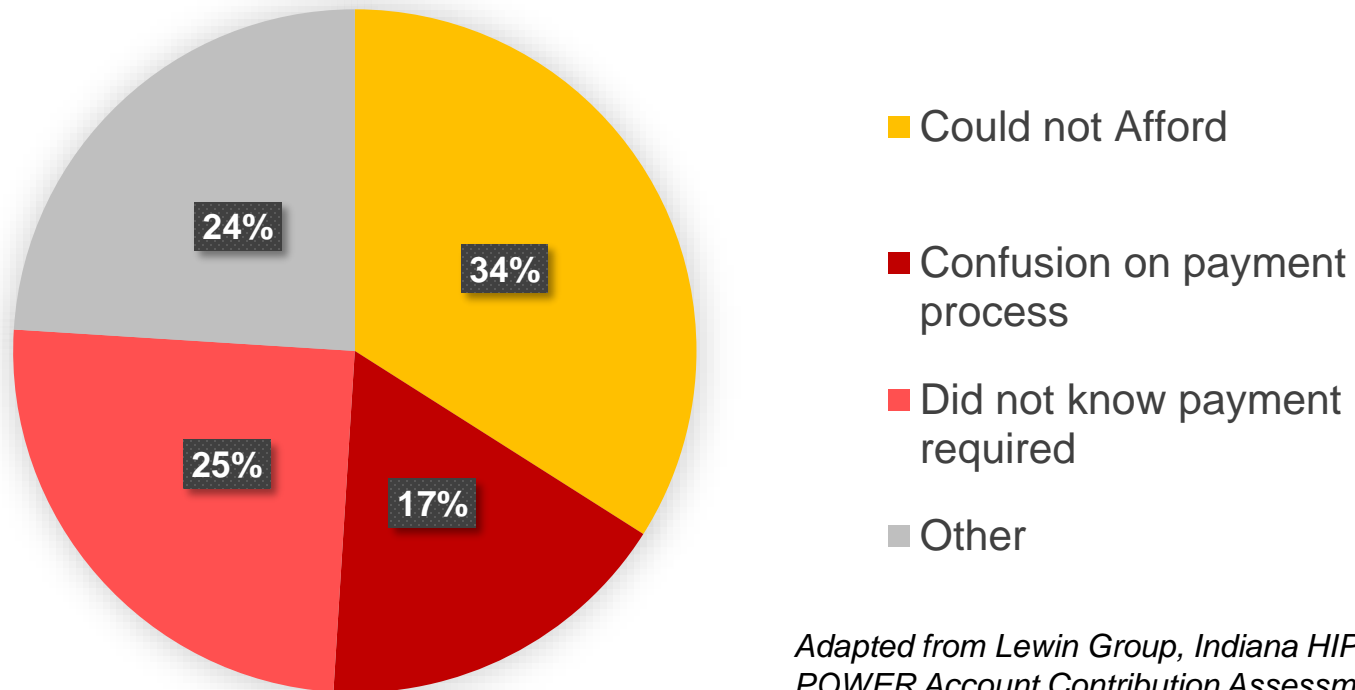
The process of identifying, screening, & verifying exemptions for people with disabilities increases red tape and lowers enrollment:

- Work requirements and medical frailty
- Partial expansion of Medicaid
- Premiums/higher cost sharing

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# Collateral Damage – Purged by Paperwork

## Reasons for Non-Payment of Premiums, Healthy Indiana Plan Basic Members



*Adapted from Lewin Group, Indiana HIP 2.0  
POWER Account Contribution Assessment*

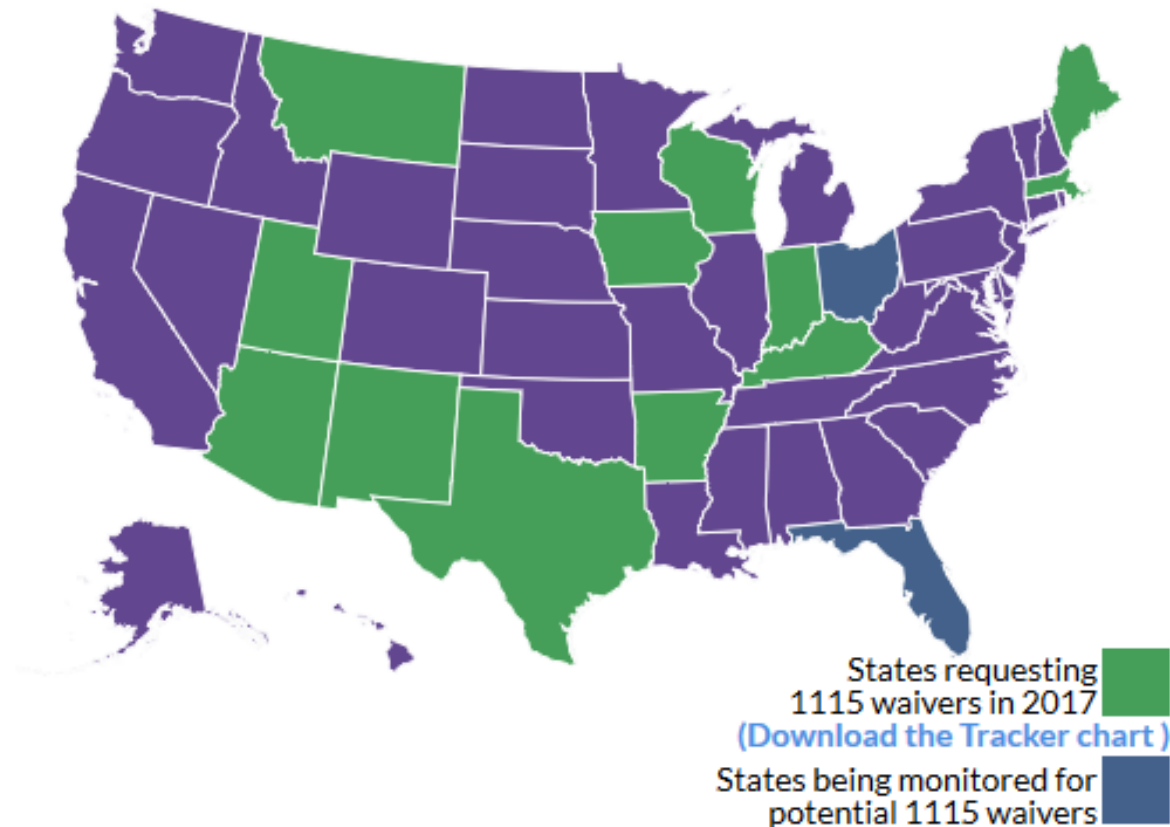
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# HOW TO WEIGH IN

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# Section 1115 Waiver Request Tracker



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# 1115 Application & Review Process

- Negotiation between State & CMS
- Detailed Application
- Approval packet:
  - Award Letter
  - Special Terms & Cond.
  - Budget neutrality agreement
- Implementation
- Evaluation and transparent reporting

CENTERS FOR MEDICARE & MEDICAID SERVICES  
SPECIAL TERMS AND CONDITIONS

NUMBER: No. 11-W-00300/8

TITLE: Montana Health and Economic Livelihood Partnership (HELP) Program Demonstration

AWARDEE: Montana Department of Public Health and Human Services

**I. PREFACE**

The following are the Special Terms and Conditions (STCs) for the Montana Health and Economic Livelihood Partnership (HELP) Program section 1115(a) Medicaid demonstration (hereinafter "demonstration") to enable Montana to operate this demonstration program. The Centers for Medicare & Medicaid Services (CMS) has granted a waiver of requirements under section 1902(a) of the Social Security Act (the Act). These STCs set forth in detail the nature, character, and extent of federal involvement in the demonstration and the state's obligations to CMS during the life of the demonstration. The STCs are effective on the date of the signed approval. Enrollment activities for the new adult population will begin on November 1, 2015, at which time Medicaid eligible adults can receive services through a third party administrator (TPA) with coverage effective January 1, 2016. This demonstration will sunset after June 30, 2019, consistent with the current legislative time frame for the Montana Health Economic Livelihood Partnership (HELP) Act, but may continue through December 31, 2020, if the Montana legislature authorizes the state to continue the demonstration and the state provides notice to CMS, as described in these STCs.

The STCs have been arranged into the following subject areas:

- I. Preface
- II. Program Description and Objectives
- III. General Program Requirements
- IV. Populations Affected
- V. Benefits
- VI. Delivery System
- VII. Premiums and Copayments
- VIII. Continuous Eligibility
- IX. General Reporting Requirements
- X. General Financial Requirements
- XI. Monitoring Budget Neutrality
- XII. Evaluation
- XIII. Health Information Technology
- XIV. T-MSIS Requirements
- XV. Schedule of Deliverables

CMS Approved: November 2, 2015  
Demonstration Period: January 1, 2016 through December 31, 2020

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# 1115 Application & Review Process - Comments & Hearings

## State Level

- Notice & “comprehensive description” of demonstration
- Min. 30 day comment period
- At least 2 public hearings
- Summary & response to public comments, including any changes made



## Federal Level

- 15 days to determine completeness
- Min. 30 day comment period
- CMS approval/denial no sooner than 15 days after comments close
- Usually negotiations last longer

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# Wherefore Commenting?

- State must respond to comments and identify changes
- Number and quality of comments matter in negotiations and potentially in litigation
- Substantive comments on the potential policy impacts
  - Expert evaluation
  - Personal stories
  - Relevant research

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# Structure of 1115 Demonstrations

1. Is it experimental? What is it testing?
2. Is it likely to assist in promoting Medicaid objectives?
3. Is it within the scope of § 1115 authority?
  - Waive compliance with requirements of Social Security Act § 1902
  - To extent and for period needed
  - Special limitations (e.g. Cost sharing)

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# Budget Cuts are not a Hypothesis

Courts: “A simple benefit cut, which might save money, but has no research or experimental goal, would not satisfy this requirement.”

Question goals such as “alignment with commercial market” with no clear experiment.

# What else can you do?

- Media strategy
- Work with state legislature (depending)
- Push for robust independent 1115 evaluation

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# Helpful Resources

- NHeLP [waiver](#) page for 1115 tracker, sample comments, background and legal/policy analysis;
- CCF [SayAhh!](#) blog and website has waiver comments;
- [CBPP](#) and Kaiser Family Foundation
  - [Section 1115 Medicaid Demonstration Waivers: A Look at the Current Landscape of Approved and Pending Waivers](#)
  - [Medicaid Waivers Should Further Program Objectives, not Impose Barriers to Coverage and Care](#)
  - [The Effects of Premiums & Cost Sharing on Low Income populations](#)
  - Other analysis on 1115 evaluations and literature reviews

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## THANK YOU

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## Questions?