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1115 Demonstrations Rules of Engagement

Testimony for the New Mexico Legislative Health and Human Services Committee

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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

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1115 Waivers: Innovation or Erosion?

Medicaid tailored for low-income populations

- *e.g.* Low cost sharing and premiums
- Transportation to medical appointments, if needed
- Robust services for children and adolescents, including periodic screening and timely treatment

Innovations can drive better, more efficient care, but…

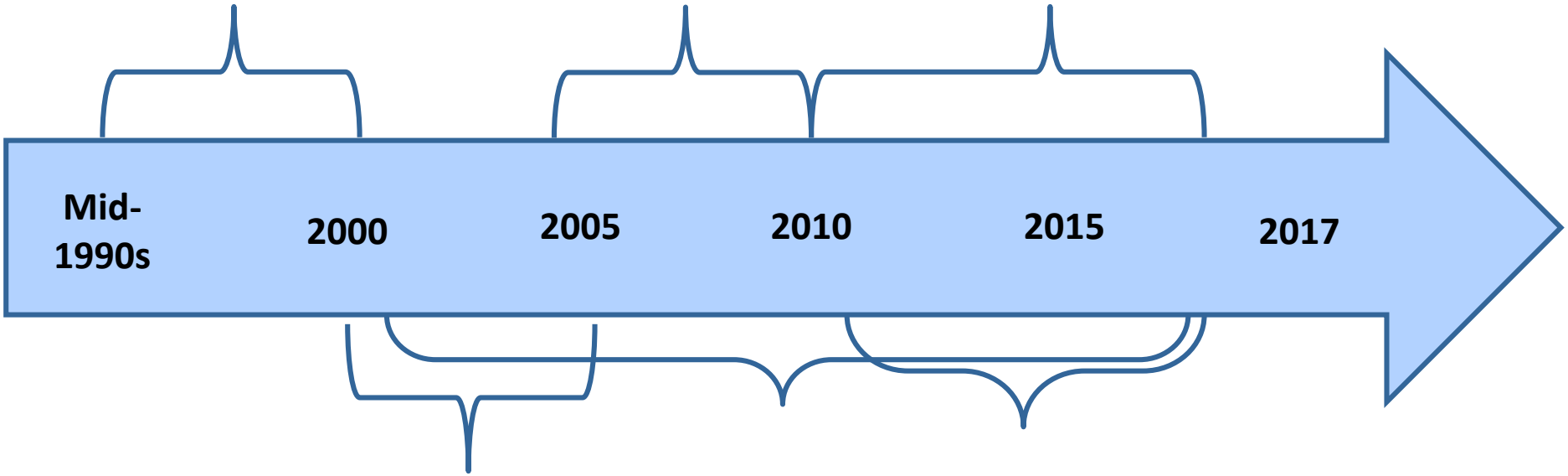
Waiving key guardrails can have predictable consequences.

History of Section 1115 Medicaid Demos

Expansion/managed care waivers: Focused on childless adults or optional eligibility groups; many waivers began as efforts to implement broader managed care systems (e.g., Minnesota, New York, Oregon, Tennessee)

Reform waivers: Initiatives to restructure Medicaid financing/delivery (e.g., Vermont, Florida, Rhode Island) and expand coverage (Massachusetts)

Delivery System Reform Incentive Program (DSRIP) waivers: (e.g., California, Texas, New York, Washington); **Uncompensated Care (UC) Pool waivers** (e.g., Florida, New Mexico, Texas)



Health Insurance Flexibility and Accountability (HIFA) waivers: CMS initiative to promote a streamlined approval process; some states used waivers to reduce program costs by setting enrollment caps and reducing benefits (e.g., Colorado, New Jersey, Oregon, Utah)

Emergency waivers: Waivers for 9/11, natural disasters and public health crises (e.g., New York, Louisiana, Michigan)

Alternative Expansion waivers: Alternative approaches for covering ACA expansion adults (e.g., Arkansas, Indiana, Michigan)

Section 1115 Demonstrations Today

Four Types of Waivers in Recent Years

Managed Care Waivers: new populations and new services

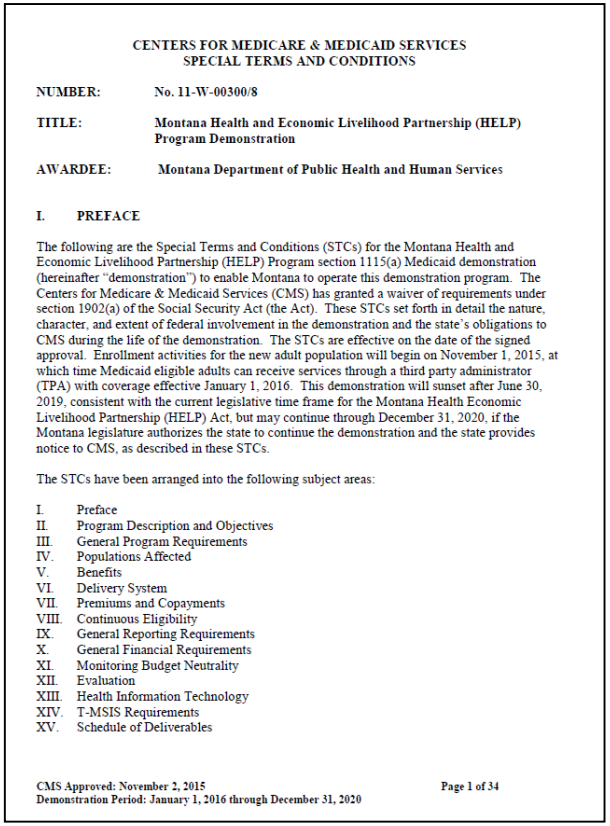
Delivery System Reform Waivers: often involve substantial federal investment; 12 states have DSRIP type waivers

Uncompensated Care Pool Waivers: new policies established by Obama Administration; 9 states have UCC waivers

Expansion Waivers: accompanied by new programmatic authorities but only to expansion populations; 7 states have such waivers

§ 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 Page 1 of 34
Demonstration Period: January 1, 2016 through December 31, 2020

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§ 1115 Application & Review Process - Comments & Hearings (42 CFR 431.420)

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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Structure of 1115 Demonstrations

1. Experimental, pilot or demonstration project
2. Secretary finds:
   - Likely to assist in promoting the objectives of the Medicaid Act
3. Secretary may:
   - Waive compliance with requirements of Social Security Act § 1902
   - To extent and for period needed

Other Limits on § 1115 Demos

- Other statutory protections, *e.g.*
  - Americans with Disabilities Act/§ 504
  - Title VI of the Civil Rights Act
  - Administrative Procedure Act
- Constitutional protections, *e.g.*
  - Due Process

Key Issues in Centennial Care Proposal

- Promoting community-based long-term care
- Better care transitions for justice-involved individuals
- Shifting to value-based purchasing
- Changing billing for long-acting contraceptives
- Waiving comprehensive children's benefit (EPSDT)
- Waiving non-emergency medical transportation
- Mandatory premiums & cost sharing
- Retroactive eligibility
- Family Planning restrictions

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Centennial Care Premiums and Cost Sharing

Experimental?

- Voluminous research and past experience
- Is it novel? At least six other states currently "evaluating" Medicaid premiums.
- Centennial Care application not clear on hypothesis or on premium policy: will there be a lockout or not?
- Courts: "A simple benefit cut, which might save money, but has no research or experimental goal, would not satisfy this requirement."

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Centennial Care Premiums and Cost Sharing

Promotes objectives of Medicaid?

- Premiums on low-income populations inhibit enrollment
  - Indiana– 29% of eligible adult required to pay to start or continue coverage did not overcome that barrier
  - No estimates of NM enrollment impact
- Cost sharing leads to poorer medication adherence and delayed or foregone care
- Out-of-pocket maximum shields enrollees from financial ruin

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Centennial Care Premiums and Cost Sharing

Scope of waiver authority?

- Premium and cost sharing limits are in §§ 1916 and 1916A
- Medicaid law requires any waiver of Medicaid cost sharing to meet additional experimental design requirements at § 1916(f)

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Centennial Care Summary

- Congress intended § 1115 for pilot testing innovative experiments that evaluate new policy concepts
- Section 1115 generally provides the Secretary with broad discretion, within limits
- Decisions exceeding those limits can be subject to legal challenge
- Closely consider policy impact and experimental value of Centennial Care provisions, including the human side

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