



# **Administrative Threats to Medicaid: Medicaid Waivers**

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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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# Roadmap

- What is Medicaid
- What are Medicaid waivers
- What's at risk?

# What Is Medicaid?

- Medicaid is the largest public health insurance program in the country, currently insuring about 74 million people
  - Medicaid covers low-income individuals
- Medicaid is a Federal program, but it is funded jointly by Federal and State governments, and it is almost entirely implemented by States
  - States have tremendous flexibility in how they implement Medicaid
  - States get partial federal funds for their Medicaid spending

# The Medicaid Promise

- Federal-state partnership –
  - States pay part of the costs
  - On average 57% paid by the federal government, but up to 75% in states with lowest per capita income
  - Enhanced federal match for system upgrades, services for newly eligible adults, family planning, preventive services
- No waiting lists (except for some waiver programs)
- As an “entitlement” Medicaid is a “property interest” under the Constitution and cannot be taken away without due process

**GUARANTEED**

# Medicaid Waivers – § 1115

- One of the most important waiver authorities in Medicaid is § 1115
- It allows HHS to waive federal Medicaid requirements for a state to do an innovative health care project
- Historically, used to do coverage expansions, managed care, family planning, and lately, Medicaid Expansion

# Things Have Gotten Much Worse

1. Worse waivers are being requested and approved...
2. With no new expansions...
3. And targeting traditional Medicaid populations

# § 1115 Waivers: Experiment or backdoor cuts?

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.





# § 1115 Waivers background

- § 1115 scope has expanded dramatically and now accounts for 1/3 of Medicaid spending
- Under previous Administration, 7 states received waivers as part of Medicaid expansion
  - Premiums with lockouts and waiting periods
  - NEMT, retroactive eligibility waivers
  - Higher cost sharing

# § 1115 Waiver Trends (pre-2017)

## 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

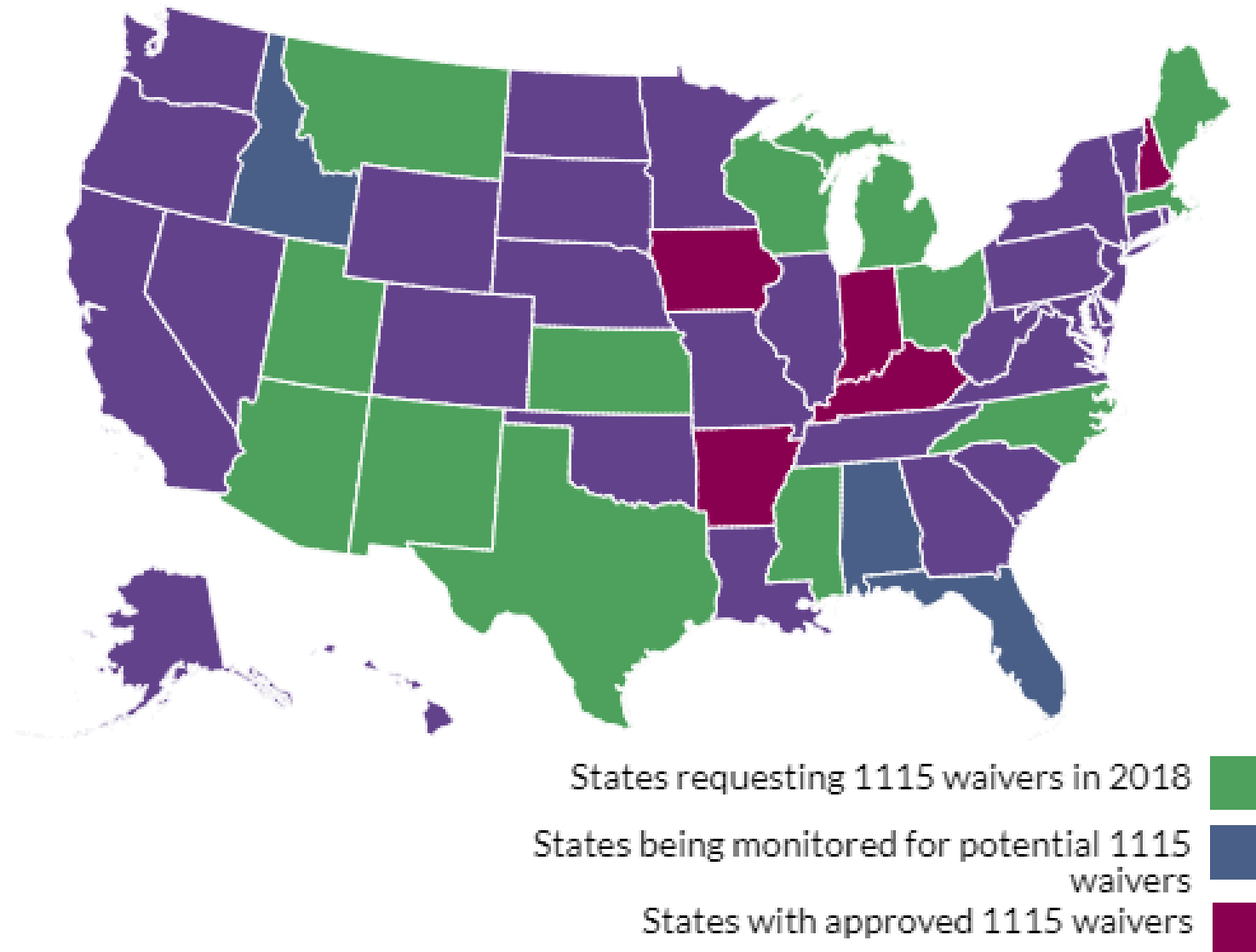


**Expansion Waivers:** accompanied by new programmatic authorities but only to expansion populations; 7 states have such waivers

# Current Issues in § 1115 Waivers

- High, mandatory premiums & cost sharing
- Mandatory exclusions
- Life-time limits
- Work requirements
- Drug testing
- Retroactive eligibility
- Non-emergency transportation

# Section 1115 Waiver Request Tracker



# Limits on 1115 demonstrations

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

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# Kentucky Litigation Overview



- Class action with 16 plaintiffs
- Filed against HHS, CMS, and leadership
- Filed in U.S. District Court, DC
- Co-counsel: Kentucky Equal Justice Center, Southern Poverty Law Center
  - Additional help from law firm Jenner & Block
- Asking the court to (1) declare waivers illegal and (2) enjoin the waivers

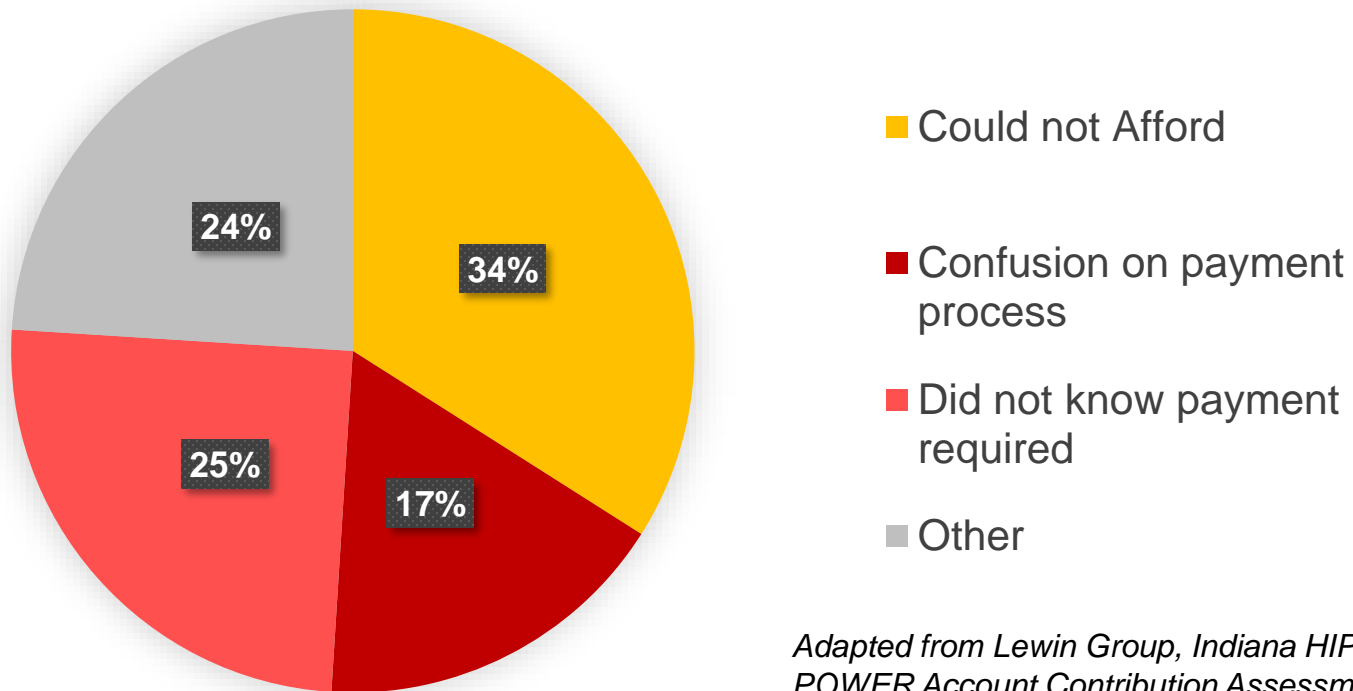
# Collateral Damage – Exemptions

- The process of identifying, screening, & verifying exemptions increases red tape and lowers enrollment.
- Sanctions disproportionately impact people with disabilities and serious medical conditions.



# 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*

# Collateral Damage – Work requirements

- **People with disabilities** who should be exempt lose coverage due to documentation or verification issues
- **People facing substantial barriers to work** due to health or functional status may not qualify as exempt
- **People with disabilities** facing substantial barriers to work will not receive adequate employment supports
- **Low-wage workers** will lose coverage due to unstable hours and reporting/verification problems
- **Caregivers** may not be exempt, or may have to document their caregiving hours as work activities

# Going Forward

- Each state will be a separate case
- Litigation will not be a “one and done” solution
- Litigation is just one piece of a larger campaign that is needed to stop bad waivers & protect the integrity of the Medicaid program



# Advocacy & Enforcement

There are a lot of different ways to be involved:

coalitions

evidence

comms

plaintiffs

amicus

comments

letters

hearings

# Helpful § 1115 Resources

- NHeLP [waiver](#) page for 1115 tracker, sample comments, legal/policy analysis, & approved waiver fact sheets
- [CBPP](#), Kaiser Family Foundation, and [CLASP](#)
  - [How Might Older Nonelderly Medicaid Adults with Disabilities Be Affected By Work Requirements in Section 1115 Waivers?](#)
  - [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](#)



## THANK YOU

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