



THE WORK REQUIREMENT: A REGULATORY STATUS UPDATE

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Overview

Major events in NH since the last roundtable



Brief NH update



Status of work/community engagement outside NH



Future of CMS Approvals

Key Dates in NH Medicaid Expansion (May 2018 to July 2019)

May 7, 2018

NHHPP Premium Assistance
1115 Demonstration Waiver
Approved with
work/community engagement
requirement

**November 30,
2018**

Granite Advantage
Health Care
Program 1115
Demonstration
Approved



May 30, 2018
Work/Community
Engagement
Roundtable

July 23, 2018

NH Submits Granite
Advantage 1115
Demonstration
waiver application

Key Dates in NH Medicaid Expansion (May 2018 to July 2019)

January 1, 2019

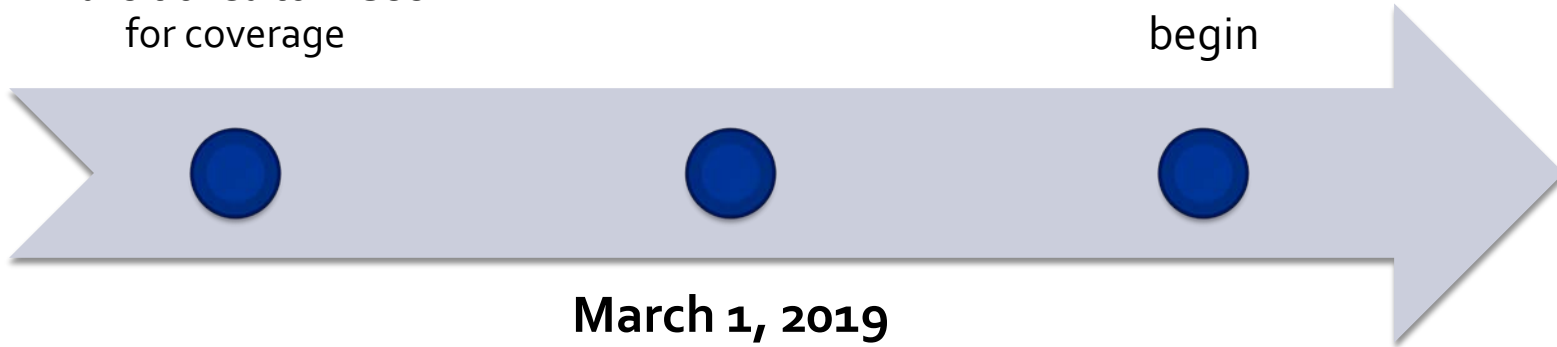
Granite Advantage
Beneficiaries
Transitioned to MCOs
for coverage

July 1, 2019

NH's new MCO
contracts set to
begin

March 1, 2019

Work/Community
Engagement
Requirement planned
effective date



Some CMS Special Terms and Conditions Differences

	May 7, 2018	November 30, 2018
Opportunity to Cure	No limit (STC 47c)	“Beginning May 1, 2020, the repeated consecutive use of the opportunity to cure to satisfy community engagement requirements by making up deficient hours for a month during the following month, for an entire one-year eligibility period, is prohibited.” (STC 22c)
State Assurances	Includes a list of required state assurances (STC 48)	Additional and more detailed requirements, including, among others: <ul style="list-style-type: none"> • Monitor the application of exemptions for an impermissibly discriminatory impact (STC 24j) • Provide disenrolled/suspended beneficiaries with information to access care at low/no cost (STC 24u)
State Reporting Requirements	Eligibility and enrollment monitoring plan (STC 48q, s)	Implementation Plan (STC 24v, 28) Monitoring Protocol (STC 29, 30)
Delayed Adverse Action	No adverse action for not satisfying the work requirement until CMS reviews and approves monitoring plan (STC 48q)	Not addressed (no relevant STC)
Medically Frail Individuals	NH will institute a process to determine whether an individual is medically frail (STC 19)	No separate requirement for a state instituted process (no relevant STC)
Retroactive Coverage	Permits conditional elimination of retroactive coverage (STC 21)	Exempts certain groups from prohibition on retroactive coverage and requires education and outreach (STC 17)

Some CMS Special Terms and Conditions Differences

	May 7, 2018	November 30, 2018
Notice to Participants	Not specified (See STC 47e)	Send written notice to currently enrolled beneficiaries explaining the requirements no later than 10 calendar days after the start date of the requirements (STC 23)
Hour & Exemption Verification or Attestation	Must attest to compliance (STC 45)	Monthly, must (1) verify compliance with or exemption from requirements; or (2) self-attest to their compliance with or exemption from requirements (STC 21)
Reactivating After Suspension	Does not specify a reactivation effective date (See STC 47e)	Upon receiving information that a beneficiary has met the criteria for reactivation, eligibility will be reactivated effective the same day (STC 22d)
Notice of Failure to Comply	Send written notice that eligibility will be suspended at the end of the following month (STC 47c)	Send written notice no later than the 10 th day of the next month that eligibility will be suspended effective the first day of the month after the month in which the notice is sent (STC 22b)
Disenrolled for less than 6 Months	Not specified (STC 47b)	Begin to meet work/community engagement requirements in the first full month following re-enrollment (STC 23)
Corrective Action	Not addressed (no relevant STC)	If demonstration features are not likely to assist in promoting Medicaid objectives, CMS may require a corrective action plan, which may be an interim step to withdrawing waivers or expenditure authorities (STC 31)

CMS Explains The Objectives of the Medicaid Program

The purpose of the Medicaid program is:

- To furnish medical assistance and other services to vulnerable populations
- To advance the health and wellness needs of its beneficiaries

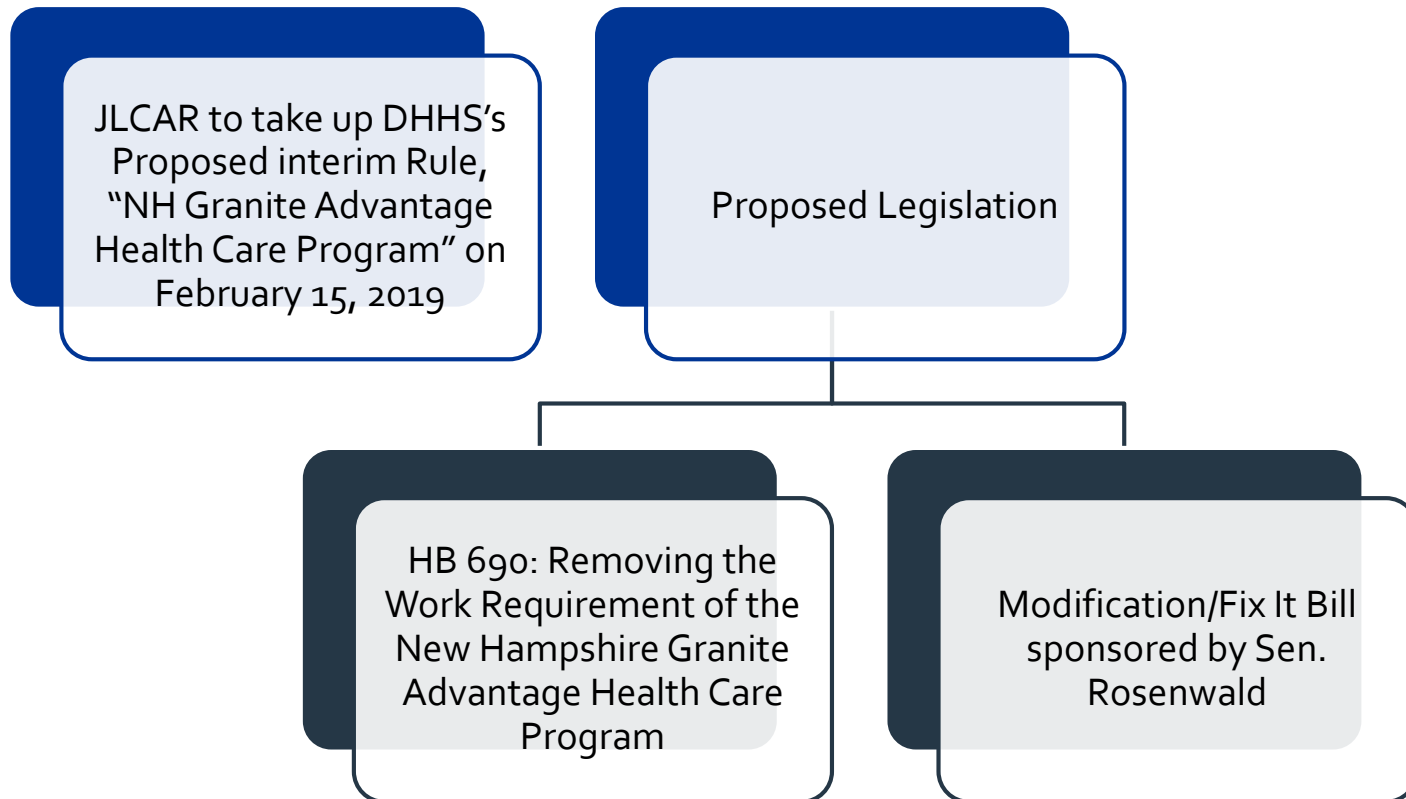
Section 1115 Demonstrations can:

- Include policies designed to address certain health determinants, including by encouraging beneficiaries to engage in health-promoting behaviors and to strengthen engagement by beneficiaries in their personal health care plans.
- Test policies that ensure the fiscal sustainability of the Medicaid program.
- Experiment with different ways of improving health outcomes and strengthening the financial independence of beneficiaries.

CMS Determines That Waiver Advances the Objectives of the Medicaid Program

- The demonstration promotes beneficiary health and financial independence.
- The demonstration will furnish medical assistance in a manner that improves the sustainability of the safety net because....
 - If CMS were to disapprove the Granite Advantage demonstration, we recognize that the state plans to end its current coverage of the new adult group that the Granite Advantage program was designed to cover, as the state has informed CMS that, under its interpretation of state law, it would be required to terminate coverage for its expansion population should CMS not approve this demonstration extension.
 - ...promoting improved health and wellness ultimately helps to keep health care costs at more sustainable levels.
 - Reducing dependency on public assistance while still promoting Medicaid's purpose of helping state furnish medical assistance by allowing New Hampshire to stretch its limited Medicaid resources, preserving the health care safety net for those New Hampshire residents who need it most.
 - Enhancing fiscal sustainability allows the state to provide services to Medicaid beneficiaries that it could not otherwise provide.

Other Items to Watch





WORK/COMMUNITY ENGAGEMENT OUTSIDE NH

With A Closer Look at Arizona, Arkansas and Kentucky



Approved and Pending Work Requirement Waivers – Covered Populations and Age Exemptions, as of May 8, 2018

	AR - approved	AZ	IN - approved	KS	KY - approved	ME	MS	NH - approved	UT	WI
Expansion Adults [^]	X	X	X		X			X		
Traditional Adults*			X	X (parents 0-38% FPL)	X	X (parents 0-105% FPL)	X (parents 0- 27% FPL)		X (parents 60- 100% FPL; childless adults 0- 100% FPL)	X (childless adults 0- 100% FPL)
Age Exemptions	50+	55+	60+	65+	65+	65+	65+	65+	60+	50+
Hours Required	80/mth	20/ wk	Up to 20/wk	20-30/ wk	80/mth	20/wk	20/wk	100/mth	3 consecutive mths of job search/ training unless working 30/wk	80/mth

*Other groups such as Transitional Medical Assistance, family planning only, or former foster care youth, may be included in some states.

[^] NC's amended Section 1115 application, submitted on November 20, 2017, includes provisions (premiums and work requirements) that would affect newly eligible adults *only if proposed state legislation ("Carolina Cares") is enacted*. These provisions are not reflected in the table, as the state has not yet added this population to its Medicaid program.

Approved Work Requirement Waivers – Covered Populations and Age Exemptions as of January 18, 2019¹

	AR implemented	IN implemented	KY ^{3*}	ME ^{4*}	MI [*]	NH [*]	WI [*]	AZ [*]
Expansion Adults	X	X	X		X	X		X
Traditional Adults ²		X	X	X (parents 0-105% FPL)			X (childless adults 0- 100% FPL)	
Age Exemptions	50+	60+	65+	65+	63+	65+	50+	50+
Hours Required	80/mth	Up to 20/wk	80/mth	80/mth	80/mth	100/mth	80/mth	80/mth

1. Data compiled by The Henry J. Kaiser Family Foundation; Populations, exemptions, penalties or consequences, and other details vary significantly by waiver.

2. Groups such as Transitional Medical Assistance, family planning only, or former foster care youth, may be included in some states.

3. On November 20, 2018, CMS reapproved the Kentucky HEALTH waiver, including all of the provisions set aside in a previous decision issued by the DC federal district court in *Stewart v. Azar*, with minor technical changes.

4. Although Maine's work requirement provision was approved on December 21, 2018, its implementation is uncertain given the change in governorship effective January 2, 2019.

* Denotes a state where the work requirement waiver has been approved, but it is not implemented.

Maine: January 22

“Governor Janet Mills sent a letter to the Centers for Medicare & Medicaid Services informing the agency that Maine would not accept the terms of the pending 1115 Medicaid waiver. Instead, Governor Mills has directed Acting Commissioner of Labor Laura Fortman and Acting Commissioner of Health and Human Services Jeanne Lambrew to make available vocational training and workforce supports to MaineCare participants at every opportunity while increasing access to needed services that keep people in the workforce.”

<https://www.maine.gov/governor/mills/news/lieu-medicaid-restrictions-governor-mills-directs-dhhs-labor-promote-work-opportunities-2019>



Pending Work Requirement Waivers – Covered Populations and Age Exemptions as of January 18, 2019

	AL	MS ⁵	OH	OK	SD ⁶	TN	UT	VI
Expansion Adults			X				X	X
Traditional Adults	X (parents 0-18% FPL)	X (parents 0-27% FPL)		X (parents 0-45% FPL)	X (parents 0-50% FPL in 2 counties)	X (parents 0-98% FPL)		X
Age Exemptions	60+	65+	50+	>50	60+	65+	60+	65+
Hours Required	35/wk (or 20/wk for parents & caretakers w/ a child under 6)	20/wk	80/mth	Up to 20/wk	80/mth or individual plan milestones	20/wk avg	Job search or training if not working 30/wk	Up to 80/mth

5. For non-exempt parents or caretakers whose incomes exceed the eligibility threshold as a result of meeting the work requirement, but who continue to fulfill the requirement, Mississippi would extend Medicaid coverage for a 12-month transitional medical assistance period. These beneficiaries would then qualify for an additional 12 months of coverage contingent upon continued work/community engagement participation.

6. For non-exempt parents or caretakers whose incomes exceed the eligibility threshold as a result of meeting the work requirement, but who continue to fulfill the requirement, South Dakota would extend Medicaid coverage for a 12-month transitional medical benefits (TMB) period. These beneficiaries would then qualify for an additional 12 months of premium assistance (limited to no more than the previous year's TMB per member per month amount) to pay for employer-sponsored insurance or qualified health plan premiums. Beneficiaries would be responsible for cost sharing and any premium costs exceeding the TMB amount during the premium assistance period.

Most Recent Approval: Arizona



- January 18, 2019: CMS approved Arizona's request to add a community engagement/work requirement to its section 1115 demonstration project
- Work/Community Engagement Requirement
 - Beneficiaries in the new adult group, age 19 to 49, must meet requirements, unless exempt
 - Federally recognized Native American tribes are exempt, among others
 - 80 hours per month
 - Must report monthly
 - 3 month grace period after determined eligible for the work requirement
 - Failure to comply or report for any month after the grace period results in the beneficiary losing coverage for 2 months.
 - Automatic reactivation if individual continues to meet all other eligibility criteria
- CMS did not approve Arizona's request to limit recipients to 5 years of Medicaid benefits over the course of their lifetime
- Work requirement may begin January 1, 2020
- Expected to impact 120,000 of the state's 1.8 million Medicaid recipients

First State to Implement: Arkansas



- Work Requirement
 - June 1, 2018: New work and reporting requirements took effect for the initial group of beneficiaries (age 30-49)
 - Must engage in 80 hours of work or other qualifying activities each month
 - Must report their work or exemption status by the 5th of the following month
 - Report must be made using an online portal or, beginning mid-December, by phone
- From September through December 2018, 18,164 people were disenrolled for failure to comply with the new requirements for 3 months
- In January 2019, enrollees ages 19-29 will be subject to the requirements for the first time
- Litigation, *Gresham v. Azar*, is pending in the DC Federal District Court, with Judge Boasberg assigned to the case



Kentucky Litigation: *Stewart v. Azar*



- June 29, 2018: DC Federal District Court overturned Kentucky's approved Medicaid work and community engagement requirements as inconsistent with Medicaid's primary objective of providing medical assistance to those who can't afford it.
- July 20, 2018: CMS allowed additional public comment on Kentucky's demonstration project through August 18, 2018.
- November 20, 2018: CMS reapproved Kentucky's demonstration waiver program, Kentucky HEALTH.
 - Re-approval of the Kentucky HEALTH program is largely the same as the original
 - Re-approval includes requirements for the state to submit implementation and monitoring protocols and other provisions likely to impact beneficiaries' ability to retain coverage.
- The court has set a briefing schedule for Kentucky Medicaid enrollees to challenge CMS's re-approval of the waiver. On January 14, plaintiffs filed a First Amended Class Action Complaint for Declaratory and Injunctive Relief

Will CMS Continue to Approve These 1115 Demonstration Waivers?

- Continuing to approve, as recently as January 18, 2019
- Administration continues to defend and promote work requirements
 - “We are fully committed to work requirements and community participation requirements in the Medicaid Program. We will continue to litigate, we will continue to approve plans, we are continuing to work with states, and we’ll drive forward.” (July 26, 2018 statement by HHS Secretary Alex Azar.)
 - “We have a long list of states that want to do this and want to move forward helping people rise out of poverty. We think it’s important to allow them to do that. These are demonstration waivers so we think it’s important to put out as many as we can so we can learn from the different states and different approaches what works.” (November 27, 2018 statement by CMS Administrator Seema Verma.)

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