

Medicaid and Work Requirements: Has Kentucky Gone Too Far?

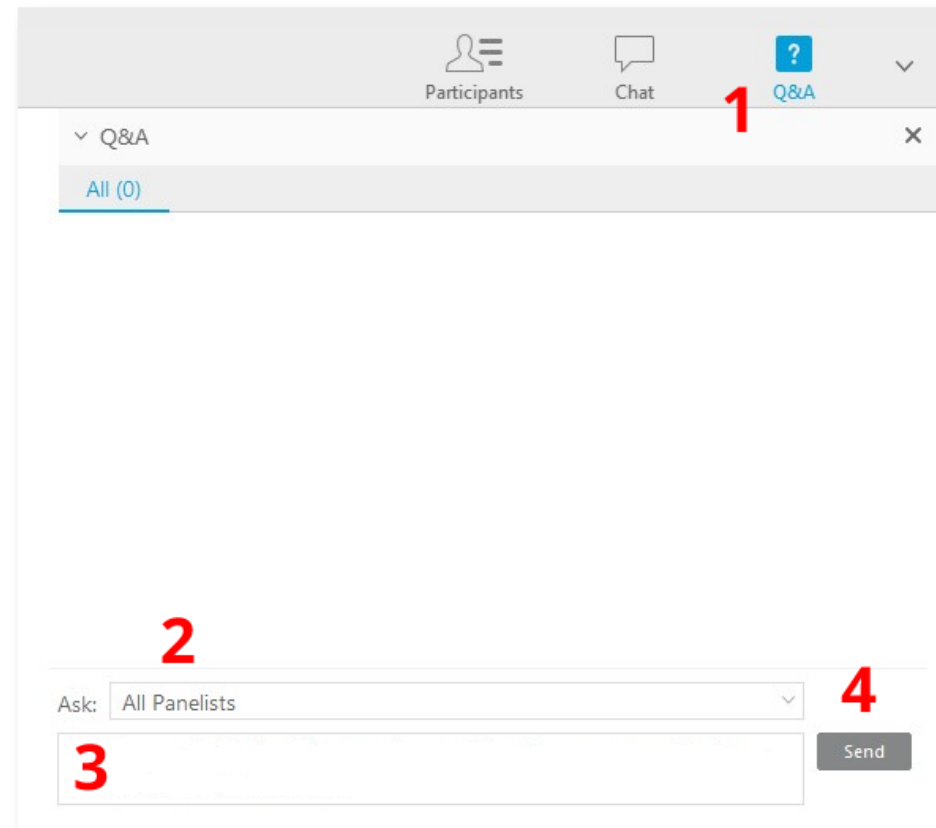
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 - Affordable Care Act

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Medicaid Background

Established in 1965 as an entitlement to health coverage

» **Aged, blind, disabled, children, parents**

Serves more than 74 million people – the largest source of health insurance coverage and the largest source of payment for long term care.

Federal funds match state expenditures: the average federal match is 58% in FY 2018

Medicaid Flexibility

Federal law establishes minimum requirements and state options

- » **Coverage categories**
- » **Services**
- » **Provider participation and freedom of choice**
- » **Premiums & cost sharing**

Medicaid Flexibility

Waiver Options

- » **Home and community based services**
- » **Delivery systems**
- » **Experimental and demonstration programs**

Affordable Care Act Changes

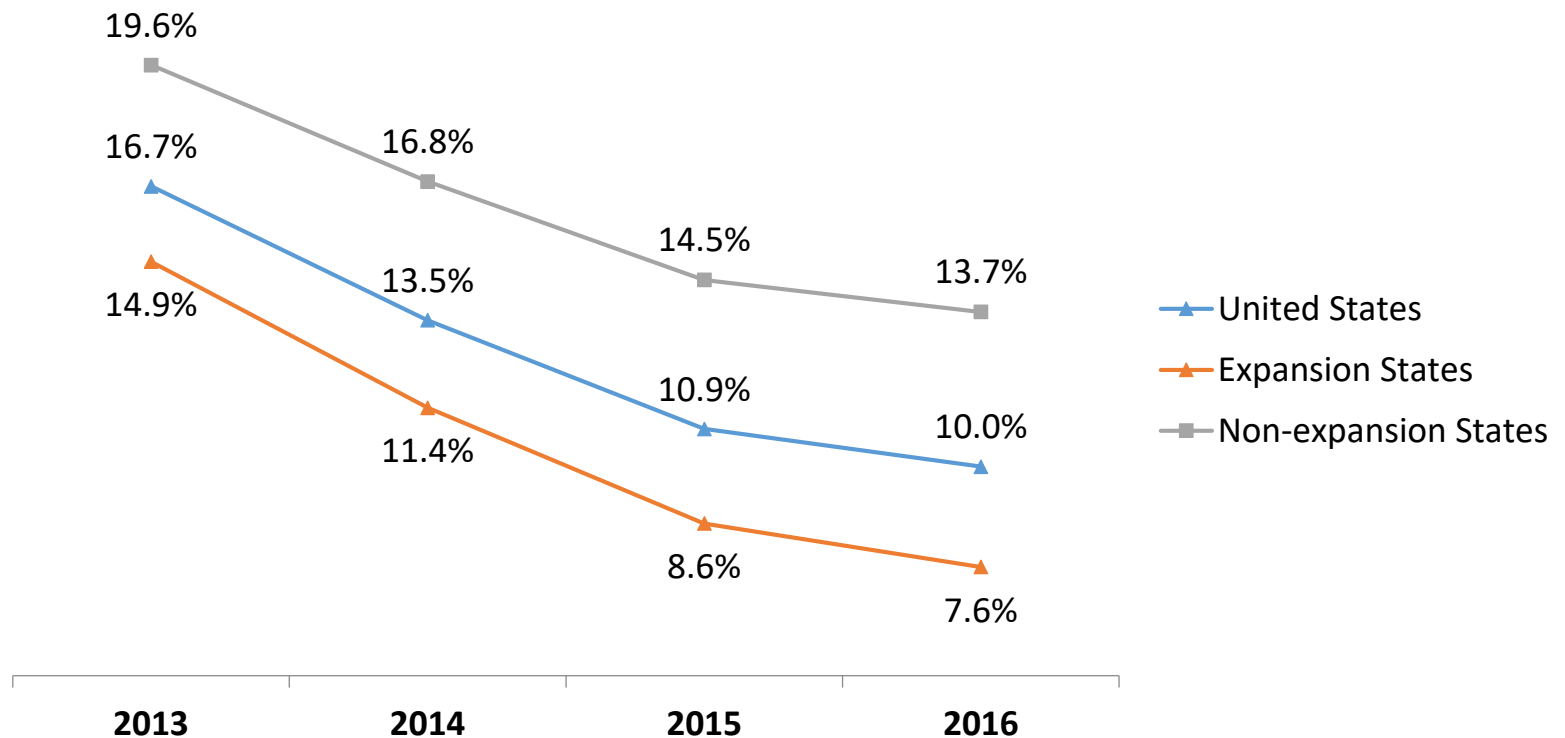
Medicaid expansion

- » Extended coverage to most citizen adults 18-64 under 133% of the federal poverty level.
- » In 2012, Supreme Court held that states do not have to expand.
- » To date, 18 states have not adopted the expansion.



Historic Drop in the Nation's Uninsured Rate

**Uninsured Rate, Persons under age 65
2013-2016**



New Direction by CMS

Letter to State Medicaid Directors March 2017

- » **Encouragement to states to increase employment and community engagement**
- » **Alignment of commercial and Medicaid coverage**

Address to State Medicaid Directors November 2017

- » **Condemned the ACA's expansion of Medicaid to "able-bodied" adults**
- » **Announced intention to move people off of Medicaid and onto commercial insurance**

Indiana 1115 Approval

- » **Framing work requirements as addressing "health determinants"**

42 U.S.C. § 1315 (§ 1115 of Social Security Act)

Experimental, pilot or demonstration project

Secretary finds:

- » Likely to assist in promoting the objectives of the Medicaid Act

Secretary may:

- » Waive compliance with requirements of 1396a of the Medicaid Act (governing state Medicaid plans)
- » To extent and for period needed to complete the experiment

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Kentucky HEALTH Waiver: Timeline

August 24,
2016:

- Initial waiver application submitted

August 2,
2017:

- Federal comment period closed

January
11, 2018:

- Dear State Medicaid Director Letter

January
12, 2018:

- Kentucky HEALTH approved

January
24, 2018:

- *Stewart v. Hargan* (D.D.C.)

February
19, 2018:

- *Commonwealth of Kentucky v. Stewart* (D. Kentucky)

Kentucky HEALTH

Approved Waiver:

- » **Mandatory work requirements**
- » **Premiums for very low income people**
- » **Cost sharing for non-emergency use of the ER**
- » **Lock outs and termination for non-compliance**
- » **No 3-months retroactive coverage**
- » **No non-emergency medical transportation**

Limits on § 1115 Authority: Approved Kentucky Waivers

Stewart v. Hargan, No. 1:18-cv-00152 (D.D.C. filed Jan. 24, 2018)

» **Plaintiffs**

» **Claims:**

- Violation of the Constitution: Take Care Clause
- Violation of the Administrative Procedure Act
 - Public notice and comment for rules
 - Dear State Medicaid Director Letter (Jan. 11, 2018)
 - Fairness in decision-making
 - Not in accordance with law
 - Arbitrary & capricious

Limit on § 1115 Authority:

An experimental, pilot or demonstration project

» Congress:

“Detailed research methodology and comprehensive evaluation”

» Courts:

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

Limit on § 1115 Authority:

Secretary may only waive provisions of § 1396a

» **Section 1396a contains 52 provisions**

» **Examples:**

Cost sharing limits, § 1396o(f)

Premium limits, § 1396o-1

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Limit on § 1115 Authority: Likely to promote the objectives of the Medicaid Act

42 U.S.C. § 1396-1

For the purpose of enabling each State ... to 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...

Compare: The purpose of TANF

42 U.S.C. § 601

The purpose of this part is to increase the flexibility of States in operating a program designed to—
(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
....

Lawsuit from Kentucky Governor

Commonwealth of Kentucky v. Stewart

- » Filed in District Court in Kentucky
- » Asking for declaratory relief that the waiver is legal
- » Sued individual plaintiffs who filed suit against HHS

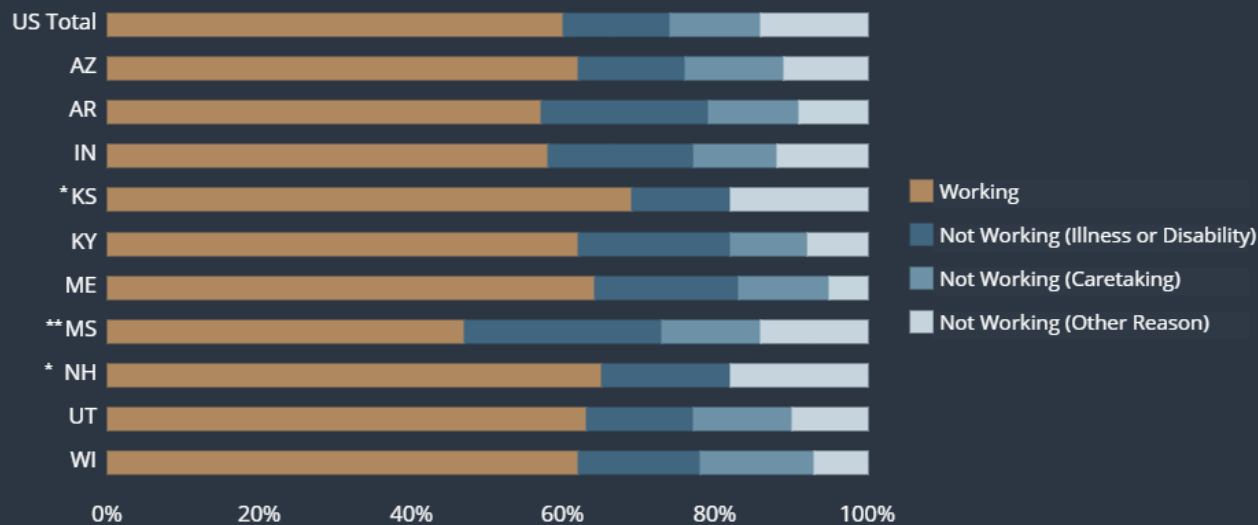
Approved and Pending Coverage Waivers

Features	Approved		Pending										
	KY	IN	AZ	MA	MI	ME	MS	MT	NC	NH	NM	UT	WI
Premiums (some states with lockout)	✓	✓	✓	✓	✓	✓		✓	✓		✓		✓
Cost Sharing	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Work Requirements	✓	✓	✓			✓	✓		✓	✓		✓	✓
Healthy Behavior Incentives	✓	✓	✓		✓						✓		✓
Non-Emergency Medical Transportation Waiver	✓	✓		✓									
Institution for Mental Disease Exclusion Waiver	✓	✓	✓	✓	✓				✓		✓	✓	✓
Retroactive Coverage Waiver	✓	✓		✓		✓				✓	✓	✓	
Prompt Enrollment Waiver	✓	✓									✓		
Drug Screening													✓
Limits on Enrollment Duration			✓									✓	✓
Partial Expansion				✓									
Health Savings-Like Accounts	✓	✓	✓		✓								
Late Renewal Paperwork Penalty/Lockout	✓	✓											
1927 Waiver for Closed Formularies				✓									

A solution in search of a problem?

CHART OF THE WEEK

10 states are seeking work requirements in Medicaid, but most non-SSI, nonelderly adults enrolled in Medicaid are already working.



* Share not working due to caregiving NA for KS and NH due to small sample size; for these states, "other reason" includes not working due to caregiving. **MS waiver application has not been certified yet by CMS.

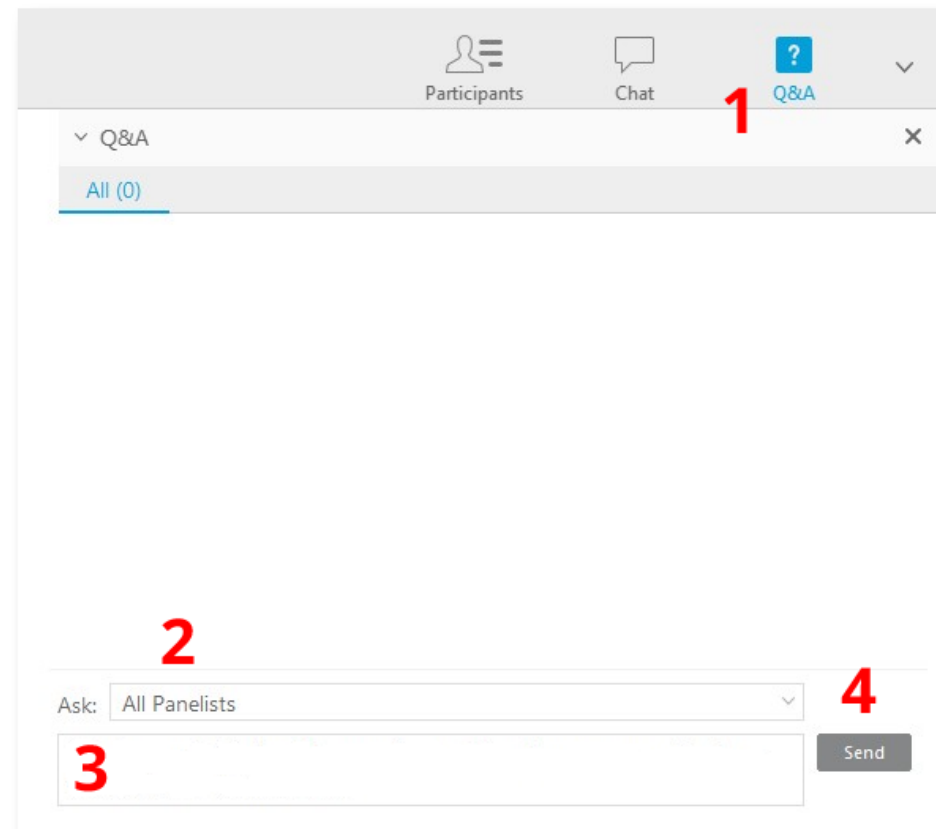
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Questions to consider

- **Do these proposals further the objectives of the Medicaid Act?**
- **How will they affect low income people?**
- **How will this affect the state's administrative burden – and how will that impact access?**
- **Is it appropriate to characterize work requirements as a social determinant of health?**

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