THE HENRY J. KAISER FAMILY FOUNDATION

A Closer Look at the Evolving Landscape of Medicaid Waivers

Web Briefing for Journalists

February 2, 2018

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Today's Web Briefing Will Be Recorded

The archived web briefing will be available later today.

Slides are available for download.

https://www.kff.org/medicaid/event/web-briefing-for-journalists-evolving-landscape-medicaid-waivers/

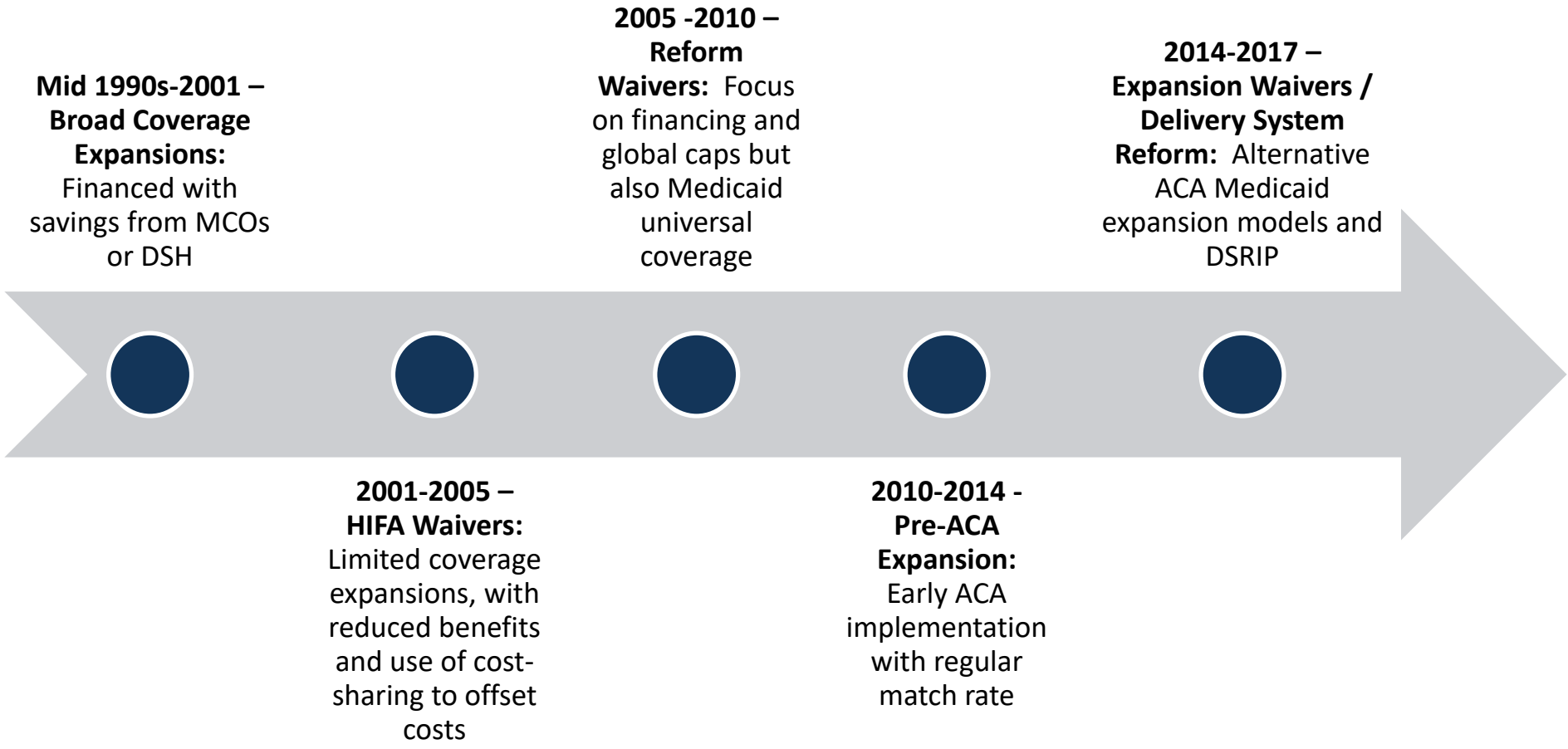
Figure 1

Section 1115 of the Social Security Act provides authority for HHS to grant Medicaid waivers.

- The HHS Secretary can waive state compliance with certain Medicaid provisions that are:
  - "Experimental, pilot or demonstration projects"
  - "Likely to assist in promoting the objectives of the Medicaid program"
  - Budget neutral to the federal government
  - Subject to state and federal public notice and comment periods
- Each Administration has some discretion over which waivers to approve and encourage; however, that discretion is not unlimited
- The Trump Administration has issued new waiver guidance:
  - November 7 – new waiver approval criteria (no longer includes increased coverage)
  - January 11 - new guidance on work requirement / community engagement waivers
- New policies recast Medicaid as a welfare program vs. a health coverage program and will test the bounds of administrative discretion for waivers

Figure 2

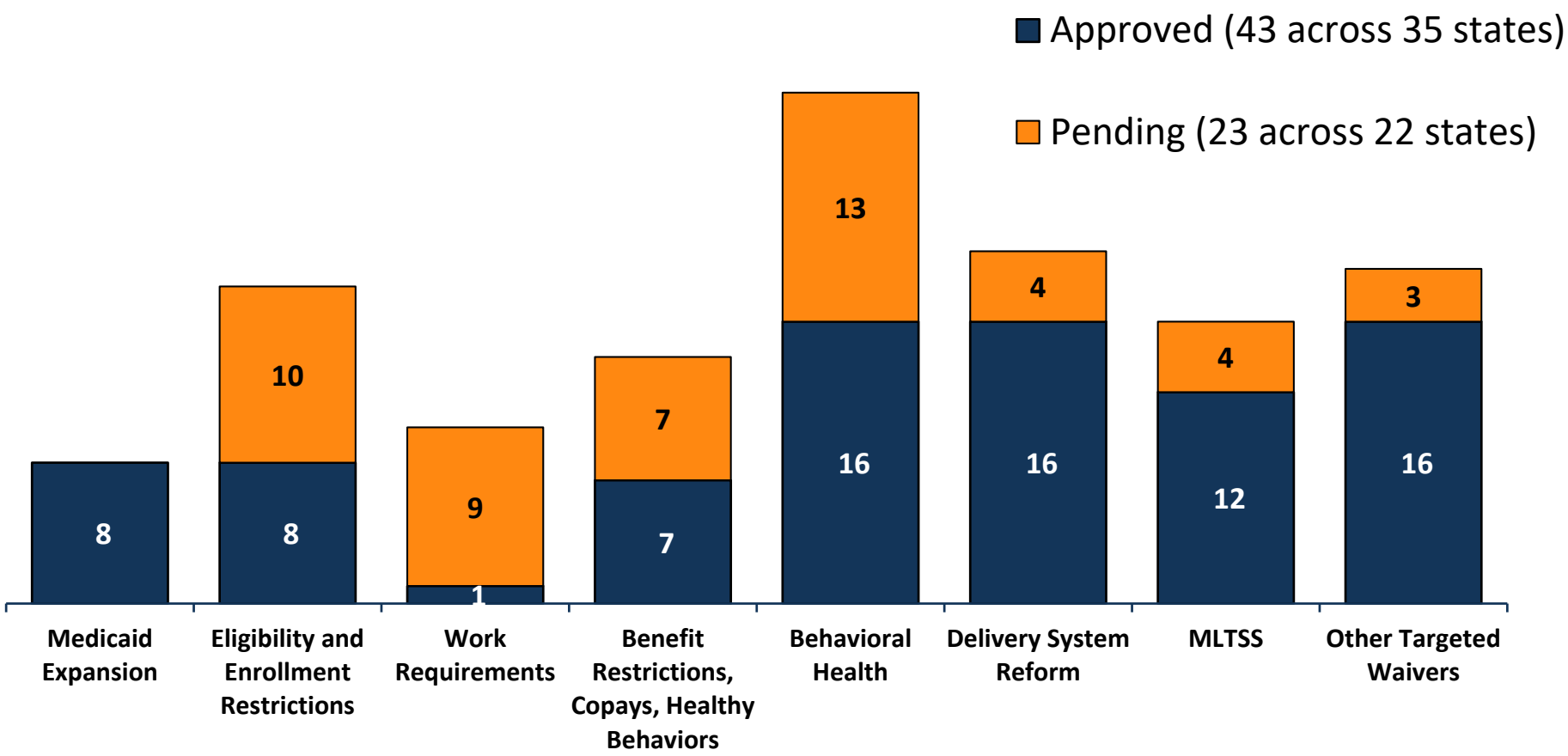
There is a long history of Section 1115 Waivers in Medicaid.



Over Time: Emergency Waivers (e.g., 9/11, Katrina, Flint)

Figure 3

As of February 1, 2018, there were 43 approved waivers in 35 states and 23 pending waivers in 22 states.



NOTES: Some states have multiple approved and/or pending waivers. Many waivers are comprehensive and may fall into a few different areas. "MLTSS" = managed long-term services and supports.
SOURCE: KFF, https://www.kff.org/medicaid/issue-brief/section-1115-medicaid-demonstration-waivers-the-current-landscape-of-approved-and-pending-waivers/

Figure 4

While some eligibility restrictions for NEW expansion populations have been approved in the past, there are a number of such proposals for current expansion and traditional populations recently approved or pending at CMS.

Approved and Pending Eligibility and Enrollment Restrictions		
Waiver Provision	**Expansion Populations**	**Non-Expansion Populations**
Premiums & Premium Assistance		
Premiums/Monthly Contribution	Approved: AR, AZ, IA, IN, KY, MI, MT Pending: NM	Approved: IN, KY Pending: ME, WI
Disenrollment and Lock-Out for Non-Payment of Premiums	Approved: IN, KY, MT Pending: NM	Pending: ME, WI
Disenrollment (Without Lock-Out) for Non-Payment of Premiums	Approved: AZ, IA	N/A
QHP Premium Assistance	Approved: AR, MI, NH	N/A
Coverage Effective Date & Time Limits on Coverage		
Waive Retroactive Eligibility	Approved: AR, IA, IN, KY, NH Pending: NM	Approved: IA, KY, UT Pending: ME, NM
Waive Reasonable Promptness	Approved: IN, KY Pending: NM	Approved: IN, KY
Eligibility Determination and Redetermination		
Lock-out for Failure to Timely Report Changes Affecting Eligibility	Approved: KY	Approved: KY
Lock-out for Failure to Timely Renew Eligibility	Approved: KY Pending: IN	Approved: KY

Figure 5

A number of eligibility restrictions for current expansion and traditional populations are pending at CMS that have not been approved in other states.

Pending Eligibility and Enrollment Restrictions		
Waiver Provision	**Expansion Populations**	**Non-Expansion Populations***
Eligibility Groups		
Limit expansion eligibility to 100% FPL with enhanced match	Pending: AR, MA	N/A
Eliminate TMA Coverage Pathway for Parents/Caretakers	Pending: NM	Pending: NM
Eligibility Determination and Redetermination		
Drug Screening and Testing	N/A	Pending: WI
Asset Test for Poverty-Related Eligibility Pathways	N/A	Pending: ME
Waive MAGI Financial Methodology	N/A	Pending: TX
More Frequent Eligibility Redeterminations	Pending: AZ	N/A
Premiums & Premium Assistance		
Tobacco Premium Surcharge	Pending: IN	Pending: IN
Coverage Effective Date & Time Limits on Coverage		
Eliminate Hospital Presumptive Eligibility	N/A	Pending: ME, UT
Time Limit on Coverage	Pending: AZ	Pending: KS, ME, UT, WI

Figure 6

States are seeking work requirements for both expansion and traditional populations.

Section 1115 Work Requirement Waivers – Covered Populations and Age Exemptions				
	Expansion Populations	Traditional Populations	Eligibility Levels	Age Exemptions
AR	X			50+
AZ	X			55+
IN	X			60+
KS		X	Parents 0-38% FPL	65+
KY - approved	X	X		65+
ME		X	Parents 0-105% FPL	65+
MS		X	Parents 0-27% FPL	65+
NH	X			65+
UT		X	Parents 60-100% FPL; Childless Adults 0-100% FPL	60+
WI		X	Childless Adults 0-100% FPL	50+

Figure 7

States are also seeking waivers for benefits, copays and healthy behavior programs for current expansion populations and traditional populations.

Approved and Pending Benefit, Copay and Healthy Behavior Provisions		
Waiver Provision	**Expansion Populations**	**Non-Expansion Populations***
Healthy Behavior Incentives	Approved: AZ, KY, IA, IN, MI, NM	Approved: FL, IN, KY, NM Pending: WI
Waive Required Benefits (NEMT)	Approved: KY, IA, IN Pending: MA	Approved: KY
Copays above statutory limits	Approved: IN, KY Pending: NM	Approved: IN, KY Pending: ME, NM, UT, WI
Fees for Missed Appointments	Approved: KY Pending: NM	Approved: KY Pending: NM
Waive EPSDT for 19 and 20 year olds	Pending: NM	Approved: UT Pending: NM
Closed Rx Formulary	Pending: MA	Pending: MA
Restriction on free choice of family planning provider		Pending: TX

Figure 8

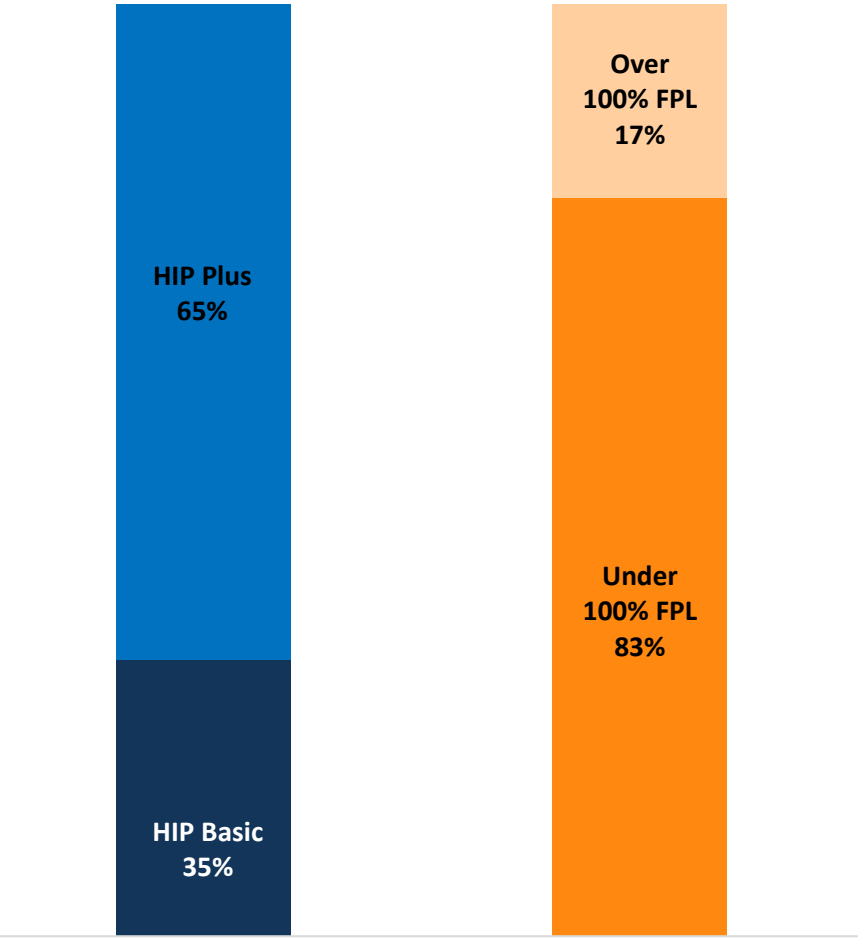
What have we learned from post-ACA Medicaid expansion waivers?

- Medicaid expansion design, whether through state plan authority or waivers, is highly dependent on the features of a state's underlying Medicaid program.
- Implementation of complex programs involves collaboration with a variety of stakeholders, sophisticated IT systems, and administrative costs.
- Premium costs and complex enrollment policies can deter eligible people from enrolling in coverage.
- Health savings accounts can be confusing for beneficiaries.
- Beneficiary and provider education and tangible incentives appear central to implementing healthy behavior programs.

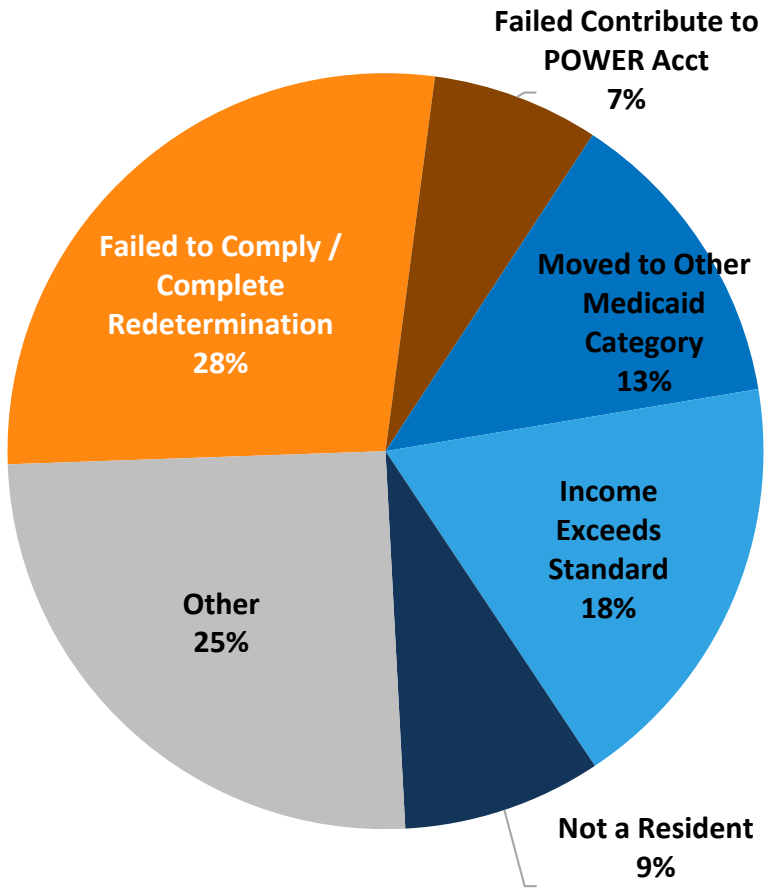
SOURCE: KFF, An Early Look at Medicaid Expansion Waiver Implementation in Michigan and Indiana (Jan. 2017).

Figure 9

Latest data for Indiana HIP 2.0 shows that over one-third of those dis-enrolled tied to failure to comply with redeterminations or make POWER account payments.



Total Enrollment 403,855

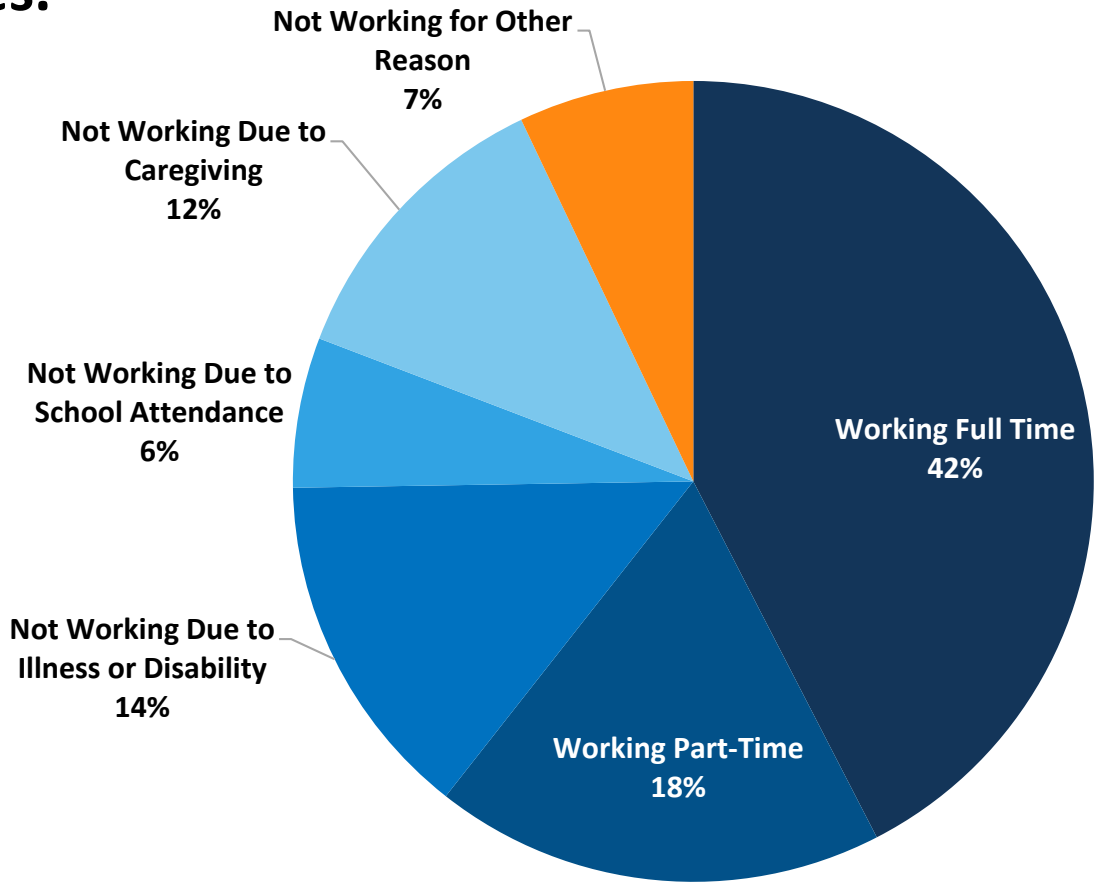


Total Closures: 45,104

Source: Data for 2017, Quarter 3, https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/in/Healthy-Indiana-Plan-2/in-healthy-indiana-plan-support-20-qtrly-rpt-aug-oct-12312017.pdf

Figure 10

The large majority of Medicaid adults are working or face barriers to work, but documenting compliance or exemptions could affect all enrollees.

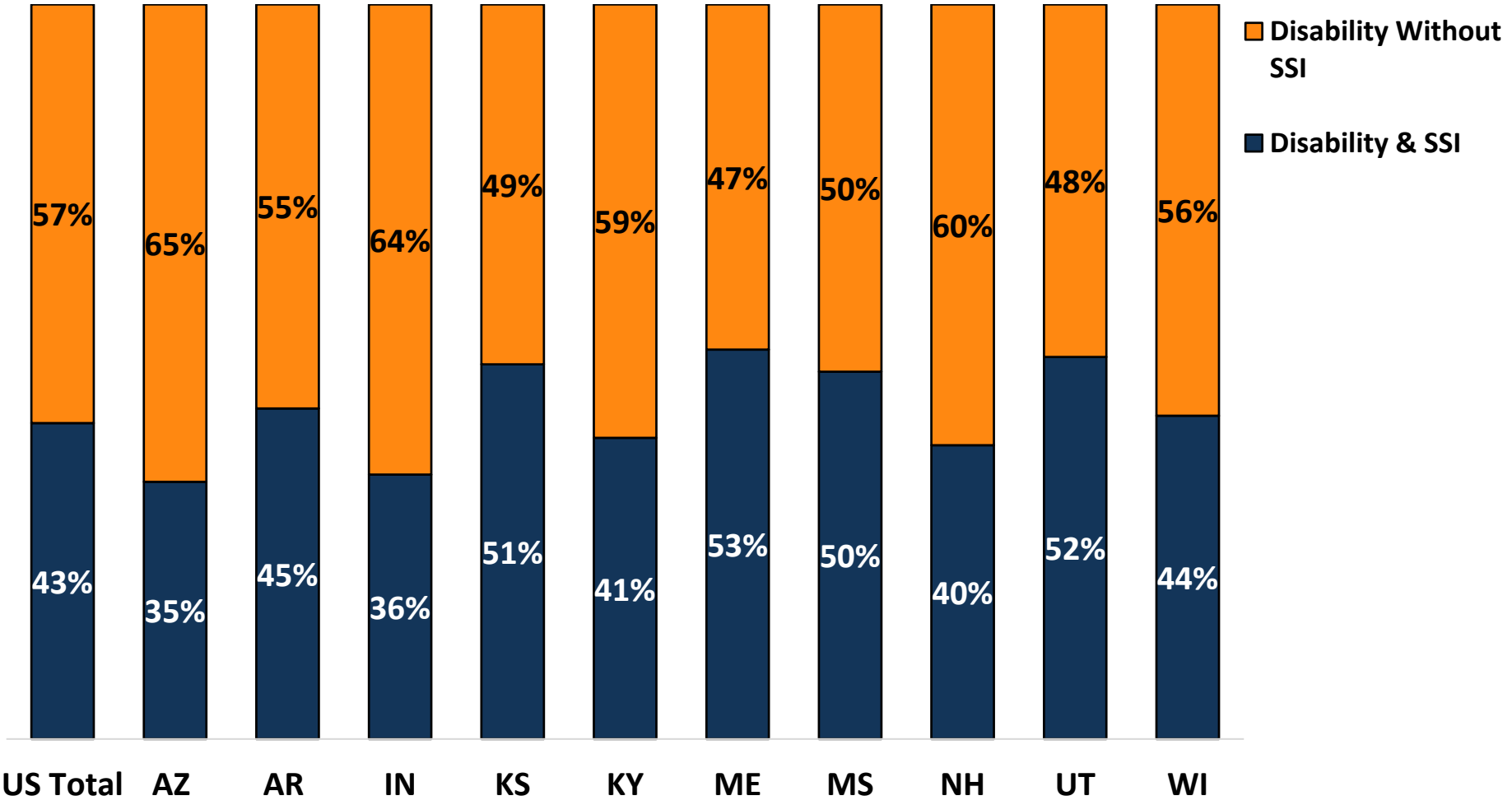


Total = 24.6 million Non-SSI, Nonelderly Medicaid Adults

NOTES: "Not Working for Other Reason" includes retired, could not find work, or other reason. Working Full-Time is based on total number of hours worked per week (at least 35 hours). Full-time workers may be simultaneously working more than one job.
SOURCE: Kaiser Family Foundation analysis of March 2017 Current Population Survey.

Figure 11

Many nonelderly Medicaid adults have a disability but do not receive SSI, making them potentially subject to work requirements.



NOTES: Includes non-institutionalized nonelderly adults ages 19-64. SSI = Supplemental Security Income.
SOURCE: Kaiser Family Foundation analysis of the 2016 American Community Survey, 1-Year Estimates.

Figure 12

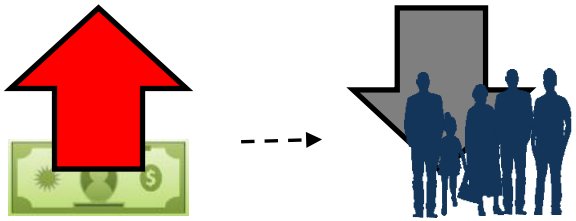
The TANF experience with work requirements can provide some lessons for Medicaid.

- **Coverage through Medicaid supports enrollees' ability to work**.
  - Many of the jobs held by enrollees do not offer health insurance.
- **Addressing barriers to work requires adequate funding and supports.**
  - TANF spending on work activities and supports is critiqued by some as too low, but it exceeds estimates of state Medicaid program spending to implement a work requirement.
- **Implementing work requirements can create administrative complexity.**
  - States can incur additional costs and demands on staff, and eligible people could lose coverage.

SOURCE: KFF, Medicaid Enrollees and Work Requirements: Lessons from the TANF Experience (August 2017).

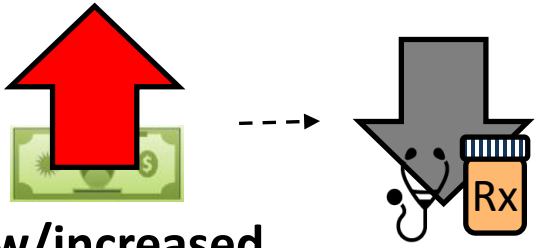
Figure 13

Research shows negative effects of premiums and cost-sharing policies for low-income populations.



New/increased premiums

- Decreased enrollment and coverage renewals
- Largest effects on those with lowest income
- Many become uninsured and face increased barriers to care and financial burdens



New/increased cost-sharing

- Even small levels ($1-$5) decrease use of needed services
- Increased use of more expensive services (e.g., ER)
- Negative effects on health outcomes
- Increased financial burdens for families

- States savings are limited
- Offset by disenrollment, increased costs in other areas, and administrative expenses

SOURCE: Kaiser Family Foundation, The Effects of Premiums and Cost Sharing on Low-Income Populations: Updated Review of Research Findings, (June 2017).

Figure 14

Increased documentation required in the waivers is counter to application and enrollment streamlining required under the ACA.

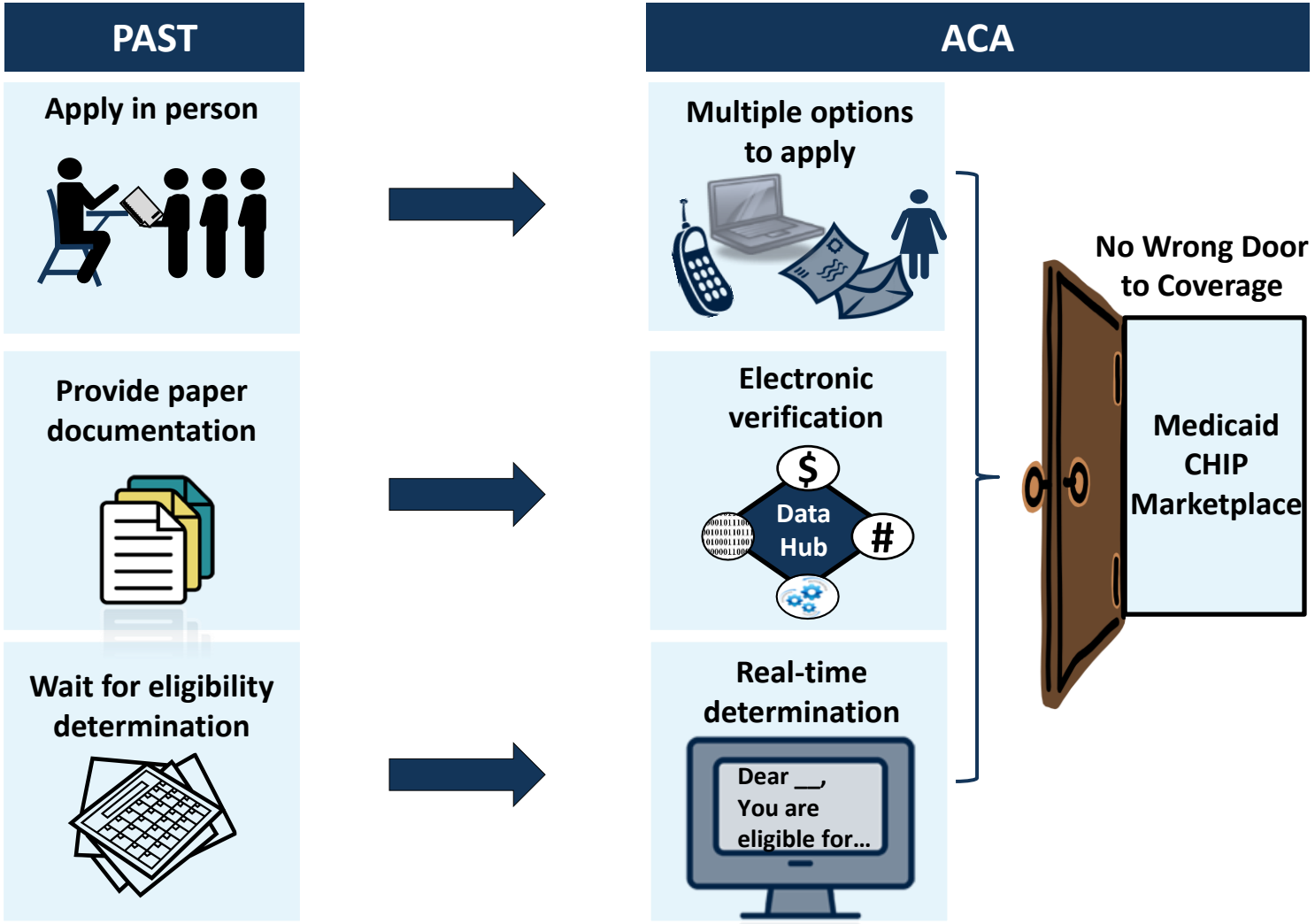


Figure 15

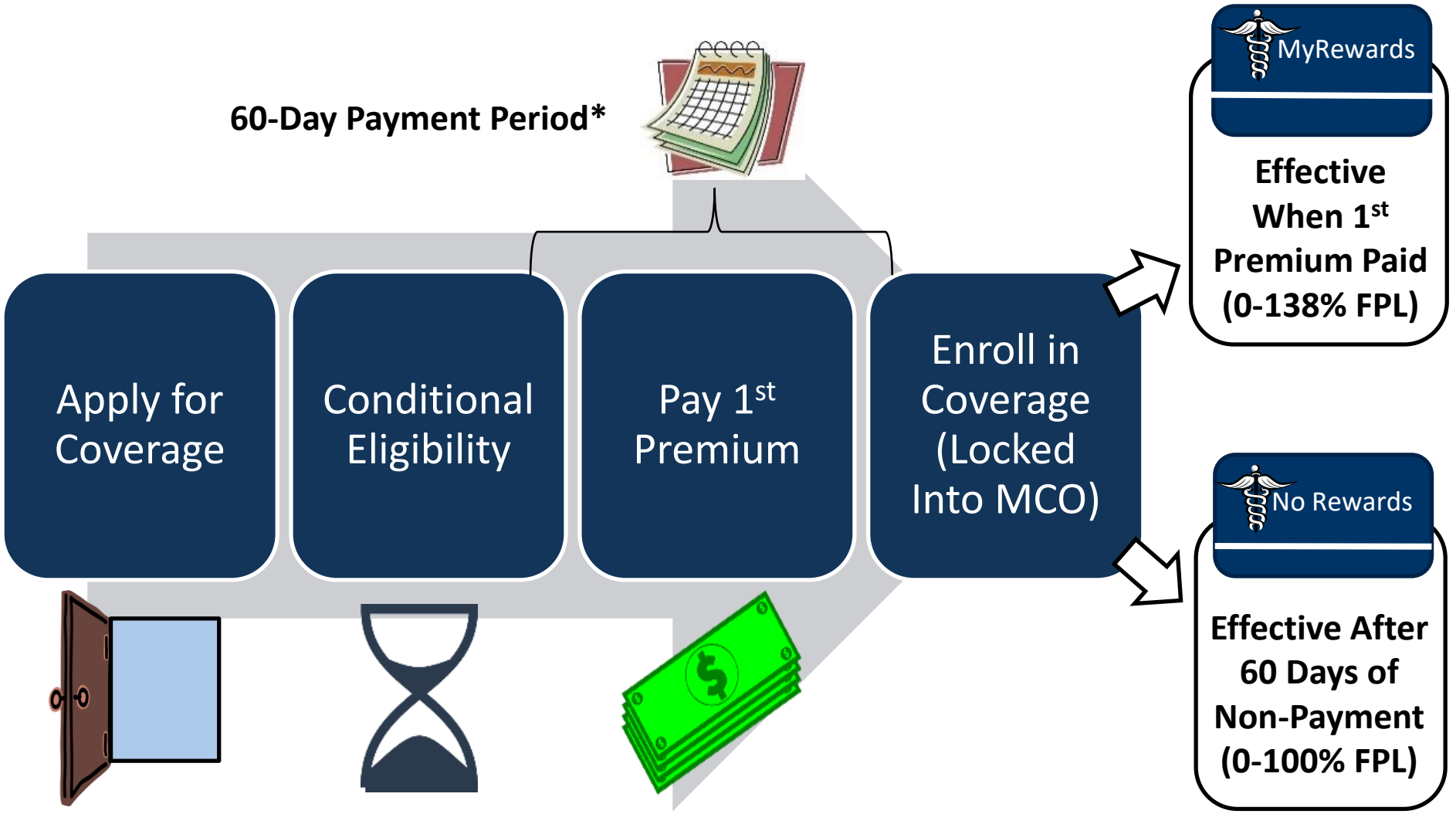
Kentucky's Section 1115 waiver includes complex provisions, including several *never before approved*.

- Kentucky HEALTH (most low-income parents and expansion adults):
  - ***Premiums up to 4% of income*** with up to 6 month lock-out for failure to pay for those > 100% FPL (exceeds the 2% of income in other waivers and the Marketplace)
  - ***Work Requirement of 80 hours/month as condition of eligibility***
  - ***Up to 6 Month Lock-out for failure to timely report changes or renew coverage***
  - Deductible and Incentive Accounts
  - Coverage Restrictions (waives retroactive coverage for most enrollees and NEMT for expansion adults)
  - ***Limited opportunities for public notice and comment:***
    - ***No requirement for state to submit operational protocols to CMS***
    - ***Notice and comment not required for changes to waiver terms that HHS Secretary determines are "of an operational nature"***
- SUD Program (for all Medicaid enrollees):
  - Waives IMD payment exclusion for short-term SUD services
  - Waives NEMT for methadone services for most enrollees

SOURCE: KFF, Approved Changes to Medicaid in Kentucky (Jan. 2018).

Figure 16

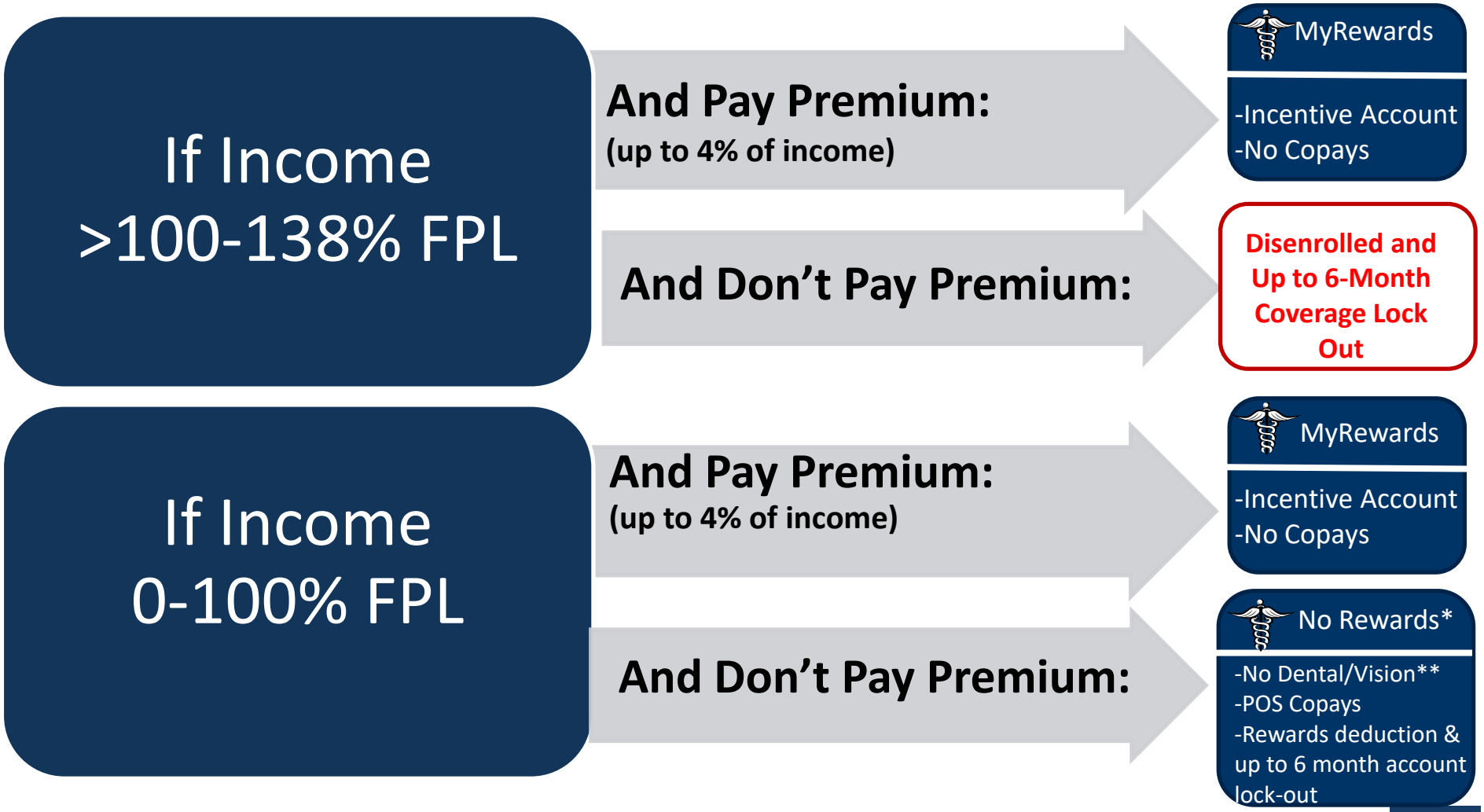
Coverage in the Kentucky HEALTH waiver is not effective until enrollees pay their 1st premium or the payment period expires.



NOTE: *Pregnant women, former foster care youth, and those known to be medically frail when applying have coverage as of the first day of the application month (without waiting for the 60-day payment period to expire).

Figure 17

Failure to pay a premium in Kentucky HEALTH results in different consequences by income.



NOTES: *Pregnant women get Rewards account without having to pay premiums. **For most expansion adults. Those who are medically frail, low-income parents, TMA, former foster care youth, and pregnant women continue to get dental/vision/OTC drugs through state plan benefit package and not through the Rewards Account.

Figure 18

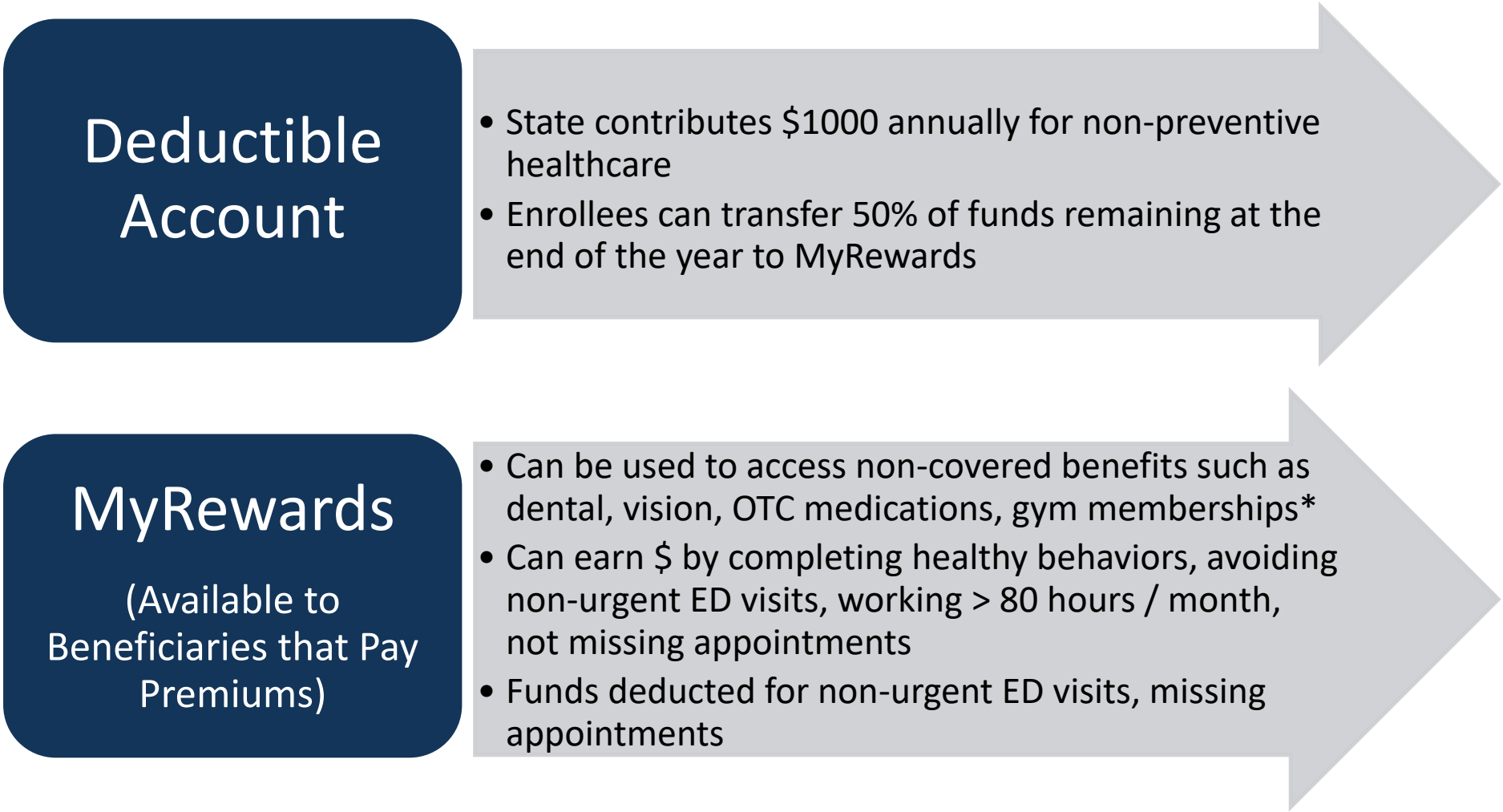
KY HEALTH requires premiums for most adults up to 4% of household income.

Household Size	50% FPL		100% FPL		138% FPL	
	Monthly Income	Monthly Premium (at 4% of Income)	Monthly Income	Monthly Premium (at 4% of Income)	Monthly Income	Monthly Premium (at 4% of Income)
1	$506	**$20**	$1,012	**$40**	$1,396	**$56**
2	$686	**$27**	$1,372	**$55**	$1,893	**$76**
3	$866	**$35**	$1,732	**$69**	$2,390	**$96**
4	$1,046	**$42**	$2,092	**$84**	$2,887	**$115**

*All non-exempt beneficiaries must pay a minimum of $1.00/month

Figure 19

Kentucky HEALTH includes a deductible account for most enrollees and an incentive account (MyRewards) for beneficiaries who pay premiums.



NOTES: *Pregnant women get Rewards account without having to pay premiums. **For most expansion adults. Those who are medically frail, low-income parents, TMA, former foster care youth, and pregnant women continue to get dental/vision/OTC drugs through state plan benefit package and not through the Rewards Account.

Figure 20

Under Kentucky HEALTH, most enrollees must document 80 hours/month of approved work activities as a condition of eligibility.

Under Kentucky HEALTH, most enrollees must document 80 hours / month of approved work activities:

The state must:

- Make good faith efforts to connect enrollees to existing community supports such as transportation, child care, language access services, and services necessary for people with disabilities to comply
  - Prohibited from using Medicaid funds for such supports
- Assess areas with high rates of unemployment, limited economies and/or educational opportunities and those that lack public transportation to determine additional exemptions or mitigation strategies
- Assess whether people with disabilities have limited job or other opportunities for reasons related to a disability and address those barriers

*Caring for a non-dependent relative or other person with a disabling chronic condition

Figure 21

Enrollees who fail to meet Kentucky HEALTH waiver requirements will lose Medicaid coverage up to 6 months.

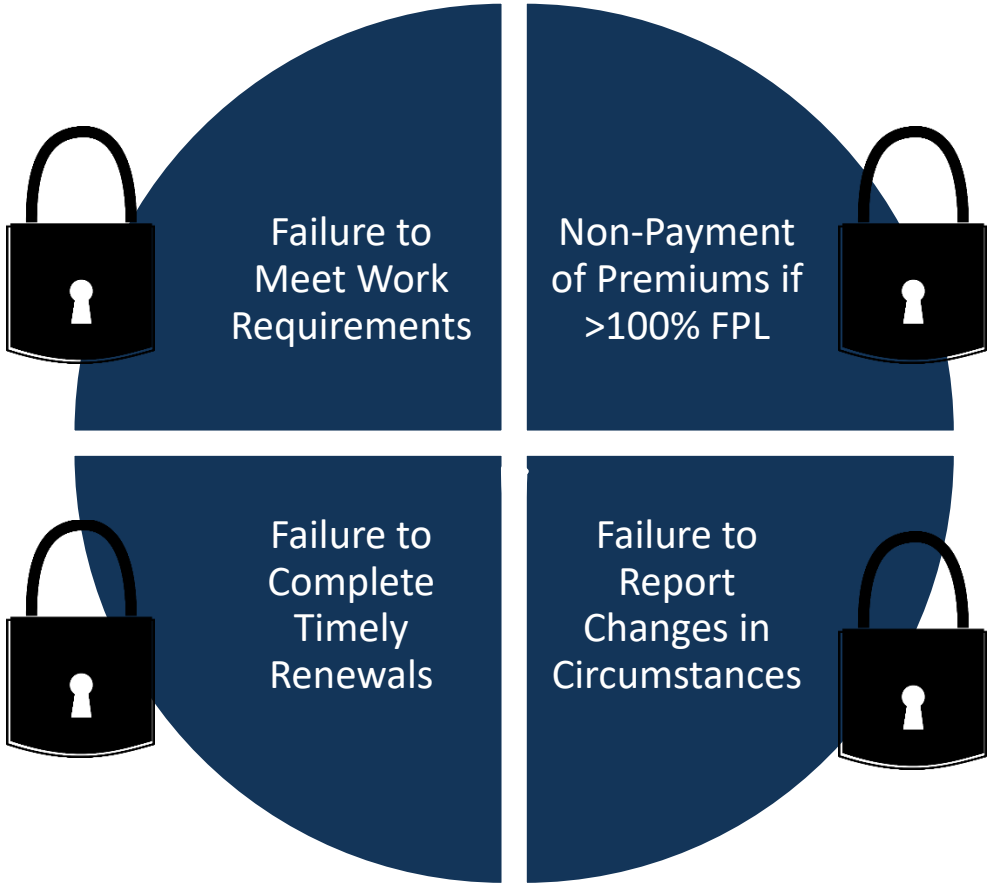


Figure 22

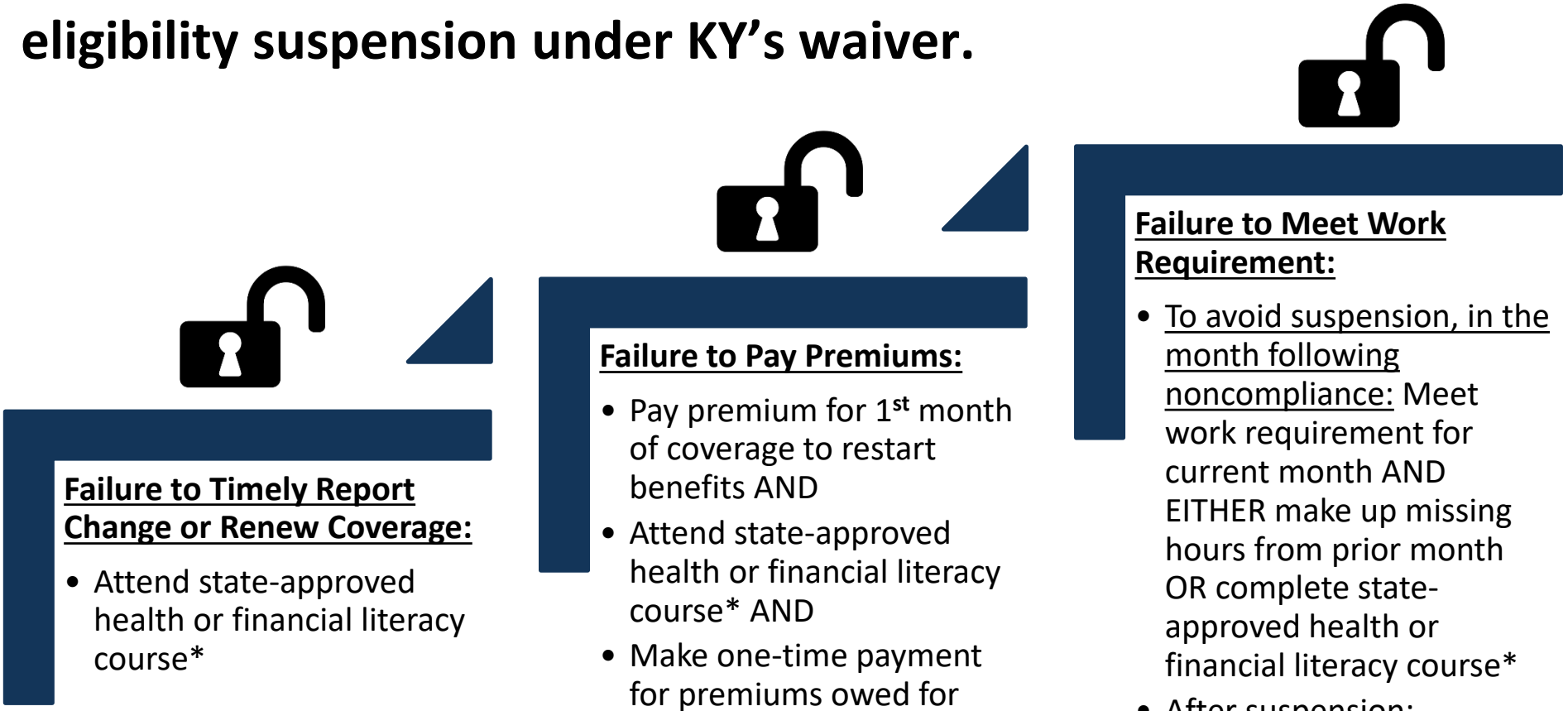
Medically frail, pregnant women, former foster care youth are generally exempt, but other exemptions that differ across provisions.

Good Cause Exemptions (For work, premiums, timely renewals and reporting)	• Hospitalization, being incapacitated, institutionalization or death of immediate family member living in the home, eviction or homelessness, caretaking or related duties for an immediate family member with a disability, victim of a declared natural disaster, victim of domestic violence • Disability under the ADA/504/1557*
Specific for Work Requirements	• Serious illness of self or immediate family member, birth or death of family member living with enrollee, severe inclement weather including natural disaster; family emergency or other event such as divorce or domestic violence. (Homelessness is not applicable)
Specific for Timely Reporting	• Being out of town during the entire reporting period, obtained or lost private coverage during the reporting period (also applies to renewals)

*Also exempt if persons with disability do not receive reasonable modifications to comply

Figure 23

There are some options to remedy a coverage lock-out or eligibility suspension under KY's waiver.



Failure to Timely Report Change or Renew Coverage:

- Attend state-approved health or financial literacy course*

Failure to Pay Premiums:

- Pay premium for 1st month of coverage to restart benefits AND
- Attend state-approved health or financial literacy course* AND
- Make one-time payment for premiums owed for each month in which healthcare services were received in the 60 days prior to lockout**

Failure to Meet Work Requirement:

- To avoid suspension, in the month following noncompliance: Meet work requirement for current month AND EITHER make up missing hours from prior month OR complete state-approved health or financial literacy course*
- After suspension: Complete 80 hours of work activities in a 30-day period OR state-approved health or financial literacy course*

NOTE: *Health or financial literacy course can be used once per year per lock-out type
**Payment of past-due premiums is not required to reactivate incentive accounts for those at or below 100% FPL.

Figure 24

A group of Medicaid enrollees has sued HHS to block the Kentucky waiver and CMS's work requirement policy.

- **The Plaintiffs.** 15 Medicaid enrollees ages 20 to 62 assert that:
  - The KY waiver and CMS work policy violate the Administrative Procedures Act, Medicaid law, and the President's Constitutional duty to faithfully execute laws
  - The waiver puts them at risk of losing Medicaid by creating new eligibility criteria that are beyond HHS's authority.
- **The Defendants.** HHS and CMS assert that:
  - Work requirement waivers "designed to promote better mental, physical, and emotional health" or, separately, "to help individuals and families rise out of poverty and attain independence" further Medicaid program objectives.
  - While "[t]his is a shift from prior agency policy. . . it is anchored in historic CMS principles that emphasize work to promote health and well-being."
- **What's Next:** CMS's response to the complaint is due on March 27, 2018.
  - The plaintiffs are asking the court to:
    - Certify the case as a class action on behalf of all Kentucky Medicaid enrollees.
    - Issue a preliminary injunction to prevent implementation of the waiver and CMS's work requirement policy until the lawsuit is resolved.

SOURCE: KFF, A Guide to the Lawsuit Challenging CMS's Approval of the Kentucky HEALTH Medicaid Waiver (Jan. 2018).

Figure 25

Approval of the waiver extension in Indiana is imminent.

- **Current HIP 2.0 Waiver Provisions (Implemented February 2015)**
  - Covered populations - expansion adults and some traditional Medicaid enrollees
  - Premiums - 2% of income for waiver beneficiaries ($1 / month for those with income 0-5% FPL)
    - Premiums are paid into a Personal Wellness and Responsibility (POWER) health account.
    - 100-138% FPL must pay a premium to effectuate coverage; those who fail to pay premiums within 60 days are dis-enrolled and locked out of coverage for six months
    - 0-100% FPL coverage does not begin until payment of a premium or end of 60 day payment period; failure to pay results in enrollment in HIP Basic
  - Demonstration for graduated ED copays for non-emergent use of ED ($8 for first visit, then $25)
  - POWER Accounts - $2,500 deductible (funded by the state and beneficiary premiums)
    - Beneficiaries who pay premiums and / or receive preventive services can rollover a portion of their share of the unused POWER account balance at the end of the year to apply to the next year's premiums.
  - Waiver of NEMT for non-medically frail expansion adults
  - Gateway to Work - voluntary state-funded work referral program (not part of HIP 2.0)
- **Key Provisions in Pending Extension**
  - Work as a condition of eligibility
  - Premiums tiers instead of flat 2% of income*
  - 3-month coverage lock-out for beneficiaries who do not timely complete the eligibility renewals
  - 1% premium surcharge for tobacco users beginning in the second year of enrollment

*approved in Dec. 2017 as within existing authority

Figure 26

What to watch as new waivers are proposed and approved:

- How will the court rule in pending litigation in KY?
- Will new flexibility encourage non-expansion states to adopt the expansion?
- Have similar waivers been approved in other states?
  - What have we learned? What does the data show?
- What populations are affected by the proposal? What are the estimated effects on coverage?
- What are the cost estimates with and without the waiver?
- Does the state have an implementation plan?
  - What are the administrative costs and challenges?
- What is the process to receive public input?
  - Will operational protocols be open for comment?
- What are the requirements for reporting and evaluation?
  - What can we learn before formal evaluations are complete that will inform the debate on waivers?

Related Resources

Medicaid Waiver Tracker: Which States Have Approved and Pending Section 1115 Medicaid Waivers?

https://www.kff.org/medicaid/issue-brief/which-states-have-approved-and-pending-section-1115-medicaid-waivers/

Section 1115 Medicaid Demonstration Waivers: The Current Landscape of Approved and Pending Waivers

https://www.kff.org/medicaid/issue-brief/section-1115-medicaid-demonstration-waivers-the-current-landscape-of-approved-and-pending-waivers/

Medicaid and Work Requirements: New Guidance, State Waiver Details and Key Issues

https://www.kff.org/medicaid/issue-brief/medicaid-and-work-requirements-new-guidance-state-waiver-details-and-key-issues/

Approved Changes to Medicaid in Kentucky

https://www.kff.org/medicaid/issue-brief/approved-changes-to-medicaid-in-kentucky/

How Might Medicaid Adults with Disabilities Be Affected By Work Requirements in Section 1115 Waiver Programs?

https://www.kff.org/medicaid/issue-brief/how-might-medicaid-adults-with-disabilities-be-affected-by-work-requirements-in-section-1115-waiver-programs/

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