

NOTICE OF MAINECARE 1115 WAIVER APPLICATION
Full Notice of Public Hearing and Public Comment Period

AGENCY: Department of Health and Human Services, Office of MaineCare Services

PUBLIC HEARINGS: Pursuant to 42 CFR Part 431.408, notice is hereby given that the Department of Health and Human Services (“DHHS”) will host two public hearings on the DHHS 1115 waiver application that will be submitted to the Centers for Medicare and Medicaid Services (“CMS”).

Table 1. Public Hearings

Hearing 1: Portland Public Hearing	Hearing 2: Augusta Public Hearing
Date: May 17, 2017	Date: May 18, 2017
Time: 9:00AM	Time: 9:00 AM
Location: Cross Insurance Arena 45 Spring Street Portland, Maine 04101	Location: Augusta Civic Center 76 Community Drive Augusta, Maine 04330
Conference Line: 1-877-455-0244	Conference Line: 1-877-455-0244
Passcode: 7319892834	Passcode: 7319892834

DESCRIPTION: This waiver seeks to implement the changes below. More information, including the proposed waiver application and the full public notice, can be found at:

<http://www.maine.gov/dhhs/oms/rules/demonstration-waivers.shtml>. More information about 1115 waivers may be accessed here: <https://www.medicaid.gov/medicaid/section-1115-demo/index.html>.

DHHS seeks a five-year waiver approval period to operate this waiver statewide.

Community Engagement and Work Requirements

This waiver proposes to require able-bodied adults to meet community engagement and work requirements. For the purposes of the 1115 waiver, able-bodied adults are individuals between the ages of 19-64 within the eligibility groups described in Table 3. Under the current MaineCare eligibility regulations, there is no similar community engagement and work requirement; however, similar requirements exist under other social service programs in DHHS, including the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF).

Under the waiver, there would be numerous ways to meet the MaineCare community engagement and work requirements, including:

- Working in paid employment at least 20 hours per week (averaged monthly). If self-employed, the member must be employed for 20 hours or more per week and receive weekly earnings at least equal to state or federal minimum wage, whichever is higher, multiplied by 20 hours; or
- Participating in and complying with the requirements of a Department-approved work program for at least 20 hours per week (averaged monthly); or
- Workfare or volunteer community service 24 hours/month; or
- Enrollment as a student at least half time, as evidenced by documentation from the academic institution; or
- Completing a combination of employment and education, based on achieving the threshold of 20 hours/week; or
- Receiving unemployment benefits; or
- Complying with work requirements for SNAP or TANF; or

- Providing caregiver services for a non-dependent relative or other person with a disabling health condition and planning or engaging in activities to formalize work in this area through exploration of training and certification programs.

DHHS may grant individual exemptions. The following individual circumstances will exempt an individual from the requirement to comply with the proposed MaineCare work requirements:

- Residing in an institutional residential facility; or
- Residing in a residential substance abuse treatment and rehabilitation program; or
- Caring for a dependent child under age six; or
- Caring for a disabled dependent; or
- Being pregnant; or
- Being physically or mentally unable to work twenty or more hours per week. If not evident, medical certification is required. In lieu of a doctor's statement, statements from nurses, nurse practitioners, social workers, or medical personnel may be sufficient; or
- Receiving temporary or permanent disability benefits issued by governmental or private resources.

Members will be assessed at the point of application or reassessment to determine if they are required to meet the MaineCare work requirements. Members who are required to meet these requirements may receive up to three months of MaineCare coverage in a thirty-six month period without meeting the community engagement and work requirements, and MaineCare may authorize an additional month of eligibility beyond the three months in exceptional circumstances.

Members who fail to comply with the community engagement and work requirements will be removed from MaineCare. The start date of the disenrollment shall be the first of the month after normal procedures for closing or removal of the individual have taken place. The disqualification period shall continue until the disqualified member complies with all registration requirements.

When a MaineCare member has failed to comply with the work requirements, a determination of whether or not good cause existed shall be made. All facts and circumstances shall be considered, including information submitted by the MaineCare member and the employer, when applicable.

Cost-sharing

Premiums

The waiver seeks to require able-bodied adults to pay monthly premiums. For the purposes of the 1115 waiver, able-bodied adults are individuals between the ages of 19-64 within the eligibility groups described in Table 3. The same individual exemptions that are listed for the community engagement and work requirements apply to premium requirements. Premiums will be tiered based on income bracket. Premiums will be due for each month that a member has MaineCare eligibility, unless specifically excluded from this requirement. Premiums are due on the first day of each month of coverage. The first month's premium must be paid prior to the start of benefits. Individuals will have sixty days from the date of their eligibility determination to pay the premium and have their benefits begin. Coverage will begin the first day of the month in which the premium is received.

In the event that a member fails to pay a required premium by the due date, the State will honor a grace period of no less than 60 days during which the member may make payment without termination from MaineCare. During the grace period, DHHS will notify the member of failure to make the required payment and that they may face termination from the program if the payment is not made. If the member does not make the payment after the grace period, the member will be disenrolled from MaineCare for a

period of 90 days. Coverage cannot begin again until any unpaid premiums are paid. When the unpaid premiums are paid and the individual is otherwise eligible, the individual will be re-enrolled.

The MaineCare premium schedule includes three premium brackets, based on member income.

Table 2. Able-bodied Adult Premium Requirements

Income Range (Percent of Federal Poverty Level)	Monthly Premium for Able-Bodied MaineCare Members
0-100% FPL	\$14
101% -200% FPL	\$43
201% and above	\$66

This requirement does not impact existing premium requirements in the MaineCare program. Members subject to these premium requirements are those who do not currently pay premiums.

Co-payments for non-emergency use of the emergency department

This waiver proposes to require all members to pay a \$20 co-payment for non-emergency use of the emergency department. This will be applied to all members with full MaineCare benefits. DHHS will be responsible for collecting these payments, and this will not result in any decrease to provider payments.

Individuals will continue to be subject to point-of-service cost sharing, which will separately be maintained consistent with Medicaid limits (no more than five percent of quarterly household income) and as described in the MaineCare Benefits Manual (<http://www.maine.gov/sos/cec/rules/10/ch101.htm>).

Missed Appointments

The waiver proposes to allow MaineCare providers to charge any MaineCare member for missed appointments. Providers must provide the MaineCare member prior notice regarding the standard office policy for missed appointments. Providers may only charge MaineCare members in accordance with standard office policy, except that the fee may not exceed the anticipated MaineCare reimbursement amount for the service that would have been delivered.

Under the current MaineCare program, providers are prohibited for charging members for missed appointments.

Eligibility Determinations

Asset Tests

This waiver proposes to apply a reasonable asset test to MaineCare eligibility determinations for members not otherwise subject to asset tests. The \$5,000 asset test will be applied to all Modified Adjustment Gross Income (MAGI) households. Assets that are not excluded as part of the existing State Plan will be countable in the determination of MaineCare eligibility.

This test would be applied to all populations who do not otherwise have an asset test as part of their eligibility determinations.

Medicaid-compliant Annuities

This waiver seeks to waive the prohibition of imposing a transfer penalty for the purchase of Medicaid-compliant annuities for long-term care coverage determinations and institute reasonable minimum payout periods for the annuitant.

Transfer penalties are applied when an individual who has assets that exceed the spousal asset allocation (a set amount of money the law allows a non-institutionalized spouse to retain for community living)

attempts to give away the excess in order to ensure Medicaid eligibility. Currently, under Section 1917(c)(a)(F) of the Social Security Act, an individual can purchase, for any dollar amount, what is widely known as a Medicaid-compliant annuity to avoid this penalty. Purchasing this type of annuity can effectively shelter an unlimited amount of money for a person (or the spouse of a person) applying for Medicaid long-term care coverage.

In addition to the request to apply a transfer penalty to these types of annuities, DHHS seeks to amend policies around the actuarial soundness criteria for these annuities. Specifically, DHHS would like to require that the minimum length of the payout of a Medicaid-compliant annuity equal 80% of the life expectancy of the annuitant, regardless of whether the annuitant is the institutionalized spouse or the non-institutionalized spouse.

Under current Medicaid long-term care post-eligibility rules, the non-institutionalized spouse's income and assets are not considered when determining *ongoing* eligibility for the long-term client. As long as the annuity pays out in full sometime within the life expectancy of the annuitant, the annuity is actuarially sound within the meaning of the rule. According to the actuarial life table published by the Social Security Administration, all men and women under the age of 100 have life expectancies of over 25 months.

Retroactive Eligibility

This waiver proposes to cease providing retroactive coverage for any person applying for MaineCare. Coverage would begin on the first day of the month in which an application is received. Currently, upon member request, the Department may assess eligibility for a period of ninety days prior to the date of application.

Presumptive Eligibility Determinations by Hospitals

This waiver proposes to eliminate the option for hospitals to make presumptive eligibility determinations. Currently, hospitals may elect to make presumptive MaineCare eligibility determinations in accordance with 42 CFR 435.1110.

GOALS: The goals of this 1115 waiver are (1) to preserve limited financial resources for the State's most needy individuals and ensure long-term fiscal sustainability; (2) to promote financial independence and transitions to employer sponsored or other commercial health insurance; (3) to encourage individual responsibility for one's health and health care costs.

ELIGIBILITY & BENEFITS: DHHS proposes to implement the following initiatives across all eligibility groups (with individual exemptions as described in the full waiver application):

- Charging enhanced cost sharing for use of the Emergency Department
- Using asset tests in eligibility determinations
- Applying a transfer penalty on "Medicaid-compliant annuities"
- Ceasing to provide retroactive eligibility
- Ceasing the hospital presumptive eligibility policy option

The table below lists the eligibility groups impacted by the proposed work requirements and premiums. Only members ages 19-64 are included in the initiatives below. These requirements apply to all income levels within these groups.

Table 3. Able-bodied Eligibility Groups

Eligibility Group Name	Work Requirements	Premiums
<i>Mandatory Categorically Needy</i>		
Low Income Families Parents/Caretaker Relatives	X	X
Transitional Medical Assistance	X	X (first six months)
Extended Medicaid due to Child or Spousal Support Collections	-	X
Former Foster Care Children	X	X
<i>Optional Categorically Needy</i>		
Certain Women Needing Treatment for Breast or Cervical Cancer	X	X
Individuals Eligible for Family Planning Services	X	X
Reasonable Classifications of Individuals under Age 21	X	X
Medically Needy Individuals Age 18 through 20	X	X
Medically Needy Parents and Other Caretaker Relatives	X	X
Special Benefits Waiver (HIV Waiver)	X	-

IMPACT ON EXPENDITURES & ELIGIBILITY: The Centers for Medicare and Medicaid Services (CMS) require that all 1115 waivers demonstrate budget neutrality. This application presents information on projected expenditures with and without the implementation of this waiver. Projections on eligible member months are provided to illustrate any potential changes to eligibility. Per Member Per Month (PMPM) estimates provide the expected expenditure per MaineCare eligible member.

Projections below (with implementation of the waiver) represent all changes except ED co-payments, premiums, and missed appointments. Premium payments and ED cost sharing are expected to result in approximately \$8,104,512 - \$8,269,067 in State revenue annually. This revenue is not counted as a reduction in expenditures in the tables below.

DHHS estimates that the current trend in eligibility decline will continue regardless of this waiver implementation; however, the decline may slightly increase over the short-term with this waiver as a result of the newly proposed eligibility criteria. The impact on eligibility as a result of the waiver is expected to include able-bodied adults, which tend to have a smaller PMPM than other members. For this reason, the average PMPM is expected to increase slightly under the waiver.

These estimates are highly dependent upon assumptions utilized in the analysis including the assumed approval and implementation dates, medical trend estimates, and eligibility assumptions. As part of this demonstration, DHHS will look to evaluate these assumptions.

Note: This section reflects what was prepared and submitted for public input assuming a January 1, 2018 demonstration start date (except for premium collections, which would begin on July 1, 2018).

Table 4. Demonstration Period

Demonstration Year	DY1	DY2	DY3	DY4	DY5
Time Period	1/1/2018- 12/31/2018	1/1/2019- 12/31/2019	1/1/2020- 12/31/2020	1/1/2021- 12/31/2021	1/1/2022- 12/31/2022

Table 5. Historical Data

	SFY 2012	SFY 2013	SFY 2014	SFY 2015	SFY 2016
Total Expenditures	\$2,323,453,881	\$2,256,222,980	\$2,243,704,171	\$2,296,672,691	\$2,288,058,837
Eligible member months	3,542,635	3,403,333	3,265,058	3,104,659	2,983,647
Average PMPM	\$656	\$663	\$687	\$740	\$767

Table 6. Projections (Without Waiver)

	DY1	DY2	DY3	DY4	DY5
Total Expenditures	\$2,219,874,683	\$2,208,775,310	\$2,197,731,433	\$2,197,731,433	\$2,197,731,433
Eligible member months	2,807,015	2,778,945	2,751,155	2,751,155	2,751,155
Average PMPM	\$791	\$795	\$799	\$799	\$799

Table 7. Projections (With Waiver)

	DY1	DY2	DY3	DY4	DY5
Total Expenditures	\$2,219,210,886	\$2,208,124,789	\$2,197,087,418	\$2,197,093,858	\$2,197,093,858
Eligible member months	2,807,015	2,750,875	2,723,366	2,696,132	2,696,132
Average PMPM	\$791	\$803	\$807	\$815	\$815

HYPOTHESIS & EVALUATION:

Through this demonstration, DHHS intends to evaluate a number of hypotheses, as described below.

Table 8. 1115 Waiver Hypotheses

#	Hypothesis	Methodology	Data Sources and Metrics
Goal 1: To preserve limited financial resources for the State’s most needy individuals and ensure long-term fiscal sustainability.			
1.1	The elimination of asset tests has resulted in MaineCare eligibility for individuals who have personal assets that could be used to purchase health insurance coverage or pay for medical bills.	Examine impact on eligibility for individuals reassessed for MaineCare coverage after asset tests are reintroduced.	Eligibility files
1.2	The inability to impose restrictions and transfer penalties on Medicaid-compliant annuities has resulted in MaineCare eligibility for individuals who have personal assets that could be used to purchase health insurance coverage or pay for medical bills.	Record the number of transfer penalties applied to applicants pre- and post – demonstration implementation.	Eligibility files
Goal 2: To promote financial independence and transitions to employer sponsored or other commercial health insurance.			
2.1	Earned income of those who leave MaineCare will increase after community and engagement requirements are implemented.	Maine will conduct an analysis of the wage and employment experiences of the impacted population.	Administrative data from DHHS Wage and employment

			records available at the Maine Department of Labor.
Goal 3: To encourage individual responsibility for one's health and health care costs.			
3.1	Allowing providers to charge for missed appointments will result in increased provider enrollment or changes in the size of provider panels for select services (e.g. dental providers).	DHHS will monitor provider enrollment and feedback.	Provider enrollment applications Provider feedback
3.2	Allowing providers to charge for missed appointments will result in a decrease in missed appointments.	DHHS will collect provider feedback regarding this initiative through stakeholder engagement.	Stakeholder feedback
3.3	Non-emergency utilization of the Emergency Department (ED) will decrease as members are held responsible for an enhanced copayment.	DHHS will conduct a pre- and post-utilization analysis of ED use.	Claims data

WAIVER & EXPENDITURE AUTHORITIES:

A. Amount, Duration, Scope and Comparability

Section 1902(a)(10)(B)

Section 1902(a)(17)

To the extent necessary to enable the State to vary the premiums, work requirements as described in this waiver application.

B. Reasonable Promptness and Eligibility

Section 1902(a)(10)(A) and 1902(a)(8)

To the extent necessary to enable DHHS to not provide medical coverage until the first day of the month in which MaineCare members make their first premium payments, when applicable.

To the extent necessary to enable DHHS to make compliance with the MaineCare community engagement and work requirements and timely premium payments, a condition of eligibility for able-bodied adults.

C. Retroactive Eligibility

Section 1902(a)(34)

To the extent necessary to enable DHHS to not provide medical coverage to MaineCare members for any time prior to the first day of the month in which the individual's application for coverage is received.

D. Cost Sharing

Section 1902(a)(14) insofar as it incorporates Sections 1916 and 1916A

To the extent necessary to enable DHHS to impose mandatory cost sharing which exceed Medicaid allowable amounts for non-emergency use of the Emergency Department and for premium payments.

(Additionally 42 C.F.R. §447.15)

To the extent necessary to enable MaineCare enrolled providers to charge members directly for missed appointments.

E. Asset Tests

1902(e)(14)

To waive the restriction on the use of asset tests for Medicaid eligibility determinations as described in this waiver application.

F. Transfer Penalties

Section 1917(c)(a)(F)

Section 1902(a)(18)

To the extent necessary to waive specific requirements which prohibit the State from imposing a transfer penalty for the purchase of Medicaid-compliant annuities.

To the extent necessary to allow DHHS to require that the minimum length of the payout of the Medicaid-compliant annuity equals eighty percent of the life expectancy of the annuitant, regardless of whether the annuitant is the institutionalized spouse or the non-institutionalized spouse.

G. Presumptive Eligibility Determinations by Hospitals

**Section 1902(a)(47)
42 CFR 435.1110**

To the extent necessary to waive the requirement to allow hospitals to serve as entities able to determine presumptive eligibility.

PUBLIC COMMENT: This notice also serves to open the 30-day public comment period, which closes at 11:59PM on Thursday, May 25, 2017.

Comments and questions about the proposed 1115 waiver application can also be submitted online via: <http://www.maine.gov/dhhs/oms/rules/demonstration-waivers.shtml> or by email to: Policy.DHHS@maine.gov or by mail to: Division of Policy/MaineCare Services, 242 State St. 11 State House Station, Augusta, Maine 04333-0011. All comments must be received by 11:59PM May 25, 2017.

The public may review the proposed waiver application at any Maine DHHS office in every Maine County. To find out where the Maine DHHS offices are, call 1-800-452-1926.