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Nebraska could pave the way forward for Medicaid work requirements

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AP

A yard sign promoting Initiative 427, the Medicaid Expansion Initiative, is seen in Omaha, Neb. in Oct. 2018.

Nebraska's two-tiered approach to Medicaid expansion has spawned interest among health wonks because its work requirement could stand up to legal scrutiny.

The Trump administration has been pushing states to adopt a Medicaid work requirement, claiming that such policies can improve people's health outcomes by getting them to work more. Many red states were eager to pursue a work requirement because it aligns with the ideological commitments of conservative policymakers, but the courts have ruled against them so far.

But Nebraska is tacking a new approach that circumvents one of the courts' most pressing concerns with work requirements: Medicaid enrollment.

In November 2018, Nebraskans voted in favor of a ballot initiative that extended Medicaid coverage to most able-bodied adults ages 19 to 64 that earn up to 138% of the federal poverty level. Rather than pursue a conventional Medicaid expansion, **Nebraska opted to request a Medicaid 1115 or "state innovation" waiver from the CMS** last month that would allow it to create two tiers of Medicaid benefits for the newly eligible population. **Comments on Nebraska's proposal are due January 17.**

The "Prime" tier will allow expansion enrollees to receive the same Medicaid benefits as Nebraska's traditional Medicaid population if they fulfill community engagement, personal responsibility and wellness activities. The "Basic" package would cover basic health services and prescription drugs, but drop coverage for dental, vision and over-the-counter drugs. Medicaid expansion enrollees would receive basic benefits even if they don't fulfill any of the activities required for prime benefits. Under the plan, the state would check every six months to determine whether a beneficiary was eligible for basic or prime benefits. Beneficiaries could be locked out of prime benefits for one year if they don't fulfill all of the reporting requirements.

The state's community engagement requirement could be fulfilled through work, searching for a job, education, volunteering or other qualifying activities.

Nebraska's Department of Health & Human Services claims the approach would improve the health of the expansion population, increase patient engagement, deliver a better experience for patients and providers, and slash healthcare spending. But many healthcare experts are skeptical of those claims.

Federal courts have shut down work requirements in **Arkansas, Kentucky** and **New Hampshire** because their policies could lower enrollment by denying coverage to

otherwise eligible people if they failed to meet reporting requirements. Some states paused implementation of their work requirements until the courts settle the matter.

"Does this comport with the objectives of the Medicaid program, which is to provide health coverage to vulnerable people?" said Joan Alker, executive director and a co-founder of the Center for Children and Families and a research professor at the Georgetown University McCourt School of Public Policy.

It's a question the courts will eventually decide, according to Tiffany Friesen Milone, policy director for the OpenSky Policy Institute, a left-of-center Nebraska think tank.

"I don't see how we (the state of Nebraska) don't get sued," she said.

Integrity concerns behind work requirement support

Conservative policymakers and researchers have increasingly supported additional Medicaid work and reporting requirements in recent years due to concerns about Medicaid's integrity. They're worried that states are enrolling ineligible people, said Aaron Yelowitz, a professor in the Department of Economics at the University of Kentucky and a senior fellow with the libertarian Cato Institute.

Citing his academic research and recent reports from HHS and its Office of the Inspector General, Yelowitz said that "states are gaming the system by misqualifying people to get higher federal match rates" rather than steering them into programs they're eligible for, like non-expansion Medicaid enrollment.

"There are people eligible under some pathway, but that pathway is one where the state bears some more expense and (the state is) ripping off the federal government," he said.

But many Medicaid experts think that Yelowitz's concerns about the program's integrity are vastly overblown. They argue that he and other like-minded researchers and policymakers misunderstand or "grossly misrepresent" the data on Medicaid improper payments using faulty logic and research methods.

Still, both sides agree that program integrity is a legitimate goal for states and the federal government.

If people think the Medicaid program isn't run well, it could "undermine support for the program," Yelowitz added.

During last month's Medicaid and CHIP Payment and Access Commission meeting, the commissioners requested that MACPAC's staff look into what's behind Medicaid's improper payment rates.

Most of the commissioners were more concerned about misnomers being spread about Medicaid's program integrity than there being significant integrity problems.

Better data could go a long way toward informing experts and the public about how concerned they ought to be about it. But most experts aren't worried about it for now.

No evidence that work requirements work

Red states have been enamored with Medicaid work requirements for the past couple of years because conservative policymakers think that they could boost workforce participation and trim state Medicaid expenditures by moving more people onto commercial insurance plans.

But a 2018 study in the New England Journal of Medicine found that 18,000 people in Arkansas lost coverage when the state implemented its work requirement, and there was no significant bump in beneficiary employment. The state's employment rate went up during the demonstration period, which the state ended early.

"Correlation has been confused with causality," Akler said. "Healthier people are more likely to work because they're healthier."

Nebraska's waiver, if approved, would be a valuable opportunity to find out what works and what doesn't. Medicaid 1115 waivers were created for the purpose of researching and demonstrating new policy approaches.

But the state didn't include an evaluation plan in its waiver proposal, saying that it would "work with an independent entity to develop a robust evaluation plan and methodology" to test its hypotheses. It's unclear how Nebraska or the CMS would learn anything from the demonstration because the state hasn't explained how it would know if the experiment was working or not.

Critics of the proposal say that the lack of an evaluation plan suggests the underlying policy aim is to cut spending by denying people benefits rather than to experiment with new ideas to change how people behave.

Diving deeper into Nebraska's plan

Nebraska's proposal asks that the CMS waive Medicaid's 90-day retroactive eligibility

requirement, which covers three months of medical services for Medicaid-eligible people that aren't enrolled. The state says that waiving the requirement would incentivize people to fulfill reporting requirements, maintain coverage and improve the continuity of care. It would also allow the state to avoid paying for medical expenses incurred during that period.

The state's application carves out specific populations from the retroactive eligibility waiver, such as pregnant women, who would likely benefit from better care continuity and continuous coverage. Nebraska's proposal didn't detail why it doesn't want to include those populations in the demonstration.

"Many low-income individuals may not know that they are eligible for Medicaid and may not seek care for a condition until the condition becomes unmanageable," the Nebraska Section of the American College of Obstetricians and Gynecologists said in a letter. "Ending retroactive eligibility may further encourage such self-imposed rationing of care as patients will likely try to avoid incurring medical bills they cannot pay."
The reporting complexity of the proposal would likely interrupt enrollment, rather than improve maintenance of coverage, experts say.

Nebraska would need to conduct an expensive, resource-intensive outreach campaign to ensure that Medicaid beneficiaries and providers understand the differences in benefits and eligibility and reporting requirements. That's especially difficult in a rural state like Nebraska.

"The intent should not be to trip people up. It should not be to create a system that is so impossible that you need to have a Ph.D. to figure out what's going on," Yelowitz said.

A "robust system" would make it easy for eligible people to enroll and maintain coverage and ensure program integrity by preventing ineligible people from receiving benefits, according to Yelowitz.

Automated reporting could reduce the administrative burden on beneficiaries, making it is easier for them to maintain eligibility while achieving the goals of state policymakers. For example, if a Medicaid enrollee is working, information about their wages could be automatically collected and reported using existing unemployment insurance data.

But there's a fundamental conflict between making sure that eligible people can enroll in and maintain Medicaid coverage, and preventing ineligible people from receiving benefits, Yelowitz said.

Additional reporting requirements will likely lead to more eligible people losing some coverage, at least temporarily. And the evidence isn't clear that it's worth the tradeoff.

The additional reporting would probably increase uncompensated care, said Andy Hale, vice president of advocacy for the Nebraska Hospital Association. That would hurt providers, especially in **rural areas that are already struggling**.

The state would likely spend a huge sum of time and money administering the much more complex Medicaid expansion, which might not be worth the cost, Friesen Milone said. Kentucky's Medicaid administrative costs went up more than 40% when it implemented its waiver because the federal government doesn't provide matching funds for many implementation expenses.