

Children, Families, Health, and Human Services Interim Committee  
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# MEDICAID EXPANSION SUMMARY OF APPEALS COURT RULING

## BACKGROUND

In March 2018, the federal government approved the Arkansas Works Medicaid waiver. This waiver required some people covered under Medicaid expansion to participate in work, education, or other community engagement activities in order to continue receiving Medicaid coverage.

In February of this year, a federal appeals court unanimously upheld a lower court ruling that vacated federal approval of the waiver. The appeals court agreed with the lower court that the secretary of the U.S. Department of Health and Human Services (HHS) had failed to consider the potential loss of Medicaid coverage that could occur if the waiver were approved.

The court looked at approval of a waiver request similar to Montana's pending application.

The Montana Legislature passed House Bill 658 in 2019, to continue the expansion of Medicaid to nondisabled adults who are 19 to 64 years of age and whose income is at or below 138% of the federal poverty level. HB 658 also included community engagement requirements for some of the expansion enrollees. The state's waiver application seeking approval of the community engagement requirements is still pending.

## WHAT DID THE APPEALS COURT SAY?

The Arkansas community engagement requirements were proposed as part of a Medicaid waiver for what's known as a "demonstration project," which is designed to test new ideas for the Medicaid program. States must apply for a waiver of federal Medicaid law when they want to test ideas that fall outside of the requirements of that law.

In a 19-page decision<sup>i</sup>, the District of Columbia Circuit Court of Appeals said HHS Secretary Alex Azar acted in an "arbitrary and capricious manner" in approving the Arkansas waiver because he failed to consider the potential loss of Medicaid coverage that could occur under the waiver.

The court noted that federal law allows the HHS secretary to approve demonstration projects that are "likely to assist in promoting the objectives" of Medicaid. And federal Medicaid law and past court rulings make it clear that the primary objective of the Medicaid program is to provide health care coverage and access to medical care, the court said.

However, the judges said, Azar approved the Arkansas waiver on the grounds it would accomplish three goals:

- improve health outcomes;
- address behavioral and social factors that influence health outcomes; and
- provide an incentive for enrollees to engage in their own health care and achieve better health outcomes.

The judges said Azar didn't factor the potential loss of coverage into his decision, even though public comment on the waiver application raised concerns that many people would be disqualified from Medicaid for failing to meet the community engagement requirements. And the court said the three objectives that Azar did consider, related to health outcomes and beneficiary independence, "are not consistent with Medicaid." As a result, the court affirmed the lower court's decision to vacate the waiver approval.

## WHAT DOES THE RULING MEAN FOR MONTANA?

Montana's waiver application<sup>ii</sup> says the community engagement requirements would test "the intersection of work/community engagement and health and well-being" and "promote the health, wellness, and financial stability of enrollees." It says the waiver will test whether, because of community engagement requirements, enrollees:

- secure employment;
- are more likely to transition to commercial health coverage after leaving the Medicaid program;
- are not deterred from applying for or renewing Medicaid coverage;
- have improved health and well-being, compared to enrollees who don't have to meet the requirements; and
- have a higher average income than enrollees who don't have to meet the requirements.

The application also estimated that 4,000 to 12,000 enrollees would fail to meet the community engagement requirements and lose their Medicaid coverage.

## LEGISLATIVE RECOGNITION OF LEGAL ACTION

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Legal challenges were filed to the community engagement requirements in Arkansas and other states before the 2019 Legislature passed HB 658. Recognizing the pending legal action, the bill includes language saying the act will terminate on June 30, 2025, if "a court of final disposition" invalidates community engagement requirements.

The termination section states: "*It is the intent of the legislature that if the [court action] occurs, the legislature has an opportunity to consider issues of program integrity, reform, and cost-effectiveness to determine whether [this act] should continue.*"

With appeals and other legal challenges possible, it's difficult to predict which court might make a ruling that would trigger the termination date or when that would occur. It's also possible that the federal government won't appeal the Circuit Court ruling and instead will use the ruling as its guide in approving future waiver requests for community engagement requirements, including Montana's pending application.

And lawmakers also amended HB 658 to extend the previous sunset date for Medicaid expansion to June 30, 2025, meaning future legislatures will review the expansion program regardless of federal or court action. *c10425 0118fhhb.docx*

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<sup>i</sup> <https://affordablecareactlitigation.files.wordpress.com/2020/02/dcc-gresham-opinion-2-14.pdf>

<sup>ii</sup> <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/mt/mt-help-program-pa3.pdf>