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MONTANA LEGISLATIVE  
SERVICES DIVISION

# MEDICAID EXPANSION STATUS OF HB 658 IMPLEMENTATION

## BACKGROUND

The 2019 Legislature continued the expansion of the Medicaid program to childless, nondisabled adults ages 19 through 64 with incomes up to 138% of the federal poverty level. That expansion -- allowed under the federal Affordable Care Act and first authorized by the 2015 Legislature -- was due to expire June 30, 2019, if the Legislature did not extend it.

Although lawmakers continued the program in 2019, they also:

- added new community engagement requirements for expansion enrollees;
- created several new revenue sources for funding the costs of the expansion program; and
- created a workforce development program for employers.

The changes were contained in House Bill 658. Most changes were due to go into effect July 1, 2019. However, the community engagement and premium provisions had an effective date of Jan. 1, 2020.

This briefing paper highlights developments to date in implementing HB 658.

## WAIVER APPLICATION: CONTENTS AND STATUS

HB 658 contained two provisions -- community engagement requirements and premium payments -- that are not allowed under federal Medicaid law. As a result, the Department of Public Health and Human Services (DPHHS) had to apply for a waiver of federal law to allow those provisions to go into effect. The Centers for Medicare and Medicaid Services (CMS) must approve the waiver before the requirements can go into effect.

## CMS POLICY ON COMMUNITY ENGAGEMENT

Montana's community engagement requirements were enacted after CMS changed previous federal policy on work requirements for Medicaid enrollees.

In January 2018, CMS notified states that it would consider waiver applications that required nondisabled, working-age enrollees to work or participate in other community engagement efforts as a way to improve their health and attain independence. In its policy guidance to the states, CMS

said "a growing body of evidence suggests that targeting certain health determinants, including productive work and community engagement, may improve health outcomes."

CMS has approved several state waivers for community engagement requirements. However, legal challenges have halted implementation in some states, while other states have voluntarily delayed implementation of the requirements.

## MONTANA'S COMMUNITY ENGAGEMENT REQUIREMENTS

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Under the HB 658 community engagement requirements, some expansion enrollees who are 55 years of age or younger must participate in 80 hours a month of specific activities that include working, going to school, undergoing substance use disorder treatment, or taking part in workforce readiness or community service activities. HB 658 exempted a number of people from the requirements, including people who are:

- medically frail or pregnant;
- mentally or physically unable to work;
- foster parents or primary caregivers of a person who can't provide self-care;
- students;
- homeless or living in an area with a high-poverty designation;
- participating in or exempt from work requirements for other federal public assistance programs; or
- victims of domestic violence.

In addition, people whose reported income would exceed an amount equal to the minimum wage multiplied by 80 hours are exempt from the requirements.

In its waiver application, DPHHS estimated that about 74,000, or nearly three-fourths of the estimated 100,000 people in the Medicaid expansion program, would not have to report on whether they are meeting the community engagement requirements. That's because they would either be exempt from the requirements or would be considered to be meeting the requirements because they are complying with or exempt from work requirements for other public assistance programs.

DPHHS estimated in its waiver application that slightly fewer than 26,000 people would have to report whether they were meeting the requirements. The agency projected that about 4,000 to 12,000 of those people could fail to meet the requirements and may lose their Medicaid coverage.

## PREMIUM PAYMENTS

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HB 658 required enrollees to pay tiered premiums, based on the length of time they're enrolled in the expansion program. Currently, enrollees with incomes above 50% of the poverty level must pay a monthly premium equal to 2% of their income in order to obtain Medicaid coverage. The original Medicaid expansion bill did not set an income level at which people would start paying the premiums, but CMS limited the payments to people with incomes above 50% of the poverty level when it approved the original waiver for Medicaid expansion in 2015.

HB 658 changes the premium requirement over time so that people who have been in the expansion program for more than 2 years will start paying higher premiums. Their premiums will increase by 0.5% in each subsequent year, up to a maximum of 4% of their income. However, HB 658 also exempts people from the higher premiums if they are exempt from the community engagement requirements.

HB 658 also did not set an income level at which people would have to start paying premiums. However, DPHHS's waiver application asked that the higher premiums continue to apply to people with incomes above 50% of the poverty level.

## 12-MONTH CONTINUOUS ELIGIBILITY

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When submitting its waiver application for the original Medicaid expansion program, DPHHS sought federal approval to allow Medicaid expansion enrollees to be covered by the program for 12 full months, even if their income increased above 138% of poverty. CMS approved the request, but said it would not pay the enhanced federal matching rate -- now set at 90% -- for 2.6% of the medical claims of expansion enrollees. Instead, the federal government has been paying the regular Medicaid matching rate of about 65% for those claims.

DPHHS has asked CMS to continue this 12-month eligibility period in the new waiver.

## WAIVER STATUS

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DPHHS filed the waiver application with the federal government on Aug. 30, 2019, after taking public comment for 60 days and holding public meetings as required by law. CMS also took public comment for 30 days, from Sept. 12 to Oct. 12.

CMS had not acted on the waiver application by Jan. 2, 2020.

Although HB 658 called for the community engagement requirements to go into effect Jan. 1, DPHHS cannot implement the requirements until CMS approves the waiver request and sets any additional terms for the waiver. In addition, DPHHS has said that it will not implement the community engagement provisions until it has proposed and adopted administrative rules, put in place a system for reporting on and verifying compliance with the requirements, and notified people about the new requirements.

HB 658 also gives people who are enrolled in the expansion program on the date that CMS approves the waiver 6 months to comply with the community engagement requirements once DPHHS has implemented them.

The department posted a set of Frequently Asked Questions on its website in November 2019 detailing the steps that must be taken before expansion enrollees are required to complete work or other community engagement requirements. The FAQs included this summary:

### **What you need to know:**

- **No changes to Medicaid expansion coverage are happening in January 2020**
- **It may be a year or more before work/community engagement requirements and increased premiums take effect**
- **DPHHS will communicate with Medicaid members directly before changes go into effect**

## REVENUE SOURCES

HB 658 created several new revenue sources and revised three other revenue sources to help fund Medicaid expansion. The fiscal note for the bill said the revenue sources would raise nearly \$56 million in Fiscal Year 2020 and almost \$63 million in Fiscal Year 2021. The state revenue was expected to draw down an additional \$1.46 billion in federal funds for the expansion program and other Medicaid-related expenditures over the biennium.

The table on the following page shows each revenue source and the amount that the Office of Budget and Program Planning fiscal note for HB 658 estimated would be raised by the revenue source during the current biennium.

Revenue Source	Revenue Estimate/ Biennium
<b>New:</b> Fee of 1% on net premium income for nonprofit insurers	\$9,140,000
<b>New:</b> Fee of 0.90% on hospital outpatient revenue	\$74,924,374
<b>New:</b> Taxpayer integrity fee on entities organized under 26 U.S.C. 501(d) that have members in the Medicaid expansion program	\$2,923,274
<b>Revised:</b> Taxpayer integrity fee applied to enrollees with real property, vehicles, or agricultural land that exceed certain values*	\$270,000
<b>Revised:</b> Premium payments starting at 2% of income, as provided under existing law, and increasing by 0.5% a year for people who remain in the program longer than 2 years*	\$10,726,994
<b>Revised:</b> Hospital inpatient utilization fee increased by \$20 per bed day	\$18,050,080
<b>Continued:</b> Montana Chemical Dependency Center Third-Party Collections	\$3,853,393

\* Money raised from this source previously was deposited in the general fund but is now specifically dedicated to Medicaid expenditures.

Slightly more than half of the money raised by the hospital outpatient revenue fee will go to the Medicaid expansion program, and the remainder will go to providing supplemental Medicaid payments to hospitals. The increased hospital inpatient utilization fee, commonly referred to as the hospital bed tax, also will be split between the Medicaid expansion program and supplemental Medicaid payments to hospitals.

## ADMINISTRATIVE RULE CHANGES

DPHHS has proposed rules to carry out two aspects of HB 658 -- the distribution of the money raised by the new outpatient revenue utilization fee and the increased inpatient hospital utilization fee and the removal of copayments for Medicaid expansion enrollees. It plans to propose rules for the community engagement requirements after CMS acts on the waiver application and DPHHS knows what additional conditions the federal government may impose on those requirements.

The proposed rules eliminating copayments went into effect Jan. 1 and also removed copayments for people in the traditional Medicaid program. In its statement of reasonable necessity for the rules, DPHHS said it was removing copayments for all Medicaid enrollees to keep reimbursement policies for both the expansion and traditional programs consistent. DPHHS noted in the statement:

*"Applying the same copayment methodology to Medicaid and Medicaid expansion members is anticipated to reduce the administrative burden placed on providers, while increasing access to healthcare services and prescription drugs for Medicaid members."*

## WORKFORCE DEVELOPMENT GRANT PROGRAM

HB 658 established the framework for a grant program that employers can tap. The program is designed to encourage employers to hire or train Medicaid expansion enrollees in skills that will allow them to obtain new or improved employment, obtain a job with health care insurance, earn a wage that allows them to buy their own insurance, or improve their long-term financial security.

The Department of Labor and Industry is responsible for administering the grant program, including adopting rules for the grant application and award process. The department plans to propose rules in the spring of 2020 for grants of more than \$5,000. However, it will begin making grants of up to \$5,000 beginning in January to help employers defray the costs of hiring or employing people who are participating in the workforce readiness program known as HELP-Link.

The department expects to make about \$350,000 available for the employer grant program during the current biennium.

## OTHER MEDICAID PROGRAM CHANGES

HB 658 also created new requirements for verifying the eligibility of people who apply for either the Medicaid expansion program or the traditional Medicaid program. DPHHS must now:

- verify the information submitted by applicants before authorizing any payment of benefits;
- ask the Montana Department of Revenue for income tax and wage information to verify the income information that people provide; and
- require applicants to provide proof that they are Montana residents.

The department is in the process of developing rules for some of these requirements.

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### Sources

- "Frequently Asked Questions-Medicaid Expansion." *Department of Public Health and Human Services*. Available at <https://dphhs.mt.gov/Portals/85/hrd/documents/helpplan/MedicaidExpansionFAQ.pdf>. Accessed Dec. 15, 2019.
- "Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State." *Kaiser Family Foundation*. Available at [kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/](http://kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/). Accessed Dec. 31, 2019.
- "Re: Opportunities to Promote Work and Community Engagement Opportunities Among Medicaid Beneficiaries." Letter to State Medicaid Directors. *Center for Medicare and Medicaid Services*. Jan. 11, 2018.
- "Section 1115 Demonstration Amendment and Extension Application." *Department of Public Health and Human Services*. Updated August 30, 2019.
- Conversation with State Medicaid Director Marie Matthews and DPHHS Operations Services Branch Manager Erica Johnston. Dec. 18, 2019.
- E-mails from Scott Eychner, Administrator, Workforce Services Division, Montana Department of Labor and Industry. Dec. 22 and Dec. 26, 2019.
- House Bill 658 Fiscal Note. Version HB0658.03. *Office of Budget and Program Planning*. April 10, 2019.