

# AGENCY OVERSIGHT MEDICAID EXPANSION WAIVER: CMS ACTION

## BACKGROUND

The federal agency that oversees state Medicaid programs acted in late 2021 on Montana's pending request to continue its Medicaid expansion waiver and to add community engagement requirements and, for some enrollees, higher premiums. The Centers for Medicare and Medicaid Services (CMS) also acted on the state's request to remove continuous eligibility for enrollees.

As a result of the CMS action, the state:

- will not be able to implement the community engagement requirements or premium increases approved by the 2019 Legislature;
- will have to eliminate the program's current premiums by the end 2022; and
- can end a person's eligibility for the program when household income increases above 138% of the federal poverty level.

This briefing paper summarizes key provisions of the CMS decision on Dec. 21, 2021.

## ELIMINATION OF PREMIUMS

In 2015, the Legislature approved expanding Medicaid coverage – as allowed under the Affordable Care Act – to nondisabled, nonpregnant adults ages 19 to 64 with incomes at or below 138% of poverty. Lawmakers at the time included provisions:

- requiring expansion enrollees to pay 2% of their income in premiums for the coverage; and
- ending Medicaid expansion on June 30, 2019, unless extended by a future Legislature.

The 2019 Legislature passed House Bill 658, which continued Medicaid expansion until mid-2025. It also raised premiums for people who stayed on the program longer than 2 years, at a rate of 0.5% for each additional year. The higher premiums were capped at 4% of the person's income.

Because Medicaid law generally doesn't allow states to charge premiums, Montana had to apply for a waiver of federal law to put both the original and the increased premiums in place. In 2015, CMS approved the state's original request for the 2% premiums but limited the payments to enrollees with incomes above 50% of poverty. Montana subsequently applied in August 2019 to extend that waiver and to amend it to implement the higher premiums contained in HB 658.

On Dec. 21, 2021, CMS approved a one-year temporary extension of Montana's waiver to allow the state to continue the 2% premiums — but only until Dec. 31, 2022. It did not approve the higher premiums called for in HB 658. CMS said it has determined that premiums can present a barrier to coverage and thus are not likely to promote the Medicaid program's objectives, as is required for approval of demonstration project waivers.

In its Dec. 21 letter, CMS said its earlier evaluation of Montana's waiver program showed that the demonstration project *overall* resulted in more coverage for the adult population than in states that did not expand Medicaid. However, that evaluation did not isolate the effects of the premiums on coverage, CMS said. CMS said subsequent evidence from several states suggests that premiums reduce access to coverage and care.

CMS said it extended current premiums through the end of this year to give the state time "to wind down the premium requirement." It did not act on the higher premiums enacted by HB 658, so those will not take effect.

## NO ACTION ON COMMUNITY ENGAGEMENT REQUIREMENTS

HB 658 also added requirements for expansion enrollees to participate in 80 hours of community engagement activities each month. Several types of activities were allowed under the bill, including working, going to school, participating in workforce training activities, or participating in substance use disorder treatment.

The state also had to seek a waiver to implement the community engagement requirements. That request was contained in the same August 2019 application submitted for the increased premiums.

CMS did not address the community engagement request in its Dec. 21 action on the waiver. DPHHS does not expect further action on the waiver application, so the community engagement requirements will not go into effect.

## ELIMINATION OF CONTINUOUS ELIGIBILITY

When Montana applied for its first waiver in 2015, it asked for and received approval of 12-month continuous eligibility for expansion enrollees. That allows people to keep their coverage for a full year, even if their incomes increase above 138% of poverty during that time. However, CMS said would not pay the enhanced federal matching rate of 90% for all expansion enrollees because some would likely have income changes putting them above the eligibility limit during the 12-month period. Instead, CMS has been paying the regular matching rate of about 66% of medical costs for 2.6% of expansion participants. That has resulted in a higher state payment for those costs.

The 2021 Legislature removed funding for that higher state payment in HB 2, the general appropriations language, and included language in that bill saying the Legislature intended for the state to end continuous eligibility.

In September 2021, the state sought CMS approval to end continuous eligibility.

CMS approved that request in its December 2021 action. But the state doesn't plan to implement the change until the national COVID-19 public health emergency ends. That's because the federal Families First Coronavirus Relief Act of 2020 enhanced the federal matching rate for the traditional Medicaid program by 6.2% — but only if states maintain coverage for all Medicaid enrollees until the end of the current national public health emergency.

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### Sources:

- [Demonstration Approval](#), Waiver Application No. 11-W-00300/8. *Centers for Medicare and Medicaid Services*. Dec. 21, 2022.
- E-mail correspondence with Marie Matthews, Montana Department of Public Health and Human Services. Jan. 4, 2022.