

# MEDICAID WORK REQUIREMENTS

## LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

**Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.**

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## Background Materials and Research

**Topic Summary:** Medicaid is a federal-state program that pays health care costs for low-income people. Federal law and regulations establish the basic requirements for the program. Until 2018, the federal government did not allow states to require people to work in order to qualify for Medicaid coverage or benefits. However, in January 2018, the Centers for Medicare and Medicaid Services (CMS) issued new policy guidance on the topic. CMS said it would support state efforts for work and other “community engagement” requirements for nondisabled, nonpregnant adults of working age — essentially, the Medicaid expansion population.

CMS has since approved several state requests for what are known as “Section 1115 waivers,” which allow states to try out and evaluate alternative approaches to providing Medicaid benefits. The states that have received waivers for these research and demonstration projects have taken slightly different approaches with their waivers, but their programs also have many similarities. In general, the states require people to work or participate in other “community engagement” activities (such as education, job-training programs, or volunteer work) for 80 to 100 hours per month; exempt certain groups of people from the requirements, such as medically frail individuals or full-time students; and limit either eligibility or access to certain benefits for people who fail to meet the requirements. States that have approved community engagement requirements are also making changes to their IT systems to track compliance with the requirements.

The requirements in several states have been challenged in court, and most states that received approval for their waiver have put the requirements on hold while the matter makes its way through the court system. In February 2020, a U.S. appeals court affirmed a lower court ruling that vacated the waiver approval for community engagement requirements in Arkansas. The court said that federal law makes it clear the primary purpose of the Medicaid program is to provide health coverage to low-income people. The court said that in approving the Arkansas waiver, the secretary of the U.S. Department of Health and

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Human Services did not consider the potential loss of coverage that could result from the community engagement requirements.

The federal government asked the U.S. Supreme Court to review the ruling, and the court granted the request on Dec. 4, 2020. Oral arguments will be scheduled before the end of the court's term on June 28, 2020.

### Additional Considerations for Montana

CMS initially said that federal civil rights laws barring discrimination based on race or national origin would prevent the agency from exempting American Indians and Alaska Natives from Medicaid work requirements. The agency subsequently said that states could exempt those populations if they wanted to do so in their waiver requests.

Case law involving treaty rights and other federal laws governing Indian health care could come into play if states do not provide exemptions for tribal members.

### Status of Montana Requirements

The 2019 Legislature passed HB 658, which contained community engagement requirements. In August 2019, the Department of Public Health and Human Services submitted a waiver application to put the requirements into effect. CMS has not yet acted on the application, which also requested authorization to implement higher premiums for expansion enrollees. Until CMS acts, Montana's Medicaid expansion program is continuing under the terms first passed by the Legislature in 2015.

In its request that the U.S. Supreme Court hear an appeal of the lower court ruling, HHS indicated that pending waiver requests from Montana and other states may not be resolved until the court makes a decision. On Dec. 1, 2020, the federal agency extended the current Medicaid expansion waiver – without work requirements – through 2021.

### Legislative Services Division Materials:

[Summary of Appeals Court Ruling](#), May 2020

[Status of HB 658 Implementation](#), January 2020

[Work Requirements and Other Federal Changes](#), March 2018

### Other Materials:

#### Montana's Waiver Application

Montana Department of Public Health and Human Services [Section 1115 Demonstration Application and Extension](#)  
DPHHS PowerPoint: [Medicaid Expansion Waiver](#)

#### Centers for Medicare and Medicaid Services

[1115 Community Engagement Initiative FAQs](#)

[Waiver 11-W-00298/1](#), New Hampshire Health Protection Program Premium Assistance, May 7, 2018

[Waiver No. 11-W-00287/6](#), Arkansas Works, March 5, 2018

[CMS Waiver No. 11-W-00296/5](#), Healthy Indiana Plan (HIP), Feb. 1, 2018

[CMS Waiver No. 11-W-00306/4 and 21-W-0067/4](#), KY Health Section 1115 Demonstration, Jan. 12, 2018

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### Other Sources

[Azar v. Gresham](#), Petition for A Writ of Certiorari to the United States Supreme Court, July 2020

[3 Key Questions About the Arkansas Work and Reporting Requirements Case](#), Kaiser Family Foundation, March 6, 2020  
[Explaining \*Stewart v. Azar\*: Implications of the Court's Decision on Kentucky's Medicaid Waiver](#), Kaiser Family Foundation  
[State Proposals for Medicaid Work and Community Engagement Requirements](#), National Academy for State Health Policy  
[Approved Section 1115 Medicaid Waivers as of August 29, 2018](#), Kaiser Family Foundation  
[Pending Section 1115 Medicaid Waivers as of August 29, 2018](#), Kaiser Family Foundation

### Introduced Legislation

#### 2019

[House Bill No. 658](#) (Chapter Number Assigned) -- AN ACT GENERALLY REVISING HEALTH CARE LAWS; EXTENDING THE MEDICAID EXPANSION PROGRAM PERMANENT BY REVISING THE TERMINATION DATE OF THE MONTANA HEALTH AND ECONOMIC LIVELIHOOD PARTNERSHIP ACT; ESTABLISHING COMMUNITY ENGAGEMENT REQUIREMENTS FOR HELP ACT PARTICIPANTS; REVISING MEDICAID ELIGIBILITY VERIFICATION PROCEDURES; ESTABLISHING A HELP ACT EMPLOYER GRANT PROGRAM; ENACTING A FEE ON HEALTH SERVICE CORPORATIONS; ESTABLISHING A FEE ON HOSPITAL OUTPATIENT REVENUE; REVISING TAXPAYER INTEGRITY FEES; CREATING A SPECIAL REVENUE ACCOUNT; ALLOWING THE GOVERNOR TO AUTHORIZE A SUPPLEMENTAL APPROPRIATION TRANSFER FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING THE GOVERNOR TO REPORT TO THE LEGISLATIVE FINANCE COMMITTEE; EXTENDING RULEMAKING AUTHORITY; PROVIDING APPROPRIATIONS; REMOVING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 15-30-2618, 15-30-2660, 15-31-511, 15-66-101, 15-66-102, 15-66-103, 15-66-201, 15-66-202, 15-66-203, 15-66-204, 15-66-205, 17-7-301, 17-7-311, 17-7-502, 33-30-102, 39-12-101, 39-12-103, 53-4-1110, 53-6-131, 53-6-133, 53-6-149, 53-6-160, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1306, 53-6-1307, AND 53-6-1311, MCA; REPEALING SECTION 53-6-1316, MCA; AMENDING SECTION 28, CHAPTER 368, LAWS OF 2015; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

**2017:** None

#### 2015

The federal government was not approving work requirements in 2015. However, that year, the Montana Legislature passed Senate Bill No. 405 to expand Medicaid to nonpregnant, nondisabled individuals who are 19 to 64 years of age and who have family incomes of 138% or less of the federal poverty level -- the population generally included in work requirements that passed in later years.

[Senate Bill No. 405](#) (Chapter Number Assigned) -- AN ACT CREATING THE MONTANA HEALTH AND ECONOMIC LIVELIHOOD PARTNERSHIP ACT TO EXPAND HEALTH CARE COVERAGE TO ADDITIONAL INDIVIDUALS, IMPROVE ACCESS TO HEALTH CARE SERVICES, AND CONTROL HEALTH CARE COSTS; ESTABLISHING A HEALTH CARE COVERAGE PROGRAM TO PROVIDE CERTAIN LOW-INCOME MONTANANS WITH ACCESS TO HEALTH CARE SERVICES USING MEDICAID FUNDS AND AN ARRANGEMENT WITH A THIRD-PARTY ADMINISTRATOR; IMPLEMENTING CERTAIN MEDICAID

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REFORMS; PROVIDING STATUTORY APPROPRIATIONS FOR COSTS OF PROVIDING HEALTH CARE SERVICES; PROVIDING SUPPORT FOR HEALTH CARE DELIVERY ACROSS MONTANA; PROVIDING WORKFORCE DEVELOPMENT OPPORTUNITIES FOR PROGRAM PARTICIPANTS; ESTABLISHING TIME LIMITS FOR SERVICE OF PROCESS IN MEDICAL MALPRACTICE CLAIMS; ESTABLISHING AN OVERSIGHT COMMITTEE; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 17-7-502 AND 27-2-205, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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