

# KENTUCKY HEALTH MEDICAID WAIVER MAY NOT AID FARMERS AFTER ALL

[Agriculture \(/full-blog/category/Agriculture\)](#)

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On November 20, 2018, the Kentucky Cabinet for Health and Family Services announced that the federal Centers for Medicare and Medicaid Services (CMS) had approved the Commonwealth's Section 1115 Medicaid waiver known as Kentucky HEALTH (Helping to Engage Long Term Health.) and the program shall be implemented as early as April 2019.[i]

The waiver was introduced in June of 2016; former Health and Human Services Secretary Vickie Yates Glisson stated that she did not believe that the "needle had moved" enough on health indicators over the two-year period since Medicaid expansion occurred in the Commonwealth.[ii] Section 1115 Medicaid waivers are designed to allow states the flexibility to innovate, adjust, and evaluate Medicaid policy. Most plans are approved for a five-year period.[iii]



Credit (<http://www.wkms.org/post/update-gov-bevin-submits-revised-kentucky-health-medicaid-plan#stream/0>)

Kentucky HEALTH is unique and is the first Medicaid waiver to be approved with work requirements for the purposes of maintaining Medicaid eligibility.[iv] Previously, all waivers submitted with work requirements were denied.[v] However, under the Trump administration, the plan was approved in January of 2018.[vi]

However, in June the U.S. District Court blocked Kentucky from moving ahead with implementing Kentucky HEALTH.[vii] The Court held that "the Secretary never provided a bottom-line estimate of how many people would lose Medicaid with Kentucky HEALTH in place." [viii] The oversight is

blatant, especially when considering that the risk of lost coverage was “factually substantiated in the record.”<sup>[ix]</sup>

The waiver was then returned to CMS for further consideration.<sup>[x]</sup> CMS reopened the public comment period for thirty days.<sup>[xi]</sup> A random sample of 200 comments by Kentucky Health News found the opposition to be about 7 to 1.<sup>[xii]</sup> Emily Beauregard, the executive director of Kentucky Voices for Health commented saying “they’ve made no adjustments to [the plan] to address the concerns of the judge.”<sup>[xiii]</sup> It was ultimately re-approved in late November.<sup>[xiv]</sup>

Certain Kentucky HEALTH beneficiaries will be mandated to complete eighty hours of community engagement every month in order to remain eligible for their Medicaid benefits through work, job training, education, or volunteer service.<sup>[xv]</sup> Kentucky HEALTH is offering all beneficiaries access to many community engagement and employment resources through its PATH Program.<sup>[xvi]</sup> PATH stands for “Partnering to Advance Training and Health.”<sup>[xvii]</sup>

Failure to comply with the requirements terminates health coverage; coverage can only be regained the month after they complete 80 hours of community engagement in a 30-day period or by taking approved health literacy or financial literacy courses.<sup>[xviii]</sup> Only pregnant women, children, the medically frail, primary caregivers, full-time students, and former foster youth up to age 26 will be exempt from the PATH requirements.<sup>[xix]</sup>

This comes to grave concern to those in Kentucky’s rural areas, such as farmers.<sup>[xx]</sup> There is only a temporary exemption from PATH requirements if a person lives in an area without available work or volunteer opportunities.<sup>[xxi]</sup> Many of Kentucky’s more rural areas lack the opportunities to engage that are more readily found in metropolitan areas. Farming is one of the areas that benefited the most from Medicaid expansion.<sup>[xxii]</sup> Kentucky farmers, Ben Abell and Bree Pearsall, worry about what the work PATH requirements will mean for their business.<sup>[xxiii]</sup> The couple raise lamb and grow crops on a farm outside of Louisville.<sup>[xxiv]</sup> The farm is “minimally sustainable.” They don’t have pay stubs or time sheets to document the amount of work being done.<sup>[xxv]</sup> The couple has been Medicaid eligible for the past few years.<sup>[xxvi]</sup> Though Pearsall is pregnant, thus exempt from the requirements, Abell worries what this will mean for his coverage.<sup>[xxvii]</sup>

Critics say that the work requirements would lead many low-income people to lose access to their health coverage.<sup>[xxviii]</sup> The Commonwealth’s Cabinet for Health and Family Services own projections anticipate that 95,000 Medicaid enrollees will fall from the rolls within five years.<sup>[xxix]</sup> Kentucky HEALTH should not be allowed to move forward with implementation without truly addressing the concerns of the District Court. The purpose behind Medicaid is to allow access to healthcare to low-income individuals, such as Ben Abell.

[i] Press Release, Cabinet for Health and Family Services, CMS Reapproves Kentucky HEALTH, (Nov. 20, 2018) (on file with author)  
<https://kentuckyhealth.ky.gov/SiteCollectionDocuments/Kentucky%20HEALTH%20Re-approval%20Press%20Release.pdf> [<https://perma.cc/4FVZ-TV2E>].

[ii] John Cheves, Critics find much to dislike in Gov. Bevin’s Medicaid proposal, Lexington Herald Leader (June 30, 2016, 11:30 AM) <https://www.kentucky.com/news/politics-government/article86731887.html> [<https://perma.cc/6TA9-XJJC>].

[iii] About Section 1115 Demonstrations, Medicaid (last viewed Nov. 27, 2018)  
<https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html>  
[<https://perma.cc/WUU4-JPSF>].

[iv] Phil Galewitz, Judge Blocks Kentucky Medicaid Work Requirement, The Washington Post (June 29, 2018) [https://www.washingtonpost.com/national/health-science/judge-blocks-kentucky-medicaid-work-requirement/2018/06/29/24d45fcc-7bd9-11e8-ac4e-421ef7165923\\_story.html?utm\\_term=.260ffdebc3c](https://www.washingtonpost.com/national/health-science/judge-blocks-kentucky-medicaid-work-requirement/2018/06/29/24d45fcc-7bd9-11e8-ac4e-421ef7165923_story.html?utm_term=.260ffdebc3c) [<https://perma.cc/CM6W-UKFK>].

[v] Melissa Patrick, State moves ahead on Kentucky HEALTH plan that federal judge has vacated; hoping for waiver, Northern Kentucky Tribune (Sept. 16, 2018)  
<https://www.nkytribune.com/2018/09/state-moves-ahead-on-kentucky-health-plan-that-federal-judge-has-vacated-hoping-for-waiver/>

[vi] Amy Goldstein, Trump administration again permits Kentucky to impose work requirement for Medicaid recipients, The Washington Post (Nov. 20, 2018)  
[https://www.washingtonpost.com/national/health-science/trump-administration-again-permits-kentucky-to-impose-work-requirement-for-medicaid/2018/11/20/04a097c0-ed2b-11e8-96d4-0d23f2aad09\\_story.html?utm\\_term=.92371327cc71](https://www.washingtonpost.com/national/health-science/trump-administration-again-permits-kentucky-to-impose-work-requirement-for-medicaid/2018/11/20/04a097c0-ed2b-11e8-96d4-0d23f2aad09_story.html?utm_term=.92371327cc71) [<https://perma.cc/4YT4-J7RQ>].

[vii] *Id.*

[viii] See Galewitz *supra* note iv (quoting “the Secretary never provided a bottom-line estimate of how many people would lose Medicaid with Kentucky HEALTH in place.”)

[ix] *Id.*

[x] *Id.*

[xi] *Id.*

[xii] *Id.*

[xiii] *Id.*

[xiv] Press Release, *supra*, note 1

[xv] FAQ, Kentucky HEALTH (last viewed Nov. 27, 2018)  
<https://kentuckyhealth.ky.gov/Pages/FAQ.aspx> [<https://perma.cc/J8NN-F5XC>].

[xvi] *Id.*

[xvii] *Id.*

[xviii] *Id.*

[xix] *Id.*

[xx] See generally John Tozzi and Zachary Tracer, Kentucky’s Medicaid Work Requirement Is an About-Face, Bloomberg Businessweek (January 18, 2018)  
<https://www.bloomberg.com/news/articles/2018-01-18/kentucky-s-medicaid-work-requirement-is-an-about-face> [<https://perma.cc/8TSD-RWA4>] (describing a Louisville married couple that operates a “minimally profitable” farm without paystubs and time sheets to document the hours they work, a needed requirement to receive Medicaid under the new Kentucky HEALTH program.)

[xxi] FAQ, *supra* note xv

[xxii] Tozzi, *supra*, note xx

[xxiii] *Id.*

[xxiv] *Id.*

[xxv] *Id.*

[xxvi] *Id.*

[xxvii] *Id.*

[xxviii] Galewitz, *supra*, note iv.

[xxix] *Id.*

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