

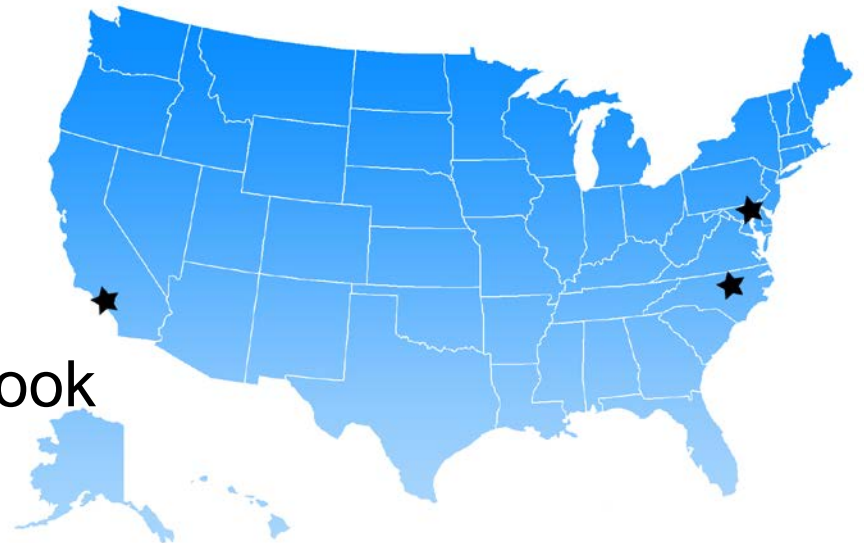


Section 1115 Context & Statute

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Overview

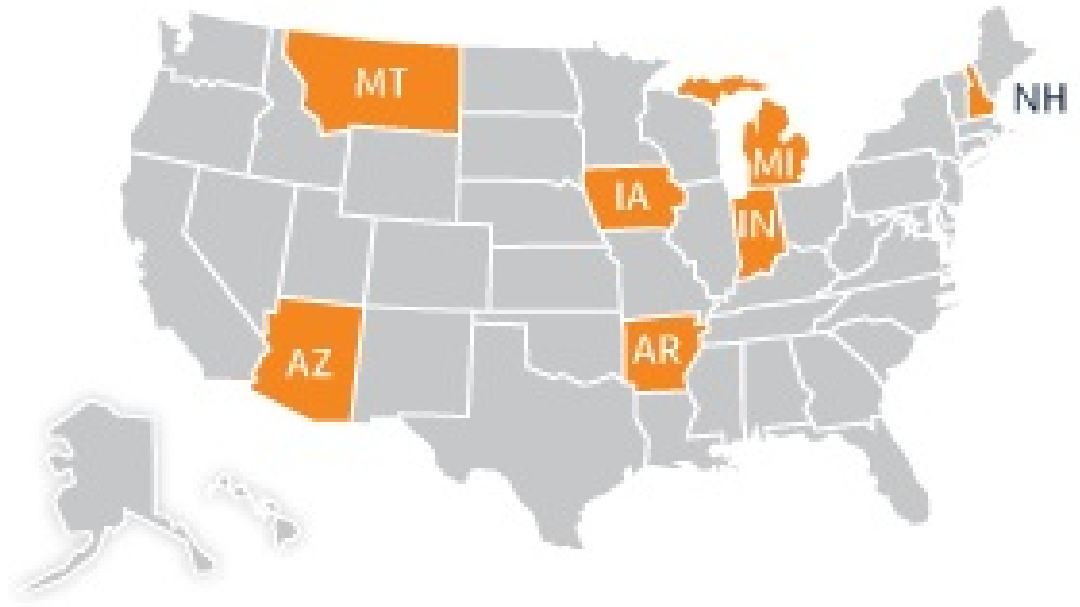
- What is § 1115?
- What states are using § 1115?
- What does the statute say?

What Is Section 1115?

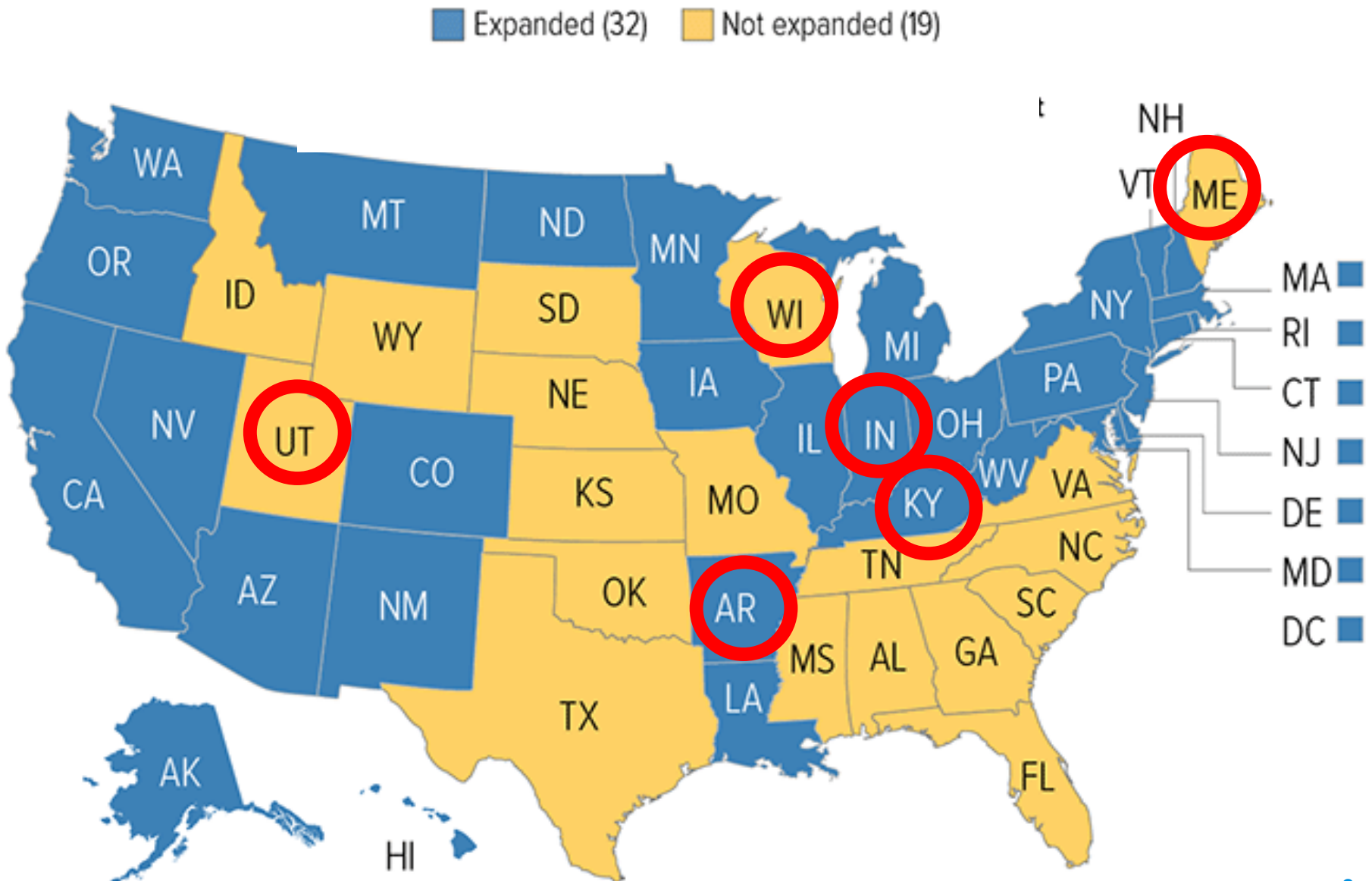
- Under Medicaid, states receive federal funding to provide health care to enrollees, but the states must comply with the federal requirements
- Section 1115 (Social Security Act) allows the Secretary to **waive** some of these requirements for states conducting a demonstration program
- Historically, this authority has been used to do things like managed care, coverage expansions, family planning expansions, etc.

New Wave of 1115 Demonstrations

- Starting in 2014, when the ACA's Medicaid expansion went into effect, a new wave of quid pro quo § 1115 approvals appeared: waivers granted in exchange for Medicaid expansion
- Now, the Trump administration is considering how this power might be used



Pending § 1115 Demonstrations



Source: Center on Budget and Policy Priorities

Pending § 1115s: Two Key Points

- The first round of Medicaid expansion waivers was to get new states to expand – the current pending states have mostly expanded already
- The first round of Medicaid expansion waivers targeted the Medicaid expansion population – the current pending states are also targeting traditional Medicaid populations

Table 2: Populations Who Would Be Subject to Work Requirements in Pending Waivers

	AR	IN	KY	ME	UT	WI
Expansion Adults	X	X	X			
Traditional Adults		X	X	X	X	X
		(low income parents, Transitional Medical Assistance)	(low income parents)	(parents up to 105% FPL, former foster care youth, Transitional Medical Assistance, medically needy, family planning)	(parents from 60-100% FPL and childless adults 0-100% FPL)	(adults without dependent children from 0-100% FPL)

Source: Kaiser Family Foundation

§ 1115 Law

- There are legal standards that govern the use of § 1115 authority
- The statute sets out numerous limits constraining the use of the authority
- There are long-standing battles on how those § 1115 standards are *applied*

§ 1115 Statutory Language Excerpt

Sec. 1115. [42 U.S.C. 1315]

In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of title ... XIX [Medicaid] ... in a State ... the Secretary may waive compliance with any of the requirements of section ... 1902 ... to the extent and for the period he finds necessary to enable such State ... to carry out such project...

Key Legal Limits of § 1115 Statute

1. § 1115 project must be a “demonstration”
2. Must promote the “objectives of” Medicaid

The “Objectives” of Medicaid

Sec. 1901. [42 U.S.C. 1396-1]

APPROPRIATION

For the purpose of enabling each State ... to furnish (1) **medical assistance** on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) **rehabilitation** and other services to help such families and individuals attain or retain capability for independence or self-care...

TANF: Helpful Comparison?

42 U.S. Code § 601

Purpose

(a) IN GENERAL The purpose of this part is to increase the flexibility of States in operating a program designed to—

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

Key Legal Limits of § 1115 Statute

1. § 1115 project must be a “demonstration”
2. Must promote the “objectives of” Medicaid
3. Only items in one section (§ 1902) can be waived
4. Can only waive to “extent and for the period” necessary to carry out demonstration
5. Must comply with transparency requirements

§ 1115 Application & Review Process - Comments & Hearings (42 CFR 431.420)

State Level

- Notice & “comprehensive description” of demonstration
- Min. 30 day comment period
- At least 2 public hearings
- Summary & response to public comments, including any changes made

Federal Level

- 15 days to determine completeness
- Min. 30 day comment period
- CMS approval/denial no sooner than 15 days after comments close
- Usually negotiations last longer

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- § 1916(f): Any cost-sharing waiver must comply with additional stringent requirements

Final Thoughts

- When does an exceptional administrative power usurp the power to legislate?
- How do we construe Medicaid's statutory intent after the narrow vision in the *NFIB* case?
- How do we distinguish a legitimate innovation from a health care cut masquerading as innovation?



Thank You

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