## MEDICAID: Continued from A-2

$21,000 a year for a single person. As an inducement to expand, the federal government covers 90% of the costs — a greater share than what the feds pay for the traditional Medicaid population.

Last year, there were about 21.3 million people who received coverage through Medicaid expansion.

One GOP cost-saving idea is to reduce the federal match for that population to what the feds give states for the traditional Medicaid population, which ranges from 50% for the wealthiest states to 77% for the poorest ones. That would reduce federal spending by $626 billion over a 10-year period, according to a recent analysis by KFF, a health research group.

Nine states — Arizona, Arkansas, Illinois, Indiana, Montana, New Hampshire, North Carolina, Utah and Virginia — have so-called trigger laws that would automatically end Medicaid expansion if the feds reduce their share. Three other states — Idaho, Iowa and New Mexico — would require other cost-saving steps.

"States will not be able to cover those shortfalls," said Jennifer Driver, senior director of reproductive rights at the State Innovation Exchange, a left-leaning nonprofit that advocates on state legislative issues. "It's not cutting costs. It is putting people in real danger."

Studies have shown that Medicaid expansion has improved health care for a range of issues, including family planning, HIV care and prevention, and postpartum health care.

**Kentucky legislature hastily adopts work requirement**

Another idea is to require able-bodied Medicaid recipients to work. That would affect an average of 15 million enrollees each year, and 1.5 million would lose eligibility for federal funding, resulting in federal savings of about $109 billion over 10 years.

In Kentucky, a Medicaid "community engagement" or work requirement was hastily approved by lawmakers Friday night as an amendment to a bill creating a Medicaid oversight board to look for ways to contain Medicaid costs. The action was taken in the final hours before the legislature broke for a 10-day veto period when the Republican supermajority was trying to ensure they could override any gubernatorial vetoes when they return March 27-28 to wrap up the session.

Senate budget committee chair Chris McDaniel, a Republican from Northern Kentucky, defended the requirement. "The intent is that if you are an ablebodied adult, that you have to demonstrate some kind of a work effort, be that school, be that child care, be that community involvement job, whatever the case is, right, the intent is that you have to execute some type of task like that."

Most adults covered by Medicaid already work; opponents of work requirements say they increase administrative costs and create paperwork burdens that cause people to lose coverage.

In heavily rural North Carolina, which has a trigger law, there are about 3 million people on Medicaid, and 640,000 of them are eligible under the state's expansion program. About 231,000 of the expansion enrollees live in rural counties. Black residents make up about 36% of new enrollees under the state's eligibility expansion, but only about 22% of the state's population.

Brandy Harrell, chief of staff at the Foundation for Health Leadership & Innovation, an advocacy group based in Cary, North Carolina, that focuses on rural issues, said the proposed Medicaid cuts would "deepen the existing disparities" between white people and Black people and urban and rural residents.

"It would have a profound effect on working families by reducing access to essential health care, increasing financial strain and jeopardizing children's health," Harrell said. "Cuts could lead to more medical debt, and also poorer health outcomes for our state."

Two of the North Carolina lawmakers with about 30% of their constituents on Medicaid, U.S. Reps. Virginia Foxx and Greg Murphy, represent heavily rural districts in western and coastal North Carolina, respectively.

Foxx has supported GOP budget priorities in social media posts. Murphy, a physician and co-chair of the GOP Doctors Caucus in the House, has focused his statements on taking care of what he says is abuse and fraud in the Medicaid system.

But North Carolina Democratic Gov. Josh Stein last week sent a letter to U.S. House and Senate leaders of both parties, saying the state's rural communities disproportionately rely on Medicaid and that cuts would upend an already fragile landscape for rural hospitals in the state.

"The damage to North Carolina's health care system, particularly rural hospitals and providers, would be devastating, not to mention to people who can no longer afford to access health care," Stein wrote.

In Nebraska, 27% of residents live in rural areas, and state lawmakers are already scrambling to make up for reduced federal Medicaid funding.

Dr. Alex Dworak, a family medicine physician who works at an Omaha health clinic that serves low-income and uninsured people, said a dearth of health care options in rural Nebraska already hurts residents. He has one patient who drives up to three hours from his rural community to the clinic.

"It wouldn't be just bad for marginalized communities, but it would be worse for marginalized communities — because things were already worse for them," Dworak said of proposed Medicaid cuts. "It will be an utter disaster."

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# Legislation would make it easier for police to withhold records, say open government advocates

By LIAM NIEMEYER
*The Kentucky Lantern*

FRANKFORT — Open government advocates warn a late-changing bill could make it easier for law enforcement agencies to withhold records via an exemption that they say agencies have misused in the past.

Under the Kentucky Open Records Act, police agencies or those involved in "administrative adjudication" can withhold records if "premature release of information" would harm an investigation or informants.

A Kentucky Supreme Court decision last year found that the Shively police department in Jefferson County had erroneously used the exemption to withhold from the Louisville Courier-Journal investigatory records involving a fatal car crash. The police department, the state's highest court found, made no effort to explain in its records denial letter how the public inspection of investigatory records related to the crash "would harm the agency's investigative or prosecutorial efforts."

"This provision has been misused for decades," said Michael Abate, a media law and First Amendment expert who serves as general counsel for the Kentucky Press Association.

Abate said law enforcement agencies had regularly exploited that exemption to wrongfully withhold law enforcement records. The Supreme Court decision, he said, made clear that agencies had to specifically articulate how the open records exemption applies to a case.

"No one is saying you can't withhold sensitive investigative material. You just have to explain why, in generic terms, why it would harm an investigation," Abate told the Lantern.

But a Kentucky bill that has been changed through a legislative maneuver late in this year's session has Abate and another open government advocates deeply concerned it could create a "categorical exemption for investigative records" just months after the court ruling.

House Bill 520, sponsored by Rep. Chris Fugate R-Chavies, was changed Thursday morning through a committee substitute in the Senate State and Local Government Committee and advanced only after a Republican senator changed his "no" vote to "continue the conversation" on the bill.

Fugate, a former Kentucky State Police trooper, told lawmakers his bill, by changing the language of the open records exemption, would protect police officers and agencies from providing records that could compromise an active investigation.

"It protects the investigation, it protects witnesses, it protects confidential informants, and it also protects the life of the police officers when investigations are compromised," Fugate said.

Fugate, speaking alongside the executive directors for the Kentucky League of Cities and the Kentucky Association of Chiefs of Police, said he cared about transparency but that witnesses needed to be protected in investigations involving murder, sexual abuse and drugs.

Instead of requiring agencies to certify that records disclosure "would harm" an agency, the amended version of HB 520 allows agencies to withhold records if disclosure "could pose a risk of harm to the agency or its investigation."

Amye Bensenhaver, the co-director of the Kentucky Open Government Coalition and a former deputy attorney general specializing in open government laws, said that language change — from "would harm" to "could pose a risk of harm" — would make it much easier for law enforcement to justify withholding records. In the past, before the Supreme Court decision, agencies routinely withheld records by saying that investigations were perpetually "pending" and "open."

"The main thing this does is essentially establish a very diluted standard for establishing harm to withhold public records in an ongoing investigation," Bensenhaver said. "It's gone from a really pretty rigorous standard — which was the ability to articulate a concrete risk of actual harm, that's a pretty high standard — to this very nebulous standard."

The bill also adds a reference to the open records exception in another part of state statutes related to the disclosure of "intelligence and investigative reports" once an investigation is completed.

The Louisville Courier-Journal reported when the Shively Police Department tried to argue in court that those state statutes also allowed them to withhold records, the Supreme Court ruled those statutes, KRS 17.150(2), had "no bearing on whether public records can be disclosed before a criminal prosecution is completed or a determination not to prosecute has been made."

Abate said the reference in HB 520 to KRS 17.150(2) is "seemingly an attempt to create a backdoor way to withhold entire investigation files."

He said it's not entirely clear what the purpose of the reference is in the bill because "they sprung this on us" through a committee substitute.

"It would be a really terrible change that would harm transparency in a meaningful way," Abate said.

Bill advances, barely, to the Senate floor

Senators on the State and Local Government committee on both sides of the aisle were skeptical of the revamped bill, and HB 520 nearly failed to advance out of the committee.

A few Republican senators expressed hesitation about the proposed rewording of the open records law, grappling with the stated desire by proponents to protect police investigations but also maintain government transparency.

"I do understand the need to protect your investigation…I still struggle with the word 'could,' in that that seems too broad to me," said Sen. Greg Elkins, R-Winchester.

Sen. Cassie Chambers Armstrong, D-Louisville, a University of Louisville law professor, echoed a concern Abate has about the bill — that it could shift the power of who gets to ultimately decide whether an open records exemption applies in a case to law enforcement agencies, not the courts.

Generally, if records are denied under the Open Records Act, those denials can be appealed to a local circuit court or the Kentucky Attorney General.

"If someone makes a request for records related to an investigation and law enforcement says this would harm our investigation, there are processes for a court to review those records," Armstrong said. "Help me understand how this doesn't let law enforcement or agencies enforce the Open Records Act."

J.D. Chaney, the executive director for the Kentucky League of Cities, responded to Armstrong by saying there would still be an appellate process available to those who feel they've been erroneously denied records.

The bill had initially failed to pass the committee after Sen. Lindsey Tichenor, R-Smithfield and Sen. Steve Rawlings, R-Burlington joined two Democrats on the committee in opposing the bill. Elkins initially voted against but changed his vote to "continue the conversation" about the bill.

Sen. Chris McDaniel, R-Ryland Heights, voted in favor of the bill, citing the difficult investigations and circumstances law enforcement can deal with during sensitive investigations.

"Sometimes the people that you deal with are far more of a danger to the overall administration of justice in our society than is the delay in the release of the records," McDaniel said. "We're talking about a space that gets very dangerous very quickly for victims, for law enforcement officers."

Fugate on Thursday declined to comment to the Lantern about the changes made to HB 520, saying the bill could potentially change again. The bill could be voted on by the Senate on Friday and sent to the House of Representatives to either concur or reject changes made in the Senate committee.

Senate President Pro Tem David Givens, R-Greensburg, told reporters Thursday afternoon senators would be discussing HB 520 among other bills still needing final passage.

"I'm aware that the vote in that committee was rather close on the legislation, but House Bill 520 did make it out," Givens said.

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