

Health Care in Motion

Timely, Substantive Updates on Policy Shifts • Actionable Advocacy to Protect Health Care

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This is America[n Health Care]

As the annual Memorial Day crowning of a new “song of the summer” brings us pointed [social commentary about the state of our nation](#), we here at Health Care in Motion continue to do our part by tracking the fractured, discordant, messy, and regressive evolution of our American health care system. If there is a single theme to these updates, it is the continuing trend toward a decentralization of power in health care policy from the federal government to state officials, with some notable exceptions discussed below. This shift can make it even more difficult to stay on top of significant developments in health policy—we’ll keep striving to keep you up to date.

Medicaid Waiver Watch

Longtime Health Care in Motion [readers](#) will recall the saga of recent Medicaid waiver proposals submitted by states. States are, with increasing frequency, seeking permission to take health coverage away from Medicaid beneficiaries who do not meet onerous work requirements, emboldened by [guidance](#) set forth by the Trump Administration. Since our last [discussion](#), the story has taken a few more twists and turns.

First, in addition to the approval of waivers in Kentucky, Indiana, and Arkansas that condition coverage for Medicaid expansion enrollees on individuals proving that they have maintained employment, the Trump Administration has given New Hampshire [approval](#) to move forward with its own proposal. No sooner than January 1, 2019, certain Medicaid beneficiaries will be required to document 100 hours of participation in employment or other “community engagement” activities each month or be locked out of the program until they can document compliance.

Second, the Administration has made its position clear on waiver requests in states that have not chosen to [expand](#) their Medicaid programs to cover all low-income adults. In these states, allowing Medicaid to take away coverage from people who do not meet work requirements would have particularly cruel effects, as the primary population [affected](#) would be parents and caretakers of dependent relatives. In [previous dispatches](#), we pointed out the untenable situation would place people in: work for the mandated number of hours and make too much to qualify for Medicaid coverage, but too little to qualify for the ACA’s subsidies—leaving no other place to turn to for health care.

Appearing at the World Health Care Congress, [Seema Verma](#), Administration of the Centers for Medicare and Medicaid Services (CMS), indicated that the Administration will not approve work requirements in non-expansion states. Citing the “[subsidy cliff](#)” that such proposals would create, Verma indicated that CMS remains willing to work with non-expansion states to craft waiver applications that address this concern. How this herculean task would be achieved remains to be seen.

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Virginia on the verge of expanding Medicaid

After a long and arduous battle over the future of the state's Medicaid program, the Virginia General Assembly [voted](#) in favor of a budget bill that includes expanding the state's Medicaid program to cover all low-income adults earning less than 138% of the Federal Poverty Level. The Democratic Governor, Ralph Northam, is [expected to sign the budget bill](#) containing the expansion in coming days. Significantly, the expansion comes with a [catch that will ring familiar](#): newly-eligible beneficiaries will have to prove that they work at least 80 hours per month. After four years of disagreement on the issue, the Republican-controlled General Assembly finally agreed to the idea of expansion, [citing](#) the policy shifts from CMS that would allow Virginia to deny coverage to those that don't maintain employment. Virginia will now become the 34th state (including the District of Columbia) to expand its Medicaid program, providing health coverage to an additional 400,000 residents.

A Domestic Gag Rule

The Trump Administration is [proposing](#) to rescind [regulations](#) that require [Title X programs](#) to provide "neutral, factual" information about pregnancy options, including abortion, when women ask. The Administration is instead proposing a "domestic gag rule," that prohibits doctors and nurses from referring patients for safe, legal abortion and from providing transparent information about accessing these health care services. This rule would affect women's health clinics, like [Planned Parenthood](#), and community health centers that serve millions of people. Members of the public can submit comments [here](#) by July 31, 2018.

This policy proposal is a noted departure from the Trump Administration's overall trend away from centralized decision-making in health care at the hands of the federal government. Indeed, as Planned Parenthood's own Republican Advisory Board points out in response to the new proposal, "[the proposed rule runs contrary to \[traditional Republican\] beliefs exemplifying instead fundamental and gross government overreach and causing potential harm to the very people Title X was designed to help, most vulnerable women in our nation.](#)" The Trump Administration is apparently in favor of limited government involvement in health care decision-making, unless there are political points to be won with a particular segment of voters.

New Jersey's Insurance Mandate

On the other side of the coin, there are developments in more progressive states to shore up the holes left by federal changes. New Jersey is now the second state (following Massachusetts) to enact a statewide individual health coverage mandate effective January 2019. The mandate will help continue the state's high insured rate (approximately [92%](#)) in light of Congress' [repeal of the federal mandate penalty](#) last December. Penalties collected from this mandate will go towards the New Jersey Health Insurance Security Fund or the Health Care Subsidy Fund (used to improve NJ's children's health insurance program). Read more about the mandate [here](#).

Leaked Changes to the Definition of a Public Charge

Some immigrants who seek lawful permanent resident status are required to show they are not likely to become a [public charge](#) (defined as someone "primarily dependent on the government for subsistence"). The federal government will specifically consider whether a person has participated in certain cash assistance programs. Earlier this year however, media outlets obtained [leaked drafts](#) of proposed changes to this policy. The drafts suggest that the [Department of Homeland](#)



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Security plans to expand the set of programs that can negatively impact a public charge consideration. Advocates are concerned that an expansion could include programs that provide health benefits, and thus discourage immigrant families from accessing health care coverage. The proposed changes have not been officially published though, and will be subject to notice and comment procedures before being finalized. For more information about the potential impact these changes may have on immigrant families, read [here](#).

Imminent Proposed Changes to Section 1557

The Department of Health and Human Services' [Office of Civil Rights](#) (OCR) has prepared a proposed rule to modify regulations around Section 1557 of the Affordable Care Act. [Section 1557](#) incorporates certain federal civil rights laws and applies them to health programs that receive federal funding. Current regulations interpret the prohibition of discrimination on the basis of sex to include discrimination on the bases of gender identity and termination of pregnancy (though you may recall that a U.S. District Court judge has [blocked implementation](#) of this part of this rule with a preliminary injunction). OCR's proposed rule was submitted for [review](#) to the Office of Management and Budget (OMB) in April. Advocates expect that the proposed rule will roll back groundbreaking protections for members of the transgender community. If OMB approves the proposed rule, it will be published in the Federal Register and open for public comment. Health Care in Motion readers will be alerted when the proposed rule is published.

Zombie bill . . . again . . . maybe?

Hold on to your hats this summer. A group of Senate Republicans has [called](#) for leadership to cancel or trim the upcoming August recess to catch up on legislative priorities. While Senate Majority Leader [Mitch McConnell](#) is reportedly [considering](#) the request, the agenda for a potential summer session is uncertain. One possibility? Another health care bill, either a revived version of the [Graham-Cassidy](#) health care bill that was the final proposal considered last year, or a [new proposal](#) being shopped around by a group of 40 conservative health care experts led by the Heritage Foundation. It is still unclear whether or not this is all smoke and mirrors, but we will continue to monitor and keep readers updated if this evolves into a real threat.

That's all the news that fits this week. Advocates should keep fighting in the trenches, wherever those trenches may be, and [take solace in the songs of summer that accompany us through these trying days](#).

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