

THREATS TO HEALTH AND SAFETY NET PROGRAMS

POVERTY THRESHOLD PROPOSAL

The White House Office of Management and Budget (OMB) issued a request for comment in May in which it indicated that the Administration is considering adopting a different approach to calculating the federal poverty threshold.¹ The document discusses adjusting for inflation at a slower rate, which, over a ten year window, could lead to more than a three percent reduction in the federal poverty line. This threshold is used by federal agencies for determining the income-eligibility status and benefit level for beneficiaries in numerous means-tested health, nutrition and safety net programs, including many highlighted in this brief.² For example, estimates suggest that this change, if enacted, would lead to a loss or reduction of benefits for hundreds of thousands of beneficiaries enrolled in Medicaid, the Children’s Health Insurance Program (CHIP), the Supplemental Nutrition Assistance Program (SNAP), and those receiving federal financial assistance in individual insurance market, to name a few.³ A comment period closed in late June.

MEDICAID REFORMS

Medicaid covers over 72 million low-income individuals – including 28 million children – serving as the nation’s largest health insurance program.⁴ Since its inception as a low-income insurance program, Medicaid has evolved, in part due to the coverage expansion called for by the Affordable Care Act (ACA), among other reforms. To date, 37 states (including DC) expanded Medicaid pursuant to the ACA, extending coverage to individuals up to 138 percent of the federal poverty level (FPL) (\$35,535 for a family of four).⁵ The Trump Administration has set forth an ambitious health care agenda, with sweeping reforms and budgetary cuts to Medicaid. Key tenets of the administration’s Medicaid agenda include:

Reform	Description	Status
Block Grants/ Per Capita Cap	In addition to wholesale ACA repeal (including elimination of the Medicaid coverage expansion), the President’s FY 2020 budget proposes to shift Medicaid from an open-ended entitlement program to one that allows states to implement Medicaid block grants or per capita caps, both of which would significantly reduce coverage (\$658b/10y cut). ⁶ Despite the assumption by many that such a change would require an act of Congress, the Administration is planning to release guidance to states on how they might accomplish such a model via section 1115 waivers. ⁷ In	Pending

¹ <https://www.federalregister.gov/documents/2019/05/07/2019-09106/request-for-comment-on-the-consumer-inflation-measures-produced-by-federal-statistical-agencies>

² <https://www.hhs.gov/answers/hhs-administrative/what-programs-use-the-poverty-guidelines/index.html>

³ <https://www.cbpp.org/research/poverty-and-inequality/administrations-poverty-line-proposal-would-cut-health-food> and <https://www.cbpp.org/research/poverty-and-inequality/poverty-line-proposal-would-cut-medicare-and-premium-tax>

⁴ <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/ProgramBasics.pdf>

⁵ <https://www.kff.org/medicaid/issue-brief/status-of-state-medicicaid-expansion-decisions-interactive-map/>

⁶ <https://www.hhs.gov/sites/default/files/fy-2020-budget-in-brief.pdf>

⁷ <https://www.reginfo.gov/public/do/eoDetails?rrid=129183>

	Nov. 2019, CMS Administrator Seema Verma preliminarily outlined the plan, stating it would provide “unprecedented flexibilities” to states and generate “vigorous accountability for outcomes.” Release of the guidance is expected in the near-term. ⁸	
Work Requirements	As part of a “new direction” in Medicaid, Centers for Medicare and Medicaid (CMS) issued guidance to states to implement work and “community engagement” requirements (e.g., job search caregiving, volunteer service) of certain populations via section 1115 waivers. ⁹ To date, CMS approved work requirements waivers in 9 states (3 of which have been set aside by a court), while several other waivers are still pending. ¹⁰ In Arkansas, implementation of this model resulted in 18,000 people losing their Medicaid coverage. ¹¹	Enacted
Additional Administrative Actions	Proposed rules issued in the Fall of 2019 would rescind the required monitoring process states must engage in to ensure sufficient beneficiary access to services; ¹² and would overhaul the way states must finance and account for their supplemental payments to providers. ¹³ The administration is likely to continue to leverage its regulatory authority to implement Medicaid reforms consistent with its agenda of promoting state flexibility. A forthcoming regulation (expected in 2021), e.g., will “reexamine” requirements of states to provide non-emergency medical transportation (NEMT) when beneficiaries lack means of accessing medical services. ¹⁴	Proposed and Pending

NUTRITION PROGRAM REFORMS

Conservatives in the House of Representatives were largely unsuccessful in enacting the major cuts and restructuring of nutrition programs that they sought through the 2018 Farm Bill process. Since that time the Administration has sought to enact some smaller, but meaningful changes via regulation. Additional proposals have arisen that may impact programs related to the Child Nutrition Reauthorization process in the coming year, such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and school meals.

Reform	Description	Status
ABAWD Rule	The Department of Agriculture (USDA) published a proposed rule that would narrow the criteria by which states may exempt certain SNAP beneficiaries known as able-bodied adults without dependents (ABAWDs) from existing program work requirements. ¹⁵ Approximately 44 percent of ABAWDs in 36 states currently live in an area where the program's work requirements have been waived. ¹⁶ Under this proposal, that number would drop to 11 percent, thus exposing these enrollees to a the three-month time limit on their SNAP benefits if they cannot maintain 80 hours per month of employment.	Proposed

⁸ <https://www.cms.gov/newsroom/press-releases/cms-administrator-seema-vermas-speech-national-association-medicaid-directors-washington-dc>

⁹ <https://www.cms.gov/newsroom/press-releases/cms-announces-new-policy-guidance-states-test-community-engagement-able-bodied-adults>

¹⁰ <https://www.kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/>

¹¹ <https://khn.org/news/study-arkansas-medicaid-work-requirements-hit-those-already-employed/>

¹² <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-14943.pdf>

¹³ <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-24763.pdf>

¹⁴ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=0938-AT81>

¹⁵ <https://www.federalregister.gov/documents/2019/02/01/2018-28059/supplemental-nutrition-assistance-program-requirements-for-able-bodied-adults-without-dependents>

¹⁶ <https://fns-prod.azureedge.net/sites/default/files/snap/FY19-Quarter1-ABAWD-Waiver-Status.pdf>

Categorical Eligibility	“Broad-based” categorical eligibility is a pathway by which households may be automatically eligible for SNAP benefits based on being eligible for or receiving benefits from other specified low-income assistance programs. ¹⁷ The Administration released a proposed rule ¹⁸ that would limit this pathway, effectively cutting 3.1 million enrollees from SNAP and removing direct certification in school meals for nearly one million children. ¹⁹	Proposed (Awaiting finalization)
Standard Utility Allotments	USDA published a proposed rule that would standardize how standard utility allowances (SUAs) are calculated within a household’s SNAP benefit calculation. The agency estimated that the change in methodology would reduce SNAP spending by \$4.5 billion over five years, and result in approximately 8,000 households losing SNAP eligibility. Comments are due on the proposal by Dec. 2, 2019. ²⁰	Proposed
Community Eligibility Provision	In its fiscal year (FY) 2020 budget proposal, the White House proposes to cut child nutrition programs by \$1.7 billion over 10 years, in large part by reducing the number of schools eligible to implement the Community Eligibility Provision (CEP). ²¹ CEP allows the nation’s highest poverty schools and districts to serve breakfast and lunch at no cost to all enrolled students without collecting household applications. ²² It increases participation in school meals, reduces stigma, and reduces administrative paperwork burden.	Budget Proposal

POLICIES IMPACTING IMMIGRANTS, WOMEN, AND MARGINALIZED COMMUNITIES

A. “Public Charge” Final Rule

When an immigrant applies to enter the country or obtain a green card, the U.S. government makes a determination as to whether that person is likely to become a “public charge,” or to become reliant on public benefits.²³ If they are deemed a “public charge,” they are not allowed to enter or to extend their stay. Whereas historically only cash benefits have been considered in public charge determinations, on August 14, 2019, the Department of Homeland Security (DHS) finalized a rule that would effectively expand the definition of “public charge” to include the use of safety net programs such as Medicaid, SNAP, Medicare Part D subsidies, and housing programs.²⁴ The rule was scheduled to take effect October 15, 2019; however, a court-issued injunction temporarily blocked its implementation nationwide on October 11, 2019, and multiple other nationwide injunctions followed postponing the effective date until the legal cases are settled. Given the October legal ruling and other pending cases, when and if it will take effect is not currently known. Until it does take effect, individuals and families can continue to utilize health, nutrition and housing benefits without concern for public charge. Public confusion and fear however, are causing immigrants to disenroll from or avoid health and human service programs for which their families are in fact eligible. The Urban Institute reports that 1 in 7 adults avoided these programs in 2018, for example, while potential changes to public charge were pending.²⁵ A companion rule from the Department of Justice (DOJ) that would also impact public charge is anticipated later this year.

¹⁷ <https://fas.org/sgp/crs/misc/R42054.pdf>

¹⁸ <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-15670.pdf>

¹⁹ <https://www.fns.usda.gov/pressrelease/fns-001519>

²⁰ <https://www.federalregister.gov/documents/2019/10/03/2019-21287/supplemental-nutrition-assistance-program-standardization-of-state-heating-and-cooling-standard>

²¹ <https://www.obpa.usda.gov/budsum/fy2020budsum.pdf>

²² <https://www.fns.usda.gov/school-meals/community-eligibility-provision>

²³ <https://www.chcf.org/blog/immigrants-new-proposed-public-charge-rule/>

²⁴ <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>

²⁵ <https://www.urban.org/urban-wire/public-charge-rule-looming-one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018>



B. 2020 Census Citizenship Question

In early 2018, officials within the Trump Administration decided to include a question regarding an individual's citizenship status in the 2020 census. Experts estimate that 24 million people in the U.S. would avoid participation, effectively lowering the population count in every state, which could result in a decrease in federal funding of key safety net programs that many immigrants rely on.²⁶ Opponents argue that the U.S. Constitution requires that every person in the nation be counted, not citizens. Most recently, the U.S. Supreme Court has temporarily blocked the question from being included in 2020.²⁷

C. Title X Final Rule

Title X, which served over 4 million low-income, uninsured clients in 2018, is a program intended to support access to family planning care.²⁸ The Trump Administration recently issued a final rule that would block or severely limit the availability of federal funds for family planning providers that also offer abortions, and would prohibit sites that participate in Title X from referring patients for or counseling them on abortion services.²⁹ Attorney Generals from 23 states, Planned Parenthood and the American Medical Association have filed a lawsuit to block the implementation of the law, however a federal appeals court ruled that the rule can take effect while the lawsuits play out.³⁰

A recent Kaiser Family Foundation (KFF) report found that Title X participation has declined since enactment of the rule.³¹ Specifically, it found that 23 percent of sites receiving Title X funding will no longer participate in the program, including 429 Planned Parenthood sites across 34 states and the District of Columbia. Of the 90 grantees participating in the program in 2019, only 19 have confirmed they will comply with the new regulatory requirements. HHS has since reallocated \$33.6 million in FY 2019 funding to 50 current grantees. The reallocated funding was sourced from sites which have withdrawn from the program.³²

D. Final Rule on Conscience Protections

The Department of Health and Human Services Office of Civil Rights (HHS OCR) issued a final rule that vastly expanded protections for health care providers, payers, and other entities from discrimination on the basis of their exercise of conscience and religious belief in HHS funded programs.³³ Covered entities, such as individual providers, hospitals, health plans, patients, caregivers, pharmacists and others, are broadly protected from having to perform, train for, pay for, refer for, or otherwise participate in activities to which they object. Opponents

²⁶ <https://www.statnews.com/2018/04/13/citizenship-question-2020-census-public-health/>

²⁷ <https://www.politico.com/story/2019/06/27/supreme-court-ruling-census-citizenship-question-1385304>

²⁸ <https://www.kff.org/womens-health-policy/issue-brief/new-title-x-regulations-implications-for-women-and-family-planning-providers/>

²⁹ <https://www.kff.org/womens-health-policy/issue-brief/new-title-x-regulations-implications-for-women-and-family-planning-providers/>

³⁰ <https://www.politico.com/story/2019/06/20/trump-family-planning-restrictions-1544884>

³¹ https://www.kff.org/womens-health-policy/issue-brief/data-note-impact-of-new-title-x-regulations-on-network-participation/?utm_campaign=KFF-2019-Global-Health-Policy-GHP&utm_source=hs_email&utm_medium=email&utm_content=76170004&_hsenc=p2ANqtz-9PYi_g4Kkn8XdesFckxKsLWWsRzxxkEpGbo6FtXENtlns1ILBq0HBNB_D5bnYzWBgieZ1CaJ4MUvWrk8Y2AXxai9x9ZjQ&_hsmi=76170004

³² <https://www.hhs.gov/about/news/2019/09/30/hhs-issues-supplemental-grant-awards-to-title-x-recipients.html>

³³ <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>

contend this will impede access to services such as abortion, sterilization, assisted suicide, vaccinations, and care for transgender individuals.³⁴ The Administration delayed implementation of the final rule until November 22, but several federal judges across the United States have blocked the rule.³⁵

First, New York’s U.S. District Judge, Paul Engelmayer, struck down the rule, which he characterized as having “glaring legal defects.” He stated the administration’s decision to advance the rule is “arbitrary and capricious,” adding that reports of a “significant increase” in conscience violation complaints from physicians are “flatly untrue.” The judge also stated that the rule violates several federal laws that require hospitals to provide emergency care to low-income patients, and require employers to accommodate worker’s religious preferences. Following this, U.S. District Judge Stanley Bastian of Washington State blocked the rule via an oral ruling, arguing that the rule would limit access to necessary care for many patients. A third lawsuit on the issue is currently pending in California. Administration officials have not yet signaled whether they will appeal the rulings, though further legal action is likely.

E. Proposed Rule Redefining Discrimination on the Basis of Sex

HHS OCR issued a proposed rule to amend regulations under Section 1557 of the ACA to repeal the current definition of sex discrimination – defined as “discrimination on the basis of pregnancy termination, sex stereotyping, and gender identity.” The agency proposes instead to adopt an interpretation of “sex” to mean “biologically male or female,” and to remove sexual orientation and gender identity as prohibited bases for discrimination. This will negatively affect the trans community, where one in five transgender adults are uninsured and only 40 percent of trans people report being out to their medical professionals, for fear of harassment.³⁶

On a related note, Texas’ U.S. District Judge Reed O’Connor overturned protections for two patient groups established in Section 1557 of the ACA: transgender patients seeking transition procedures and patients seeking abortions.³⁷ The vacated regulation prohibited insurers and providers receiving federal funding from denying the treatment or coverage of anyone based on sex or if they are seeking pregnancy termination (section 1557 of the ACA). The court ruled that the policy violates the religious freedom of Christian health care providers. The ruling is likely to be appealed.

³⁴ <https://newsatjama.jama.com/2019/05/15/jama-forum-the-conscience-rule-how-will-it-affect-patients-access-to-health-services/>

³⁵ <https://affordablecareactlitigation.files.wordpress.com/2019/06/file0.203873881177184.pdf>

³⁶ <https://www.commonwealthfund.org/blog/2018/federal-protections-health-care-risk-transgender-americans>

³⁷ <https://affordablecareactlitigation.files.wordpress.com/2019/10/fa-memorandum-op-and-order-10-15-19.pdf>