



CENTER *for* HEALTH LAW
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HARVARD LAW SCHOOL

HEALTH CARE REFORM UPDATE:

AN OVERVIEW OF CONGRESSIONAL AND ADMINISTRATIVE
CHALLENGES TO ACCESS TO CARE

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CENTER *for* HEALTH LAW
and POLICY INNOVATION
HARVARD LAW SCHOOL

Training center for the next generation of health policy lawyers; law and policy reform think tank; advocacy and leadership development; law reform advising

Access to Care

- Monitor, analyze, and advocate for access to care and treatment for underserved individuals living with chronic illness

Whole Person Care

- Support sustainable integration of innovative, “triple-aim services” into care delivery and financing through policy reform

Impact Litigation

- Achieve health care systems change and protect individual rights through the courts

FOUR RECENT SUCCESSES

- All Affordable Care Act (ACA) repeal and replace bills **defeated**
- Medicaid work requirements in Kentucky **invalidated**
- Rise of Medicaid Expansion ballot activism **in Maine and upcoming votes in Nebraska, Utah and Idaho**
- Despite efforts to destabilize the ACA Private Insurance Marketplace **strong enrollment continued in 2018**

1. ACA REPEAL AND REPLACE

- If they have the votes the GOP will likely launch another attempt to repeal the ACA
- Graham-Cassidy 2.0 is the most recent ACA repeal proposal currently being circulated:
 - Eliminates Medicaid expansion and Marketplace subsidies
 - Block grants Medicaid and cuts funding by \$649 billion
 - Eliminates \$800 billion in Medicare funding as a result of elimination of ACA taxes
 - Makes pre-existing condition protections meaningless by eliminating essential health benefits and allowing higher premiums based on health status

The mid-term elections may determine the fate of the Affordable Care Act

2. ENTITLEMENT REFORM

- Medicare reform proposals call for funding cuts and other program changes, including:
 - Premium support model
 - Increased eligibility age
 - Changes to Part B and Part D protected classes
 - Increased utilization management
- Medicaid reform proposals call for the elimination of the traditional Medicaid entitlement in favor of a block grant or per capita cap
 - Includes cuts to Medicaid funding and insufficient annual increases
 - States will find it increasingly difficult to respond to innovations in health care such as treatment advances or cures

3. WAIVER AUTHORITY: § 1115 FOR MEDICAID AND § 1332 FOR MARKETPLACE

- § 1115 of Medicaid Act allows states to apply for waivers from traditional rules that further Medicaid's stated purpose of furnishing medical assistance to low-income people
 - Administration has approved proposals that reduce access to coverage and services, such as work requirements, that are inconsistent with the central objective of Medicaid



“We are fully committed to work requirements and community participation requirements in the Medicaid program. We will continue to litigate, we will continue to approve plans, we are continuing to work with states, and we’ll drive forward.” – Alexander Azar, Secretary of HHS

- § 1332 of the ACA allows states to apply for waivers from Marketplace rules
 - Under current rules, coverage changes have to consider the impact on all enrollees and on vulnerable populations, now under proposed rules aggregate impact is sufficient
 - Minimum coverage standards apply to all plans, now under proposed rules substandard plans ok as long as there are plans available that meet minimum coverage requirements

MEDICAID WAIVERS: IT'S NOT JUST WORK REQUIREMENTS

	<u>Work Requirements</u>	<u>Lockouts</u>	<u>Time Limits</u>	<u>Premiums</u>	<u>Copayments</u>	<u>Drug Testing</u>	<u>Partial Expansion</u>	<u>Closed Formulary</u>	<u>No Retroactive Coverage</u>	<u>No Presumptive Eligibility</u>	<u>Enhanced Proof of Citizenship</u>
Alabama	X										
Arizona	X		X						X		
Arkansas	X	X					X*		X		
Indiana	X	X		X					X		
Iowa									X		
Kansas	X	X	X*								
Kentucky	X	X		X	X				X		
Maine	X	X		X	X				X	X	
Massachusetts							X*	X*	X		
Michigan	X			X							
Mississippi	X										
New Hampshire	X								X		X
New Mexico		X		X	X				X		
North Carolina	X			X							
Ohio	X										
South Dakota	X	X									
Utah	X	X	X	X	X		X		X	X	
Wisconsin	X	X	X		X	X					

Red text is approved. Black text is pending. * Indicates the proposal was denied by CMS.

4. PRIVATE INSURANCE MARKETPLACE REFORMS

- Congress eliminated the individual mandate as part of the tax reform law
- Administration eliminated cost sharing subsidy payments to insurers and cut outreach and enrollment funds by 84%
- Administration is promoting parallel insurance markets that are exempt from ACA access, quality and equity rules
- Lawsuit *Texas v US* threatens the Marketplace if not the entirety of the ACA

	Percent of FPL & Income					
Household Size	100%	138%	200%	250%	300%	400%
1	\$12,060	\$16,643	\$24,120	\$30,150	\$36,180	\$48,240
4	\$24,600	\$33,948	\$49,200	\$61,500	\$73,800	\$98,400
Premium Set at Percent of Income	2.01%	3.32%	6.34%	8.10%	9.56%	9.56%

THE PATH FORWARD

- We have a blueprint for success to defeat ACA repeal efforts and other challenges
- We have to continue efforts to build bi-partisan support for federal and state laws, policies and programs that truly meet the triple aim of health reform
- We need to protect health care access gains and prioritize the promotion of innovative reforms to prevention, screening, treatment and support services
- Working together for access to comprehensive and affordable health care, that meets the care, treatment and services needs of vulnerable populations, is a goal that advocates can and must win!



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