

## 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.<sup>1</sup> 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.<sup>2</sup> 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) (formerly known as food stamps), and those receiving federal financial assistance in individual insurance market, to name a few.<sup>3</sup> 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.<sup>4</sup> 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).<sup>5</sup> 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
<b>Block Grants/ Per Capita Cap</b>	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). <sup>6</sup> Despite the assumption by many that such a change would require an act of Congress, the Administration is planning to	Pending

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

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

<sup>3</sup> <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-medicaid-medicare-and-premium-tax>

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

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

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

	release guidance to states on how they might accomplish such a model via section 1115 waivers. <sup>7</sup>	
<b>Work Requirements</b>	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. <sup>8</sup> To date, CMS approved work requirements waivers in 7 states (2 of which have been set aside by a court), while several other waivers are still pending. <sup>9</sup> In Arkansas, implementation of this model resulted in 18,000 people losing their Medicaid coverage. <sup>10</sup>	Enacted
<b>Additional Administrative Actions</b>	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. <sup>11</sup>	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
<b>ABAWD Rule</b>	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. <sup>12</sup> Approximately 44 percent of ABAWDs in 36 states currently live in an area where the program’s work requirements have been waived. <sup>13</sup> 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 (Awaiting finalization)
<b>Categorical Eligibility</b>	“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. <sup>14</sup> Changes to this provision were sought, though not achieved in the last Farm Bill; however, the Administration is reviewing a proposal that would amend regulations to limit categorical eligibility “to households that receive cash Temporary Assistance for Needy Families (TANF) or other substantial assistance from TANF.” <sup>15</sup>	Pending

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

<sup>8</sup> <https://www.cms.gov/newsroom/press-releases/cms-announces-new-policy-guidance-states-test-community-engagement-able-bodied-adults>

<sup>9</sup> <https://www.kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/>

<sup>10</sup> <https://khn.org/news/study-arkansas-medicare-work-requirements-hit-those-already-employed/>

<sup>11</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=0938-AT81>

<sup>12</sup> <https://www.federalregister.gov/documents/2019/02/01/2018-28059/supplemental-nutrition-assistance-program-requirements-for-able-bodied-adults-without-dependents>

<sup>13</sup> <https://fns-prod.azureedge.net/sites/default/files/snap/FY19-Quarter1-ABAWD-Waiver-Status.pdf>

<sup>14</sup> <https://fas.org/sgp/crs/misc/R42054.pdf>

<sup>15</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=0584-AE62>

<b>Community Eligibility Provision</b>	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). <sup>16</sup> 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. <sup>17</sup> It increases participation in school meals, reduces stigma, and reduces administrative paperwork burden.	Proposed
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**POLICIES IMPACTING IMMIGRANTS, WOMEN, AND MARGINALIZED COMMUNITIES**

**A. “Public Charge” Proposed 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.<sup>18</sup> On October 10, 2018 the Department of Homeland Security published a proposed rule that would effectively expand the definition of “public charge” to include the use of safety net programs such as Medicaid, supplemental nutrition assistance program (SNAP), Medicare Part D subsidies, and housing programs.<sup>19</sup> Though the rule has not been finalized, immigrants in fear of being denied entry or permanent residency have dis-enrolled or avoided use of these programs for which they or their citizen children may be eligible. The Urban Institute reports that 1 in 7 adults avoided these programs in 2018.<sup>20</sup> A companion rulemaking from the Department of Justice (DOJ) is anticipated that could make involvement in these programs grounds for deportation.

**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.<sup>21</sup> 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.<sup>22</sup>

**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.<sup>23</sup> 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

<sup>16</sup> <https://www.obpa.usda.gov/budsum/fy2020budsum.pdf>

<sup>17</sup> <https://www.fns.usda.gov/school-meals/community-eligibility-provision>

<sup>18</sup> <https://www.chcf.org/blog/immigrants-new-proposed-public-charge-rule/>

<sup>19</sup> *Ibid.*

<sup>20</sup> <https://www.urban.org/urban-wire/public-charge-rule-looming-one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018>

<sup>21</sup> <https://www.statnews.com/2018/04/13/citizenship-question-2020-census-public-health/>

<sup>22</sup> <https://www.politico.com/story/2019/06/27/supreme-court-ruling-census-citizenship-question-1385304>

<sup>23</sup> <https://www.kff.org/womens-health-policy/issue-brief/new-title-x-regulations-implications-for-women-and-family-planning-providers/>



abortions, and would prohibit sites that participate in Title X from referring patients for or counseling them on abortion services.<sup>24</sup> 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.<sup>25</sup>

#### **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.<sup>26</sup> 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 contend this will impede access to services such as abortion, sterilization, assisted suicide, vaccinations, and care for transgender individuals.<sup>27</sup> The Administration has delayed implementation of the final rule until November 22, while six lawsuits move forward.<sup>28</sup>

#### **E. Proposed Rule Redefining Discrimination on the Basis of Sex**

HHS OCR issued a proposed rule to amend regulations under Section 1557 of the Affordable Care Act 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.<sup>29</sup>

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<sup>24</sup> <https://www.kff.org/womens-health-policy/issue-brief/new-title-x-regulations-implications-for-women-and-family-planning-providers/>

<sup>25</sup> <https://www.politico.com/story/2019/06/20/trump-family-planning-restrictions-1544884>

<sup>26</sup> <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>

<sup>27</sup> <https://newsatjama.jama.com/2019/05/15/jama-forum-the-conscience-rule-how-will-it-affect-patients-access-to-health-services/>

<sup>28</sup> <https://affordablecareactlitigation.files.wordpress.com/2019/06/file0.203873881177184.pdf>

<sup>29</sup> <https://www.commonwealthfund.org/blog/2018/federal-protections-health-care-risk-transgender-americans>