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President-Elect Trump and Congressional Republicans Consider Medicaid Reform

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Health Care

Medicaid provides health care to 70 million Americans. In fiscal year 2015, States spent $532 billion on Medicaid, with the federal share representing well over half of that total.

President-elect Donald J. Trump, his nominee for Secretary of Health and Human Services (HHS), and congressional Republican leadership have all proposed sweeping changes to the Medicaid program. With President-elect Trump taking office in 2017, and Republicans maintaining control of both the House of Representatives and the Senate, there is now a real possibility of substantial legislative changes to the Medicaid program, for the first time since the enactment of the Affordable Care Act (ACA).

Below, we summarize and analyze Republican Medicaid reform proposals, as well as their prospects for enactment. While much uncertainty remains about the Republican leadership and Trump Administration's legislative priorities, we believe there is a significant possibility they will make a push for major changes to Medicaid during the next Congress (*i.e.*, sometime in 2017 or 2018), potentially as part of their efforts to "repeal and replace" the ACA.

President-elect Trump's Position

During the campaign, President-elect Trump said little about Medicaid, outside of his repeated promises to repeal the ACA and some statements about protecting Medicaid (e.g., a tweet in which he said he "was the first & only potential GOP candidate to state there will be no cuts to Social Security, Medicare & Medicaid.")

However, according to the campaign's website, President-elect Trump is in favor of "block-granting" Medicaid. The campaign's "health care reform" proposal included the following passage:

> Block-grant Medicaid to the states. Nearly every state already offers benefits beyond what is required in the current Medicaid structure. The state governments know their people best and can manage the administration of Medicaid far better without federal overhead. States will have the incentives to seek out and eliminate fraud, waste and abuse to preserve our precious resources.

Neither the campaign nor the transition team has provided any other details about President-elect Trump's position on block-granting Medicaid.

A “block grant” program can mean any number of things. When Republicans in Congress advocate “block-granting” Medicaid, they generally mean financing Medicaid with a federal grant to each State in a base year, which increases annually by some inflationary metric, regardless of the actual increase in Medicaid expenditures, thereby putting the State at risk for program growth in excess of whatever inflationary metric is chosen. In a block grant program, a State would not have the right to federal financial participation in all valid Medicaid expenditures made in compliance with federal law and policy. It is often assumed that a Medicaid block grant program would include increased flexibility for States, but that is not necessarily true. For example, Congress could block-grant the financing of Medicaid, to push the financial risk to States, while keeping all the rules and restrictions in Title XIX and its implementing regulations. However, Republican proposals to block grant Medicaid have generally also included increased flexibility for States in designing and administering their Medicaid programs.

With any block grant proposal, the devil is in the details. How will the base year block grant amount be calculated? What inflationary metric will be chosen to increase funding from the base year? How much additional flexibility will States receive in exchange for taking on more financial risk?

Nominees to Lead HHS and CMS

Last week, President-elect Trump announced that he will nominate Representative Tom Price (R-GA) and Seema Verma to lead HHS and the Centers for Medicare & Medicaid Services (“CMS”), respectively. The choice of Representative Price, in particular, may indicate that the Trump administration will seriously consider pushing major changes to Medicaid.

Representative Price

Representative Price (who is a physician) has long advocated for the repeal of the ACA, as well as substantial changes to Medicaid and Medicare.

Representative Price authored and introduced the Empowering Patients First Act of 2015, HR 2300 (the Act), which would entirely repeal the ACA, including all of the provisions relating to Medicaid, such as:

- The expansion of Medicaid to low-income adults up to 133 percent of the federal poverty level (FPL).
- The expansion of Medicaid eligibility for children ages six and older from 100 percent to 133 percent of the FPL.
- The disproportionate share hospital (DSH) payment reductions.

The Act does not offer any replacement for the Medicaid expansion.

The Act would also create an option for individuals to opt out of Medicaid and receive a tax credit to purchase an individual, private health plan instead. The amount of the tax credit would depend on the individual’s age, ranging from $75 per month for children to $250 per month for adults age 50 and above (adjusted annually for inflation).

In addition to the Empowering Patients First Act, Representative Price, in his role as Chairman of the House Budget Committee, authored "A Balanced Budget for a Stronger America," which proposed what appears to be something like block grants for Medicaid. Specifically, it stated:

> For the Medicaid program, we transition to State Flexibility Funds that give states the freedom to tailor their individual programs to address the diverse needs of their communities. This will promote greater accountability and effectiveness to the benefit of those Americans on Medicaid who are struggling to gain access to quality care under the current system. Instead of just adding millions of more people to a broken system like the Obama Administration has done, this budget will give governors and state legislatures the power to break free from intrusive federal dictates and gain better outcomes for their Medicaid beneficiaries.

Other than this excerpt, the proposal provides no details about how Representative Price envisions the "State Flexibility Funds" working.

"A Balanced Budget for a Stronger America" also proposed requiring States to impose a work requirement for "able-bodied working age adults" to receive Medicaid:

> This budget supports a work requirement for able-bodied adults who are enrolled in Medicaid. This proposal would ensure that an able-bodied working age adult could qualify for Medicaid only if they are actively seeking employment or participating in an education or training program. Work not only provides a source of income and self-sufficiency, but also provides a valuable source of self-worth and dignity for individuals.

Seema Verma

Unlike Representative Price, Ms. Verma has not been a legislator and does not have a legislative record to shed light on her views about Medicaid. Ms. Verma is CEO and founder of SVC, Inc., a health policy consulting company, where she advised Governors' offices, State Medicaid agencies, State Health Departments, and State Departments of Insurance. Ms. Verma helped design and implement the Healthy Indiana Plan (HIP) Section 1115 Demonstration, which extended coverage to non-disabled, low-income adults in Indiana before the ACA was enacted. Ms. Verma also played a leading role in developing, negotiating, and implementing the HIP 2.0 Section 1115 Demonstration, which was the mechanism through which Indiana expanded Medicaid coverage to all adults under 133 percent of the FPL under the ACA. Prior to her consulting work, Ms. Verma served as a Director with the Association of State and Territorial Health Officials (ASTHO) in Washington.

House Republican Leadership's *A Better Way* Proposal

Prior to the election, House Republicans, led by Speaker Paul Ryan (R-Wis.), published a series of policy proposals, collectively titled, "A Better Way: Our Vision for a Confident America." The health care component of *A Better Way* proposed a major overhaul of the Medicaid program.

Per Capita Allotment or Block Grant Financing

In *A Better Way*, House Republicans assert that:

- Medicaid is plagued by waste, fraud, and abuse
- Medicaid enrollees lack access to certain types of care
- Medicaid beneficiaries have not experienced notably better health outcomes than individuals without any health coverage
- States have little incentives to manage costs
- Medicaid costs are unsustainable over the long-term
- The federal government has too much control over the program

A Better Way proposes to reform Medicaid by giving States the choice to receive funding through either (1) a per capita allocation or (2) a block grant, starting in 2019.

Under the former option, the federal government would calculate a separate per capita allotment for each of the four major categories of Medicaid enrollees – aged, blind and disabled, children, adults – within each State. The government would calculate these per capita allotments by adding up all the medical assistance and administrative expenses associated with each enrollee category in each State in 2016, and dividing that total by the number of Medicaid enrollees in each category in each State in 2016. The 2016 per capita allotment would be trended upward to account for "inflation" between 2016 and 2019, but the proposal does not specify the inflationary metric to be used, or whether "inflation" means regular inflation or medical inflation. Graduate Medical Education (GME) and DSH payments would be excluded from the per capital allotment calculation and would continue to be funded through a separate payment stream.

A per capita allotment financing system presents trade-offs for States: States would lose unlimited federal support for Medicaid expenditures, but they would also receive increased flexibility in operating their programs. Specifically, under *A Better Way*, States could: adopt work requirements for Medicaid enrollees; set enforceable premiums for non-disabled individuals; require non-disabled enrollees to receive coverage through a premium assistance program, "without all of the existing requirements for the provision of wrap-around services"; use waiting lists and enrollment caps for optional Medicaid eligibility populations; and, for the expansion population, lower the financial eligibility threshold to something below 138 percent of the federal poverty level (FPL). The per capita proposal does not, however, seem to contemplate an overhaul of federal Medicaid regulations, outside of giving States these specific additional flexibilities.

By basing the per capita allotment on 2016 spending levels, it appears that the *A Better Way* proposal would penalize States that currently operate particularly efficient Medicaid programs. For example, a State that efficiently spends Medicaid dollars in 2016 would likely get less money per Medicaid enrollee in the future than a similarly situated State with a less efficient program in 2016.

Per capita Medicaid financing has been under consideration by Republican lawmakers for some time. For example, a per capita financing structure was proposed in 2013 by Senator Orrin Hatch (R-UT), Chairman of the Senate Finance Committee, and Congressman Fred Upton (R-MI), soon-to-be former Chairman of the House Energy & Commerce Committee.

As an alternative to the per capita allotment, *A Better Way* would allow States to elect block grant financing, which it appears would provide them with substantially more flexibility. Because House Republicans have not yet provided legislation to implement *A Better Way*, it is not clear exactly how this block grant system would work. However, the *A Better Way* White Paper describes several features of the proposed system:

- The amount of the annual block grant to a State "would be determined using a base year in a manner that would assume states transition individuals currently enrolled in Obamacare's Medicaid expansion into other sources of coverage."
- States would have "maximum flexibility for the management of eligibility and benefits for non-disabled, non-elderly adults and children," which would supposedly eliminate the need for States to pursue waiver programs.
- States would still be required to cover and provide certain services "to the most vulnerable elderly and disabled individuals who are described as mandatory populations under current law."
- States would be able to "implement stringent residency requirements so that those individuals here illegally would not receive benefits."

Other Proposed Changes

In addition to the large scale overhaul of Medicaid financing that a per capita allotment or block grant system would represent, *A Better Way* proposes several more limited changes to the Medicaid statute:

- Medicaid Expansion. The House Republicans' proposal would significantly change the Medicaid expansion. States that have not expanded by 2019 would be prohibited from doing so. In States that have expanded, enrollees covered by the expansion would be included in calculating the per capita allocation, but States would have the flexibility starting in 2019 to cut the "less needy" expansion population from the program and shift Medicaid expenditures "to help those who need it the most." The enhanced 90 percent Federal Medical Assistance Percentage (FMAP) for the expansion population would be phased out starting in 2019, and expenditures for expansion enrollees would be matched at the regular FMAP.
- Managed Care. *A Better Way* proposes to amend the statute to allow States to require all populations to enroll in managed care.
- Waivers. *A Better Way* proposes several changes to "modernize" the waiver process:
  - Grandfather "successful" "waivers for managed care if they have already been renewed twice." It is not clear what the proposal means by "successful" waivers, or even what it means by "waivers for managed care."
  - Grandfather waiver provisions that meet "fast track parameters," "so that states could fold such waivers in their state plan and would no longer be required to seek renewals of such waivers."
  - Limit the Secretary's ability through Section 1115 demonstrations "to provide federal dollars for state programs on 'costs not otherwise matchable.'" Costs otherwise not matchable funding would only be available for "state programs specifically focused on serving health care needs of Medicaid patients or uninsured individuals below a specific income threshold."

The White Paper does not specify the scope of these changes to the waiver process, but it appears that they apply to all Medicaid waivers (Section 1115 and Section 1915).

- DSH. The ACA-scheduled Medicaid DSH cuts for 2018 through 2020 would be cancelled. Beginning in 2021, the federal government would be required to replace the Medicare and Medicaid DSH payment system with "one combined national pool of uncompensated care."
- Abortion. Current law would be amended to give States the flexibility to exclude from participation in Medicaid physicians and other providers who provide elective abortions.
- CHIP. The Republicans' proposal generally leaves CHIP untouched, except that it returns the program to its pre-ACA E-FMAP levels, *i.e.*, between 65 percent and 85 percent. The ACA currently provides a 23 percent increase in CHIP E-FMAP from 2016 through 2019, which the Republicans' proposal would eliminate.

  It is important to note that CHIP is up for reauthorization in 2017.

Prospects for Medicaid Reform

As a result of last month's election, there may be enough votes in Congress to pass some version of the Republican Medicaid reform proposals described above. However, it is unknown how Congressional Republicans or President-elect Trump will prioritize Medicaid reform. In addition, the overwhelming majority of Democrats oppose repeal of the ACA's Medicaid expansion, and we expect similar opposition from Democrats to any proposal to block-grant Medicaid or impose a per capita allotment, at least in the form proposed by congressional Republicans.

At the very least, the Republicans will be working to "repeal and replace" the ACA, including the Medicaid expansion. This "repeal and replace" effort may be an attractive vehicle for reforming Medicaid financing as well.

While the filibuster rules in the Senate would seem to allow Democrats to block any Republican-driven Medicaid reform proposals, a Senate procedure called "budget reconciliation" allows the Senate to bypass a filibuster for any legislative proposal that has a significant budgetary impact. Under this procedure, a simple majority of Senators can pass legislation that repeals the Medicaid expansion and/or restructures Medicaid financing. Further, it is possible some Democratic Senators would join Republican efforts to reform Medicaid. A number of Democratic lawmakers have expressed concern about the long-term financial sustainability of Medicaid, and several Democratic Senators representing States that President-elect Trump won are up for re-election in 2018.

For all of these reasons, we think there is a realistic possibility of significant changes to Medicaid being enacted in the next Congress.

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