

# HHS Federal Update

NCSL

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## *A Time of Transition*

In a time of a transition in the White House, change is ultimately expected regardless of the parties involved. During his 2016 presidential campaign, President-elect Trump made fully known his desire to repeal and replace the Affordable Care Act (ACA) and in his healthcare reform paper has called upon the U.S. Congress to act by:

- completely repealing the ACA,
- modifying existing law that inhibits the sale of health insurance across state lines,
- allowing individuals to fully deduct health insurance premium payments from their tax returns under the current tax system,
- allowing individuals to use Health Savings Accounts (HSAs),
- requiring price transparency for all healthcare providers,
- block-granting Medicaid to the states, and
- removing barriers to entry into free markets for drug providers that offer safe, reliable and cheaper products.

President-Elect Trump believes these initiatives would have sufficient impact to lower healthcare costs, but they would only serve as a start of his future efforts to improve the system. In addition, the paper outlines his belief that by enforcing immigration laws, eliminating fraud waste and energizing the economy will relieve the economic pressures across the country. His belief that reducing the number of individuals needing access to programs like Medicaid and the Children's Health Insurance Program (CHIP) will require installation of new programs that grow the economy to generate capital and create jobs.

### *Centers for Medicare and Medicaid Services (CMS) Administrator Announced*

President-Elect Trump also named his pick to fill the role of Administrator for CMS as health policy consultant Seema Verma from Indiana. Ms. Verma was instrumental in the development of the Medicaid expansion plan in Indiana working under then governor Vice President-elect Mike Pence. She holds an MPH from Johns Hopkins University and has experience working for the Association of State and Territorial Health Officers, and as a consultant with various states. [Seema Verma's biography](#).



### **Nominee for Secretary of Health and Human Services**

President-Elect Trump has announced that he plans to nominate House Budget Chairman Tom Price (R-GA) as Secretary of Health and Human Services (HHS). Congressman Price, an orthopedic physician, has been one of the ACA biggest critics and introduced one of the many measures to repeal the law over the last few years. His legislation, HR 2300, would provide three billion dollars in grants to states to cover those individuals with pre-existing conditions and others that would be covered by high-risk pools. His appointment as Secretary of HHS would provide him with broad authority to impact the manner of change during any transition from the current ACA system into a system the congress creates in the coming session. [Congressman Price's biography](#).

### 2017 Health Agenda: House Republican Proposals on Health

On February 15, 2016, chairs of the Task Force on Health Care Reform released their mission statement laying out the goals of the task force and outlining the next step in the development of the Republican agenda. The Mission Statement proposes to modernize American health care with patient-centered solutions that improve access, choice, and quality, lower costs, promote innovation, and strengthen the safety net for the most vulnerable. On November 15, 2016, House Republicans released new material outlining their plan to replace the Affordable Care Act (ACA) that was originally unveiled in June.

The proposal is built on five principles:

1. Repeal of the ACA.
2. Provide all Americans with more choices, lower costs, and greater flexibility.
3. Protect our nation's most vulnerable.
4. Spur innovation in health care.
5. Protect and preserve Medicare.

The proposed plan makes certain recommendations concerning health coverage:

- **Expanding Consumer-Directed Health Care Options**—The plan institutes several expansions to health savings accounts (HSAs) which would: (1) allow spouses to make catch-up contributions to the same HSA account; (2) allow qualified medical expenses incurred before HSA-qualified coverage begins to be reimbursed from an HSA account as long as the account is established within 60 days; (3) set the maximum contribution to an HSA at the maximum combined and allowed annual deductible and out-of-pocket expense limits; and (4) expand accessibility for HSAs to certain groups, like those who get services through the Indian Health Service and TRICARE.
- **Making Support for Coverage Portable**—The plan would offer: (1) every American access to financial support for an insurance plan chosen by the individual and can be taken with them job-to-job, home to start a small business or raise a family, and into retirement years. assistance to those individuals and families currently receiving; (2) a universal, refundable tax credit for individuals and families, in the form of a portable payment at the beginning of every month and adjustable for age which could be used to purchase a health plan of their choice; (3) if an individual or family chooses to purchase insurance coverage that is less expensive than the value of the value of the fixed credit they receive, the difference would be deposited into an HAS-like account and could be used toward other health expenses.
- **Preserving Employer Sponsored Health Insurance**—The plan proposes to cap the pre-tax exclusion for employer-sponsored insurance (ESI) from an employees' gross income. The cap would be capped at a level that would ensure job based coverage would continue unchanged for the vast majority of health insurance plan with only the most generous plans seeing a change. In addition, the plan provides relief from the Cadillac for lower income workers and those who live in areas with higher labor costs.
- **Purchasing Coverage across State Lines**—The plan would allow the purchase insurance plans licensed in other states. In addition, the plan would enable states to enter into interstate compacts for pooling, giving states authority to regulate health plans as they have in the past.
- **Expanding Opportunities for Pooling**—The plan allows small business to band together to offer small business health plans, also known as association health plans (AHPs). Small business and voluntary organizations—such as alumni organizations, trade associations, trade associations, and other groups—should have the ability to pool together and offer health care coverage at lower prices through improved bargaining power at the negotiating table with insurers just as corporations and labor unions do. AHPs would free employers from costly state-

mandated benefit packages and lower their overhead costs. The plans would be prohibited from “cherry picking” only healthy participants, or charging higher rates for sicker people in the plan. It would also permit individuals to purchase coverage on their own through individual health pools (IHPs) to allow people to join together and garner the same purchasing power as employers and negotiate lower rates with insurance companies in the individual market.

- **Preserving Employee Wellness Programs**—The plan ensures that employers can offer wellness programs that are tied to financial reward or surcharge so long as those programs do not exceed the limits under current law. The plan also clarifies that offers of financial incentives do not violate the Americans with Disabilities Act of 1990 (ADA). Voluntary collection of medical information from an employee’s family member as part of a wellness program will not be considered a violation of the Genetic Information Nondiscrimination Act of 2008 (GINA). The proposals will provide needed certainty, protect workplace wellness programs from litigation, and ensure employers can continue to make benefit decisions that impact their daily operations and health care resources.
- **Protecting Employers’ Flexibility for Self-Insurance**—Under this plan, employers would be able to freely choose insurance options, including self-insurance and stop-loss protections, by preserving the current definition of stop-loss insurance and maintaining its distinct difference from “group health insurance.”
- **Medical Liability Reform**—The plan includes liability reform that includes caps on non-economic damage awards, ensuring plaintiffs can recover full economic damages and that patients will not have their damages taken away by excessive lawyer contingency fees. It will also encourage states to continue to be laboratories of innovation to find the best means by which to reduce frivolous lawsuits and the practice of defensive medicine. And the plan proposes to work with states to pursue a wide variety of options.
- **Addressing Competition in Insurance Markets**—Additional information about the House Republicans’ plan is provided in the following documents:
  - [Snapshot](#)
  - [Full Taskforce Report](#)
  - [Fact Sheet](#)
  - [Frequently Asked Questions \(FAQs\)](#)

## Federal Register Releases

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- **2017 Medicare Parts A & B Premiums and Deductibles Announced**—<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2016-Press-releases-items/2016-11-10-2.html#Heal>
- **Section 1115 Demonstration Opportunity to Allow Medicaid Coverage to Former Foster Care Youth Who Have Moved to a Different State**—The purpose of this CMS guidance is to inform states how they can pursue a Medicaid demonstration project under section 1115 of the Social Security Act (the Act) to continue to provide Medicaid coverage to former foster care youth who aged out of foster care under the responsibility of another state (and were enrolled in Medicaid while in foster care), and are now applying for Medicaid in the state in which they live. <https://www.medicaid.gov/federal-policy-guidance/downloads/cib112116.pdf>
- **CMS Medicaid and CHIP Managed Care Final Rule (CMS-2390-F) Frequently Asked Questions (FAQs) November 10, 2016**—<https://www.medicaid.gov/federal-policy-guidance/downloads/faq-11-10-2016.pdf>
- **Food and Nutrition Service (FNS) Activity**
  - **Team Nutrition**, <http://www.fns.usda.gov/tn/team-nutrition>  
Team Nutrition is an initiative of the USDA FNS to support the Child Nutrition Programs through training and technical assistance for foodservice, nutrition education for children and their caregivers, and school and community support for healthy eating and physical activity. Newly released materials include:
    - I. **Local School Wellness Policy Outreach Tools**—Engage school staff and parents in school wellness using these ready-to-go communication tools. Sharing news about your Local School Wellness Policy

is easy with these flyers, presentations, newsletter articles, and social media posts. Your school can personalize them to make them specific to your Local School Wellness Policy activities.

- II. **Nutrition and Wellness Tips for Children**–Tip sheets to help child care providers create healthier environments for the children in their care! Each tip sheet focuses on a specific topic and includes a practical application section to help providers apply the tips to their child care program. By using the tip sheets when planning meals and activities for children ages 2 through 5 years old, providers can incorporate key recommendations and best practices into their menus and daily schedules.

## Guidance and Outreach Tools

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- **Medicaid and Children's Health Insurance Programs: Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and Children's Health Insurance Program**–On Nov. 21, 2016, the CMS issued a final rule to promote modernization and coordination of Medicaid appeals processes with other insurance affordability programs. CMS also issued a companion NPRM relating to the coordination of Medicaid, the Children's Health Insurance Program (CHIP) and Marketplace notices and appeals processes. These regulations are effective on January 20, 2017. <https://www.federalregister.gov/documents/2016/11/30/2016-27844/medicaid-and-childrens-health-insurance-programs-fair-hearing-and-appeal-processes-for-medicaid-and>
- **Medicaid Program; Final FY 2014 and Preliminary FY 2016 Disproportionate Share Hospital Allotments, and Final FY 2014 and Preliminary FY 2016 Institutions for Mental Diseases Disproportionate Share Hospital Limits (Notice)** <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-25813.pdf> final federal share disproportionate share hospital allotments for FY 2014 preliminary federal share DSH allotments for FY 2016, and corresponding limitations on aggregate state DSH payments to institutions for mental disease and other mental health facilities.
- **Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2017 through September 30, 2018 (Notice)** <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-27424.pdf> federal medical assistance percentages for fiscal year FY 2018.
- **2017 Medicare Parts A & B Premiums and Deductibles Announced--Medicare Program; CY 2017 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement** <https://www.gpo.gov/fdsys/pkg/FR-2016-11-15/pdf/2016-27425.pdf>
- **Medicaid Program; The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems--Proposed Rules.** On November 18, 2016, the CMS put on display at the [Federal Register a proposed rule](#) that addresses changes, consistent with the CMCS Informational Bulletin (CIB) concerning "[The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems](#)," published on July 29, 2016, to the pass-through payment transition periods and the maximum amount of pass-through payments permitted annually during the transition periods under Medicaid managed care contracts and rate certifications. The changes prevent increases in pass-through payments and the addition of new pass-through payments beyond those in place when the pass-through payment transition periods were established in the final Medicaid managed care regulations.

## Federal Reports of Interest

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**Surgeon General's report on Substance Use Disorders**–The first-ever Surgeon General's Report on Alcohol, Drugs, and Health reviews what we know about substance misuse and how you can use that knowledge to address substance misuse and related consequences. <https://addiction.surgeongeneral.gov/>

**Social Services Block Grant (SSBG) 2014 Focus Reports**—On November 8, the [Office of Community Services](#) released focused reports on 2014 SSBG activity:

- [SSBG 2014 Focus Reports Adult Protective Services](#)
- [SSBG 2014 Focus Reports Child Care](#)
- [SSBG 2014 Focus Reports Child Protective Services](#)
- [SSBG 2014 Focus Reports Child Welfare Services](#)
- [SSBG 2014 Focus Reports Services for Older Adults](#)
- [SSBG 2014 Focus Reports Special Services For Individuals With Disabilities](#)

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