

# Medicaid: What to Watch in 2019 from the Administration, Congress, and the States

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Medicaid, the provider of health insurance coverage for about one in five Americans and the largest payer for long-term care services in the community and nursing homes, continues to be a key part of health policy debates at the federal and state level. Important Medicaid issues to watch in 2019 include Medicaid expansion developments amid ongoing litigation about the ACA's constitutionality as well as Medicaid demonstration waiver activities, including those focused on work requirements and other eligibility restrictions. States are also likely to continue to pursue initiatives to address the opioid crisis, and the recent passage [of bi-partisan legislation](#) with new tools and financing could bolster these efforts. Primary areas of federal policy to watch in 2019 with implications for Medicaid include the expiration of temporary funding for Puerto Rico and the US Virgin Islands in the absence of legislative action as well as potential regulatory changes to public charge policies that would likely lead to Medicaid enrollment declines among immigrant families. Finally, reforms in benefits, payment and delivery systems continue to evolve as states and the federal government focus on managed care, social determinants of health, prescription drugs, and community based long-term care. While beyond the scope of this brief, Congress and states could also consider broader health reform that could expand the role of public programs in health care including Medicare for All or Medicaid buy-in programs that could have significant implications for Medicaid.

## Medicaid Expansion

Medicaid expansion was an important issue in the 2018 midterm elections. Following the [election, 37 states including the District of Columbia have adopted the ACA's Medicaid expansion](#). This count includes Maine, where the new governor signed an executive order to begin implementation of the expansion after the outgoing governor delayed implementation following the passage of a ballot initiative in November 2017, as well as three states (Idaho, Nebraska and Utah) that newly passed the expansion through 2018 ballot initiatives. In Kansas and Wisconsin, incoming governors ran on the issue of Medicaid expansion; however, they will have to work with their legislatures to enact a change. Some states that had long opposed expansion like Mississippi and Georgia may also be exploring expansion options. Other [states to watch](#) include Montana, where a ballot initiative to eliminate the sunset date for the Medicaid expansion failed and the expansion now needs to be extended by the legislature to continue, and Alaska, where the governor-elect has been a critic of the state's Medicaid expansion program. Many [studies on the effects of the ACA Medicaid expansion](#) point to positive effects on coverage, access to care, service utilization, and state budgets and economies. As states consider

Medicaid expansion, a federal trial court judge in *Texas v. U.S.* [ruled](#) that the entire Affordable Care Act (ACA) is unconstitutional on December 14, 2018, although the decision has been stayed pending appeal. While the trial court's ruling will not be the last word on the ACA's constitutionality, as appeals have been filed, the litigation could have [implications](#) for states considering expansion.

#### **What to Watch:**

- Will additional states move to adopt the Medicaid expansion in 2019, and will current expansion states seek to make changes to their programs?
- What will the outcome of the *Texas v. U.S.* litigation be? Will pending litigation have implications for Medicaid expansion?

## **Medicaid Waivers**

Section 1115 Medicaid demonstration waivers provide states an avenue to test new approaches in Medicaid not otherwise [allowed under current law](#), provided the demonstrations meet the objectives of the program. The focus of Section 1115 waivers has changed over time reflecting changing priorities for states and the Centers for Medicare and Medicaid Services (CMS). On January 11, 2018, CMS released new [guidance](#) allowing states for the first time to pursue waivers to impose work requirements in Medicaid as a condition of eligibility. To date, [7 states have waivers with work requirements approved; of these, Arkansas implemented its waiver in 2018, and three states \(Indiana, Kentucky, and New Hampshire\) are set to do so in 2019. Another 8 states have waivers pending decision with CMS as of early January, 2019.](#) In addition, states are implementing and proposing waivers that include other eligibility restrictions such as coverage lock-out periods for unpaid premiums or not timely reporting information.

On November 20, 2018, CMS re-approved the Kentucky waiver. This waiver originally was approved in January 2018, but sent back to CMS prior to implementation after a federal district [court ruling](#) that the approval exceeded the Secretary's Section 1115 authority in a lawsuit brought by a group of Medicaid enrollees challenging the approval. [The re-approval is largely the same as the original waiver and includes a work requirement, premiums, coverage lock-out periods, and health incentive accounts.](#) Implementation is set to begin in April 2019, although the court has approved a briefing schedule for the Kentucky Medicaid enrollees to challenge CMS's re-approval of the waiver. [Early experience in Arkansas](#), the first state to implement a work requirement in Medicaid, shows that the challenges reaching and informing enrollees about new requirements and enrollee difficulties navigating the online monthly reporting process and finding stable work can result in significant [coverage losses](#). While evaluations are required for demonstration waivers, the evaluation plan related to the work requirement in Arkansas has not yet been approved. Litigation challenging the Arkansas waiver also is ongoing.

#### **What to Watch:**

- What other pending waivers with work requirements will CMS approve?
- How will litigation in Arkansas and Kentucky be decided; what will be the effect on other states?
- What will be learned from states currently implementing new waiver policies that can help inform the debate and how quickly will evaluation results be publicly available?

# Medicaid Initiatives to Address the Opioid and Substance Use Disorder Crisis

[Medicaid covers 4 in 10 nonelderly adults with opioid addiction.](#) Medicaid facilitates access to treatment by covering numerous inpatient and outpatient treatment services, as well as medications prescribed as part of medication-assisted treatment (MAT). States continue to focus on strategies to address the opioid crisis. [All states are implementing pharmacy benefit management strategies](#) including quantity limits, prior authorization requirements, and requirements for Medicaid prescribers to check their state's Prescription Drug Monitoring Program before prescribing opioids to a Medicaid patient. States continue to increase access to [MAT for opioid use](#) disorder, and 38 states reported coverage of methadone in FY 2018. In addition, a number of states are using [Medicaid Section 1115 waivers](#) to expand treatment options for enrollees with substance use disorders (SUD), including opioid use disorder (OUD), primarily by using Medicaid funds to pay for short-term residential institutional (IMD) services under a State Medicaid Director Letter that was first released in [2015](#) and revised in [2017](#). On October 24, 2018, President Trump signed into law the [Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities \(SUPPORT\) Act](#). While very broad in scope, the final legislation contains a number of provisions related to Medicaid's role in helping states provide coverage and services to people who need OUD and other SUD treatment, including a time-limited option that allows federal Medicaid payments for enrollees with SUD in IMDs, available to states beginning in October, 2019. In 2018, the Centers for Medicare and Medicaid Innovation announced include two new state demonstration models focused on care delivery for [children](#) and [pregnant women](#) affected by the opioid crisis; funding opportunity notices for states to express interest are expected to follow.

## What to Watch:

- What initiatives will states pursue in 2019 to continue to tackle the opioid epidemic and what role will Medicaid play in these efforts?
- What new options will states adopt that stem from the recently passed SUPPORT Act?
- How will Medicaid expansion affect efforts to address the opioid epidemic?

## Medicaid Financing for Puerto Rico and USVI

The February 2018 federal budget bill provided increased financial support for Medicaid in Puerto Rico and the U.S. Virgin Islands (USVI) in the aftermath of hurricanes Maria and Irma. The budget bill increased the federal caps for Puerto Rico (\$4.8 billion) and USVI (approximately \$142.5 million) and provided Medicaid funds at 100% federal match from January 2018 through September 2019, as these territories continue to [recover from Hurricanes Maria and Irma](#). However, federal legislation will be required to avert a financial cliff when the Medicaid financing support expires at the end of September 2019. Individuals born in the U.S. territories are U.S. citizens or nationals, but federal financing for Medicaid programs in the territories is capped and the federal match rate is set at a percentage in law, unlike the guaranteed federal matching funds without a cap and variable matching rates for Medicaid in the states.

### What to Watch:

- Will Congress act to pass legislation to address the financing issues for Puerto Rico and USVI?
- Will proposed financing changes be temporary or permanent?

## Medicaid and Public Charge Changes

On October 10, 2018, the Trump Administration published a proposed rule that would make [changes to “public charge” policies](#). Under longstanding policy, the federal government can deny an individual entry into the U.S. or adjustment to legal permanent resident (LPR) status (i.e., a green card) if he or she is determined likely to become a public charge. Under the proposed rule, officials would newly consider use of certain previously excluded programs, including Medicaid, the Supplemental Nutrition Assistance Program, the Medicare Part D Low-Income Subsidy Program, and several housing assistance programs, in public charge determinations. [The changes would likely lead to broad decreases in participation in Medicaid and other programs](#) among legal immigrant families and their primarily U.S.-born children beyond those directly affected by the changes. Nationwide, over 19 million or one in four (25%) children live in a family with an immigrant parent, and nearly nine in ten (86%) of these children are citizens. Decreased participation in Medicaid would increase the uninsured rate among immigrant families, reducing access to care and contributing to worse health outcomes. Coverage losses also would result in increased uncompensated care for providers. More than 210,000 public comments were submitted during the rule’s comment period that closed on December 10, 2018. The administration will now review those comments and decide whether to issue a final rule that could go into effect 60 days after publication.

### What to Watch:

- What will happen to the proposed “public charge” regulations?
- How is coverage and access to Medicaid and health services affected by the proposed rule?

## Medicaid and Payment and Delivery System Reforms

Risk-based managed care continues to be the predominant delivery system for Medicaid services, and states are focused on implementing alternative payment models, improving quality within MCOs and developing initiatives to address social determinants of health. In November 2018, CMS proposed some changes to the Medicaid managed care rule regarding network adequacy, beneficiary protections, quality oversight, and rate development and payment; the public comment period closes in mid-January 2019. States are seeking to increase Medicaid [access in rural areas](#) through coverage of new benefits including telehealth, e-Consult, telemedicine, and tele-monitoring. [Strategies also include](#) funding increases for rural providers, expanded SUD treatment services in rural areas, expanded funding for primary care residency programs, and participation in multi-payer initiatives that promote rural access to care. Prescription drug costs continue to exert pressure on Medicaid spending. Many states are implementing a variety of prescription drug cost containment initiatives, especially initiatives to generate greater rebate revenue and implement new utilization controls. Finally, [nearly all states](#) are employing one or more strategies to expand the number of people served in home and community-based settings, and states

have initiatives to address long-term services and supports (LTSS) workforce issues. Housing-related supports remain an important part of state LTSS benefits, and states are working to maintain housing-related supports even as [Money Follows the Person \(MFP\) grant funds expire](#). Congress is considering an extension of the MFP program and also changes to extend provisions in the ACA that require states to apply the Medicaid [“spousal impoverishment” rules](#), which allow married couples to protect a portion of their income and assets should one spouse seek Medicaid coverage for institutional long-term care, to long-term care in community-based settings. Additionally, in November 2018, CMS issued a new [State Medicaid Director Letter](#) inviting states to waive the federal IMD payment exclusion for those with primary mental health diagnoses, which could have implications for states’ community integration obligations under the Americans with Disabilities Act and the [Supreme Court’s \*Olmstead\* decision](#).

**What to Watch:**

- What is Medicaid’s role in addressing social determinants of health and how is it evolving?
- Will new federal or state policies emerge to help control rising prescription drug costs?
- How will states continue to expand community-based LTSS and what will be the effect of the expiration of MFP funds?