



What will Happen to the Affordable Care Act Under a Trump Administration? (Part 2)

Feb 16, 2017

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Throughout his presidential campaign, Donald Trump vowed that one of his very first acts upon taking office would be to repeal the Affordable Care Act (the ACA). Since his inauguration, however, it has become clear that even with Republican control of both houses of Congress, there is no consensus on how to repeal the ACA. Indeed, there is a lack of consensus as to whether the new administration's approach to the ACA should be repeal and replacement, repeal without replacement, or a more restrained "repair" of the program. Despite this uncertainty, hints of the ACA's future lie in Trump's choice of certain individuals to head up the government agencies that oversee the country's health care systems. [Part 1](#) of this series considered Trump's nominee to head up the Department of Health and Human Services, Tom Price, who was confirmed by the Senate on February 10, 2017. Still awaiting confirmation is Trump's pick to serve as Administrator of the Centers for Medicare and Medicaid Services (CMS), Seema Verma.

Ms. Verma has spent her career shaping public health policy, serving with organizations such as the Association of State and Territorial Health Officials. Currently, she serves as president of SVC, Inc., a national health care policy consulting firm that she founded in 2001. Her firm has helped a number of states design programs intended to achieve "Medicaid expansion," which was one of the fundamental goals of the ACA.

1. What is Medicaid expansion?

Medicaid programs, which are run by individual states according to federal guidelines and with federal funding support, provide health care coverage for the poor. However, Medicaid has traditionally covered only certain categories of low-income individuals: pregnant women, children, parents of dependent children, the disabled, and individuals age 65 and over. Some of the poorest individuals, most

notably able-bodied adults without dependent children, did not qualify for Medicaid as it existed prior to the ACA. One of the goals of the ACA was to expand Medicaid coverage by making the program available to *all* citizens and legal residents with income at or below 133% of the federal poverty level (FPL).

The framers of the ACA intended this expansion of Medicaid coverage to be mandatory: states would be required to expand their respective Medicaid programs in order to continue receiving federal funding for Medicaid. But the United States Supreme Court ruled in 2012 that Medicaid expansion is optional: states that choose not to expand their Medicaid programs are still entitled to receive federal funding at pre-ACA levels. As of January, 2017, 19 states have chosen to not expand their Medicaid programs, foregoing additional federal funding while also avoiding additional state contributions to Medicaid. Of the 31 states (plus the District of Columbia) that have expanded their Medicaid programs, seven have done so via what is known as a “Medicaid waiver.”

CMS, the agency Seema Verma has been nominated to oversee, has the authority to waive the federal requirements that normally apply to Medicaid programs and grant approval for a state to pursue an experimental or “pilot” Medicaid program. Ms. Verma has helped several states design such experimental programs and apply to CMS for a waiver that exempts the state from some of the standard federal requirements for a Medicaid program.

2. What do Ms. Verma’s Medicaid expansion programs look like?

Ms. Verma has helped six different states apply for waivers from CMS that would allow them to expand Medicaid via an experimental program. She was most intimately involved in the development of the Medicaid waiver program in Indiana, her home state and that of Vice President Mike Pence.

Indiana’s program, called the Healthy Indiana Plan or HIP, has a number of elements that Ms. Verma believes fosters personal responsibility in Medicaid beneficiaries. Monthly premium payments to be paid by enrollees are a key element of the “HIP Plus” plan,

which is the only Medicaid plan available to individuals with income between 100% and 133% of the FPL and the preferred Medicaid plan for those at or below the FPL. The amount of the monthly premium is set at approximately 2 percent of an individual's monthly income, or a flat \$1 for those at or below 5 percent of the FPL. According to Ms. Verma, research shows that even a \$1 contribution towards one's health care creates a sense of stewardship for that care, leading to better choices like using preventive care rather than relying on emergency services.

Under the HIP Plus plan, there are consequences for failure to comply with the plan's requirements: if an individual's monthly premium payment is more than 60 days overdue, then the individual is "locked out" of the HIP Plus plan for six months. For those whose income is above 100% of FPL, that means they lose Medicaid coverage entirely during the lock-out period. For those whose income is at or below the FPL, they are automatically "bumped" into a lower level of coverage (the "HIP Basic" plan) with co-payment requirements and fewer benefits.

Notably, Ms. Verma helped Ohio apply for a waiver for a Medicaid expansion program that would have been similar to the HIP program, but Ohio's application was denied by the Obama administration. Ms. Verma also helped Kentucky prepare a Medicaid waiver application that was submitted in September, 2016, and is currently pending CMS review. Kentucky's waiver program would require beneficiaries to work or volunteer for a minimum number of hours in order to be eligible for Medicaid coverage. The fate of Kentucky's proposed Medicaid waiver program will ultimately lie in Ms. Verma's hands if she is confirmed as Administrator of CMS.

If she is confirmed, and if the ACA's funding for Medicaid expansion continues, it seems likely that more states will apply for and receive Medicaid waivers for programs that require a commitment of money or labor from Medicaid-eligible individuals. In short, while the HIP program was treated as a test case for Medicaid expansion by the Obama administration, it may very well become the model for Medicaid expansion under the Trump administration.

The information above was discussed in detail on February 10 at the first in a series of Frost Brown Todd seminars on the ACA

under the Trump administration. To request the slides from the seminar, please send an email to kurkallgeier@fbtlaw.com.

For more information, please contact [Rhonda Schechter](#) or any attorney on Frost Brown Todd's [Health Care Industry Team](#).

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