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Medicaid Provisions in Build Back Better

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The need for health care reform in America remains a top priority, as the coronavirus pandemic continues to spotlight pre-existing flaws in our nation's profit-driven health care system. High costs of care, physician shortages, and over [\\$140 billion in medical debt](#), reveal inadequacies in a system that leaves [43 percent of Americans](#) uninsured or underinsured. Coverage gaps are particularly pronounced amongst people of color, with job losses and reductions in income from the COVID-19 pandemic [disparately impacting](#) these communities. Congressional lawmakers have an opportunity to readily address disparities in affordable health coverage by closing the Medicaid coverage gap in President Biden's Build Back Better package.

ACA Medicaid Expansion

The Patient Protection and Affordable Care Act (ACA) instituted a number of changes in health care delivery, from requiring health plans to cover preventative services, to eliminating annual and lifetime limits, and prohibiting insurers from denying coverage due to pre-existing conditions. Two key elements of this legislation were the establishment of an insurance marketplace where individuals and families can purchase private insurance directly from an insurer, as well as expanded Medicaid eligibility to include all eligible adults under 65 earning up to 133% (effectively 138%) of the federal poverty level (FPL). To date, Medicaid expansion from the Affordable Care Act has extended coverage to nearly 15 million Americans.¹

Though Medicaid expansion was originally written as a requirement for all states, [the National Federation of Independent Business v Sebelius Supreme Court ruling](#) in 2012 held that this mandate on states was "undue coercion," and that Congress may offer funds to states to expand Medicaid, but they may not require or penalize states who choose not to participate in the program. This decision prompted many Republican-led states to opt not to expand, despite a 90% (reduced from initial 100%) federal match rate for expansion populations, and [overwhelming evidence](#) indicating the benefits of expansion. Opponents of expansion in the [twelve states](#) that have refused often cite cost concerns on state budgets. However, in many states, research indicates that the low cost-share obligation of expansion to states, combined with the offsetting savings generated, increases state revenue and produces net budget savings.² Moreover, the passage of the American Rescue Plan (ARP) in early 2021 provided an

¹ Department of Health and Human Services; *Press Release* June 2021
<https://www.hhs.gov/about/news/2021/06/05/new-hhs-data-show-more-americans-than-ever-have-health-coverage-through-affordable-care-act.html>

² The Commonwealth Fund; *The Impact of Medicaid Expansion on States' Budgets*, May 2020
www.commonwealthfund.org/publications/issue-briefs/2020/may/impact-medicaid-expansion-states-budgets

[additional temporary fiscal incentive](#) for the states that have yet to adopt the ACA's Medicaid expansion. Under the ARP, states can receive a 5% increase in their regular federal matching rate for two years after expansion takes effect. This increase would offset state costs to expansion by more than double in certain states,³ which is substantial enough to fully cover the non-federal share of expansion costs beyond two years. The reluctance of state governments and legislatures to expand Medicaid under the ACA during the height of a global pandemic and with every incentive to do so, highlights the importance for federal lawmakers to address Medicaid coverage gaps with Congressional legislation.

Table 1: Cumulative Fiscal Impact of a 5 Percentage Point Increase in FMAP, FYs 2022-2023 (In Millions of Dollars)			
	Increased Federal Funds from FMAP Increase on Traditional Populations	New State Cost Due to ACA Medicaid Expansion	Net Effect for State Spending
Total*	\$16,410	-\$6,830	\$9,590
Alabama	740	-200	540
Florida	3,080	-1,260	1,810
Georgia	1,360	-640	710
Kansas	450	-210	250
Mississippi	690	-290	400
North Carolina	1,700	-490	1,210
South Carolina	790	-190	600
South Dakota	110	-50	60
Tennessee	1,260	-360	900
Texas	5,020	-3,090	1,930
Wisconsin**	1,140	**	1,140
Wyoming	70	-40	30
Adopted Expansion but Not Implemented			
Missouri*	1,150	*	1,150
Oklahoma*	520	*	520

SOURCE: [KFF estimates and analysis](#)

Efforts Being Led in Congress

Please note that the proposals below reflect draft legislation initially released by the House Energy and Commerce and House Ways and Means Committees. The outlined provisions are subject to change before reaching the House floor.

³ Kaiser Family Foundation; *New Incentive for States to Adopt ACA Medicaid Expansion*, March 2021 <https://www.kff.org/coronavirus-covid-19/issue-brief/new-incentive-for-states-to-adopt-the-aca-medicaid-expansion-implications-for-state-spending/>

ACA Tax Credits

One measure being discussed in Congress to expand Medicaid coverage is the extension of premium tax credits under the Marketplace exchange for people in the “[coverage gap](#).” Currently, in order to be eligible to receive a subsidy to help offset costs in the marketplace exchange, individual or household income must be at least 100% of the federal poverty level. Nearly 2.2 million Americans have incomes below the lower limit to receive premium tax credits through the marketplace, and are also ineligible to receive Medicaid in the respective [12 states](#) that have yet to expand coverage. In the states that have not expanded Medicaid, eligibility is largely still based on pre-ACA levels, which exclude childless adults (regardless of income) and is available to people with disabilities, pregnant women, and very low-income parents. This proposal would extend eligibility for premium tax credits to those in the coverage gap and allow for enrollment in marketplace plans with cost-sharing assistance. The expanded eligibility would be offered from 2022 through 2024, until a separate federal Medicaid option is implemented.

Lawmakers are also considering the expansion of [more generous premium subsidies](#) for those currently enrolled in ACA marketplace plans who are beyond the income threshold for Medicaid. Under the American Rescue Plan Act, Congress authorized the temporary enhancement of marketplace subsidies for two years and expanded who can qualify for them. The law fully extended subsidy eligibility for households with incomes up to 400% federal poverty level, and capped the amount enrollees pay in marketplace premiums to no more than 8.5% of their income. The law also fully subsidized plans for people earning up to 150% FPL. President Biden’s American Families Plan proposal includes a permanent extension of this enhancement as a means to both increase affordability to current marketplace enrollees, and expand coverage to those currently uninsured. The permanent extension of this enhanced subsidy would mean 4.2 million fewer people would be uninsured and 5.1 million more people would enroll in the subsidized marketplace.⁴

Medicaid Coverage in Non-Expansion States

Additional efforts to address the coverage gap by Congress include a [proposal](#) to establish a federally-run Medicaid program. The program would transition those previously enrolled in marketplace plans below the 100% FPL threshold into the new federal Medicaid program. Plans offered through this federal Medicaid program would provide the same specialized benefits and protections granted in [alternative benefit plans \(benchmark plans\)](#) to newly-eligible beneficiaries in state Medicaid expansion programs. Thus, the federal Medicaid program would also require benefit packages to cover the [10 essential health benefits](#) mandated by the ACA. The proposal also outlines a procedural process for making an appeal relating to coverage of services, including benefit reductions and terminations, and requires the same rebates from drug manufacturers to help offset the costs of outpatient drugs provided to Medicaid enrollees. Should a state opt to expand Medicaid after 2025, beneficiaries enrolled in the federal

⁴ Urban Institute; *What if ARP Enhanced Marketplace Subsidies Were Made Permanent?* April 2021 https://www.urban.org/sites/default/files/publication/104072/what-if-the-american-rescue-plans-enhanced-marketplace-subsidies-were-made-permanent-estimates-for-2022_0_0.pdf

expansion program would be transitioned into the state program. The proposal largely builds off of the [COVER NOW Act](#) introduced by Representative Lloyd Doggett (D-TX) that would have allowed for the local expansion of Medicaid coverage in non-expansion states.

Home and Community Based Care

[The Better Care Better Jobs Act](#), introduced by Representative Debbie Dingell (D-MI) and Senator Bob Casey (D-PA) would advance President Biden's \$400 billion infrastructure proposal to strengthen and expand access to Medicaid home- and community-based services (HCBS). The legislation has been incorporated into a [proposal](#) by the House Energy and Commerce Committee. HCBS is offered through the Medicaid program to provide seniors and people with disabilities the ability to receive assistance with services such as bathing, eating, and dressing within their own home or community. The program currently provides services for [3.5 million Medicaid beneficiaries](#). The legislation aims to address current variations in coverage eligibility and benefit standards across states that have led to [significant gaps in coverage](#). To address these challenges, the proposal would make drastic improvements to HCBS infrastructure. One major component of this bill is the permanent enhancement of federal Medicaid matching funds for states—an enhancement originally passed by the American Rescue Plan for a period of one year. Other important outlined provisions include the requirement for all states to permanently implement “protections against impoverishment,” which protects the assets of individuals whose spouses receive services, as well as the permanent authorization of the [Money Follows the Person program](#) to support individuals transitioning from institutionalized care to home or community-based settings.

Key Takeaways

Expanding Medicaid coverage is an important issue for lawmakers to consider when finalizing the Build Back Better package. [Research indicates](#) that Medicaid expansion since the ACA's major coverage provisions took effect have yielded significantly better outcomes in improving access to care, reducing medical debt and uncompensated care, promoting economic mobility, and promoting overall health. Nevertheless, longstanding disparities in health inequities remain, particularly for people of color and those with undocumented status. More than 600,000 African-Americans are among the 2.2 million adults entrapped in the coverage gap from the 12 states who refuse to expand. Though people of color represent just 41% of the adult population in non-expansion states, more than 60% of those in the coverage gap were people of color.⁵ Given the extent to which communities of color face [distinct financial hardships in paying for medical debt](#) and are more likely to work low-wage jobs that do not provide employer-based insurance, Medicaid expansion could help narrow current racial health inequities. In states like Texas, which has the nation's highest uninsured population, [more than half of those in the coverage gap are Latino](#). Thus, filling the Medicaid coverage gap in the remaining non-expansion states could make a significant impact on extending health coverage and improving health outcomes in communities of color by establishing a pathway to coverage.

⁵ Leadership Conference on Civil and Human Rights; *A Racial Equity Test for BBB*
<https://civilrights.org/blog/a-racial-equity-test-for-the-build-back-better-package/>

As the reconciliation package is considered, it will be important for lawmakers to provide meaningful and permanent solutions to close the Medicaid coverage gap. Ensuring that tax credit payment enhancements for current ACA enrollees are made permanent could provide for more extensive expansion. The House Ways and Means [proposal](#) currently contains this provision, while the House Energy and Commerce proposal outlines a two-year expansion. In fact, if Congress took two just steps— made ARP premium subsidies permanent and filled the Medicaid coverage gap— the number of people without insurance would reduce by nearly one-quarter, or 7 million people in 2022 alone.⁶ To further assist with affordable coverage options, lawmakers could adopt additional provisions outlined in the Ways and Means proposal in the finalized reconciliation package, which include: reductions in the [recapture limitation](#) for taxpayers with household incomes below 200% FPL; exemptions for taxpayers with incomes below 138% FPL from having to file returns, reconcile, or repay overpayments of premium tax credits; and a revision of the “[employee firewall](#)” to clarify that any household paying more than 8.5% of their income towards health coverage does not have access to “affordable” insurance, and is thus eligible to receive premium tax credits. In doing so, the proposal would standardize coverage provided within the marketplace exchange by capping premium contributions at no more than 8.5% across income levels. Additionally, lawmakers could also consider eliminating the “[family glitch](#)” that renders certain families ineligible to receive marketplace subsidies, and [raise the value of current benchmark silver plans to gold](#) to further reduce cost-sharing obligations as President Biden signaled during the beginning of his term. The number of low-wage workers covered under Medicaid expansion may also be increased by making the enrollment period more flexible and including marketplace eligibility for undocumented immigrants.

A few key provisions [outlined](#) in the Energy and Commerce Committee would provide additional changes to Medicaid expansion. These include the permanent extension of the Children's Health Insurance Program (CHIP); the requirement for CHIP to provide up to 12 months of continuous eligibility for children; the extension of full Medicaid coverage for pregnant and postpartum women for one-year; investments to initiatives to address maternal mortality and bolster the maternal and prenatal health workforce; and the requirement of [Medicaid coverage for incarcerated individuals](#) up to 30 days prior to release.

Amid ongoing expansion negotiations, it is also vital that adequate funding be allocated for home- and community-based services to allow seniors and people with disabilities to receive the supportive services they need in the comfort of their homes. Congress has an opportunity and responsibility to address vast inequities in our current system that have left home health care workers without a liveable wage and seniors without adequate means to pay for care. As lawmakers continue laying the groundwork for Medicaid expansion efforts and improvements, it

⁶ The Commonwealth Fund; *The Coverage and Cost Effects of Key Health Insurance Reforms Being Considered by Congress*, September 2021
<https://www.commonwealthfund.org/publications/issue-briefs/2021/sep/coverage-cost-effects-key-health-insurance-reforms-congress>

is imperative that strategies remain bold and comprehensive to deliver affordable and equitable health care coverage to low-income and vulnerable communities across the country.