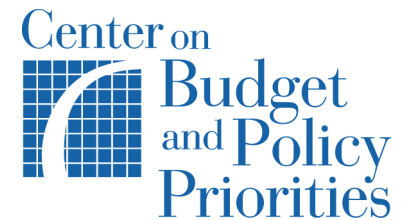


Health Policy Processes and Levers and Interagency Collaboration

National Academies Committee
on the Review of Federal Policies
that Contribute to Racial and
Ethnic Health Inequities

Allison Orris

August 3, 2022



Levers to Address Racial and Ethnic Health Inequities



“Disparities in access to care and health outcomes among Medicaid beneficiaries of color are the product of decades-long inequities, stemming from structural racism and explicit bias in health care delivery, and will require sustained institutional changes to overcome. Correcting these inequities will require intentional efforts involving beneficiaries, federal agencies, states, managed care organizations (MCOs), providers, and other stakeholders at the table to identify policy levers, change program policy and operations, evaluate progress, and make needed course corrections.”

- [*MACPAC June 2022 Report to Congress*](#)

Early Biden Administration Policies Laid Groundwork to Advance Equity

- [Health Equity Task Force](#) created to provide recommendations for mitigating inequities caused or exacerbated by COVID-19 and for preventing such inequities in the future
- Executive Order (E.O.) 13985 on [Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#) (Jan. 2021)
 - Charged federal government with developing a systemic approach to and identifying effective methods for assessing whether policies/action equitably serve all individuals and communities, especially those currently and historically underserved and adversely affected by poverty and inequality
- Request for Information (RFI) [Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government](#) (May 2021)
 - Sought information about strategies the federal government could adopt to, for example, collect data to support greater attention to equity in future policymaking, develop procurement and contracting processes that promote equity, channel grants and other funds to communities most in need, and meaningfully engagement stakeholders and communities that have been historically underserved
- [OMB Study to Identify Methods to Assess Equity: Report to the President](#) (July 2021)

White House Vision Informed HHS Strategy & Workplans

- E.O. 13985 required agencies to issue Equity Plans
 - [HHS Equity Action Plan](#)
- HHS [strategic plan](#) and CMS [strategic vision](#) include equity at the core
- CMS Office of Minority Health published a [Framework for Health Equity 2022-2032](#) “to address health disparities as a foundational element” across all of its work
 1. Expand the collection, reporting, and analysis of standardized data
 2. Assess causes of disparities within CMS programs and address inequities in policies and operations
 3. Build capacity of health care organizations/workforce
 4. Advance language access, health literacy, and provision of culturally tailored services
 5. Increase all forms of accessibility to health care services and coverage
- The Administration has also zeroed in on particular policy areas, including [White House Blueprint for Addressing the Maternal Health Crisis](#) & [CMS Maternity Care Action Plan](#)

Levers: Laws, Rules, Guidance

Law/Statute	Passed by Congress, signed by the President	Requires an act of Congress
Rules/Regulations	<p>When Congress enacts legislation, it frequently delegates rulemaking authority to federal agencies.</p> <p>Agency regulations establish specific requirements</p>	Generally requires public notice and comment
Guidance	Supplemental materials that provide clarity on laws or rules; guidance with broad applicability may be published in the <i>Federal Register</i> , but some may only appear on agency websites	Generally does <i>not</i> require notice and comment

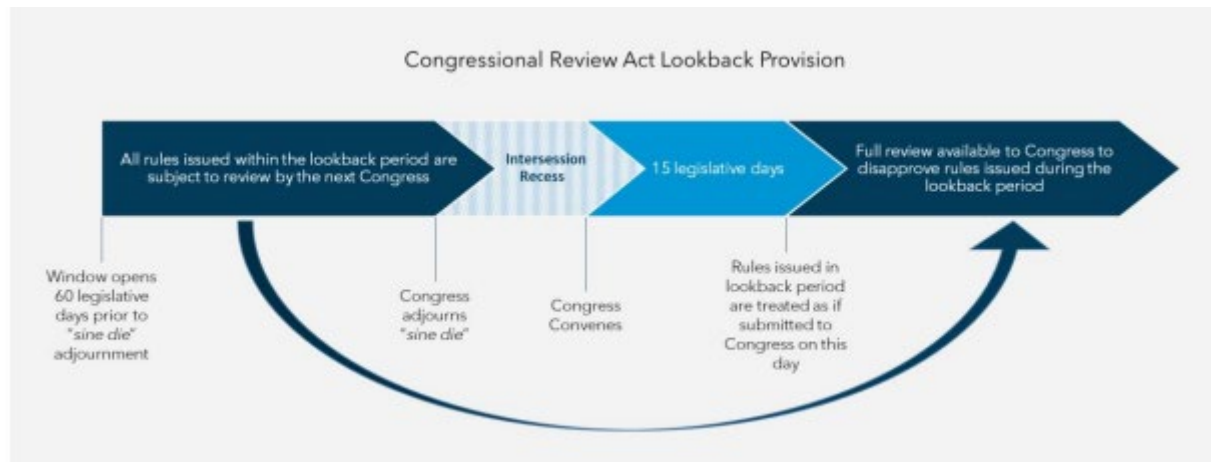
Overview of the Rulemaking Process

- The Administrative Procedure Act (APA) guides agency rulemaking
- Agencies must establish an administrative record that lays out the legal, scientific, technical, economic, and policy basis for the rule
- **Proposed rules** (NPRMs) set out the agency's approach and provide public with opportunity to comment (usually 30 or 60 days)
- **Final rules**
 - Agency must respond to significant public comments
 - There must be “logical outgrowth” for any change from the proposed rule – agency can solicit comments on specified alternatives
 - Generally effective 30 or 60 days after publication
- Rules go through an extensive “clearance” process within each agency and at the White House before they are released
- According to APA and Supreme Court precedent, agencies must provide a reasoned explanation when they want to change established policy

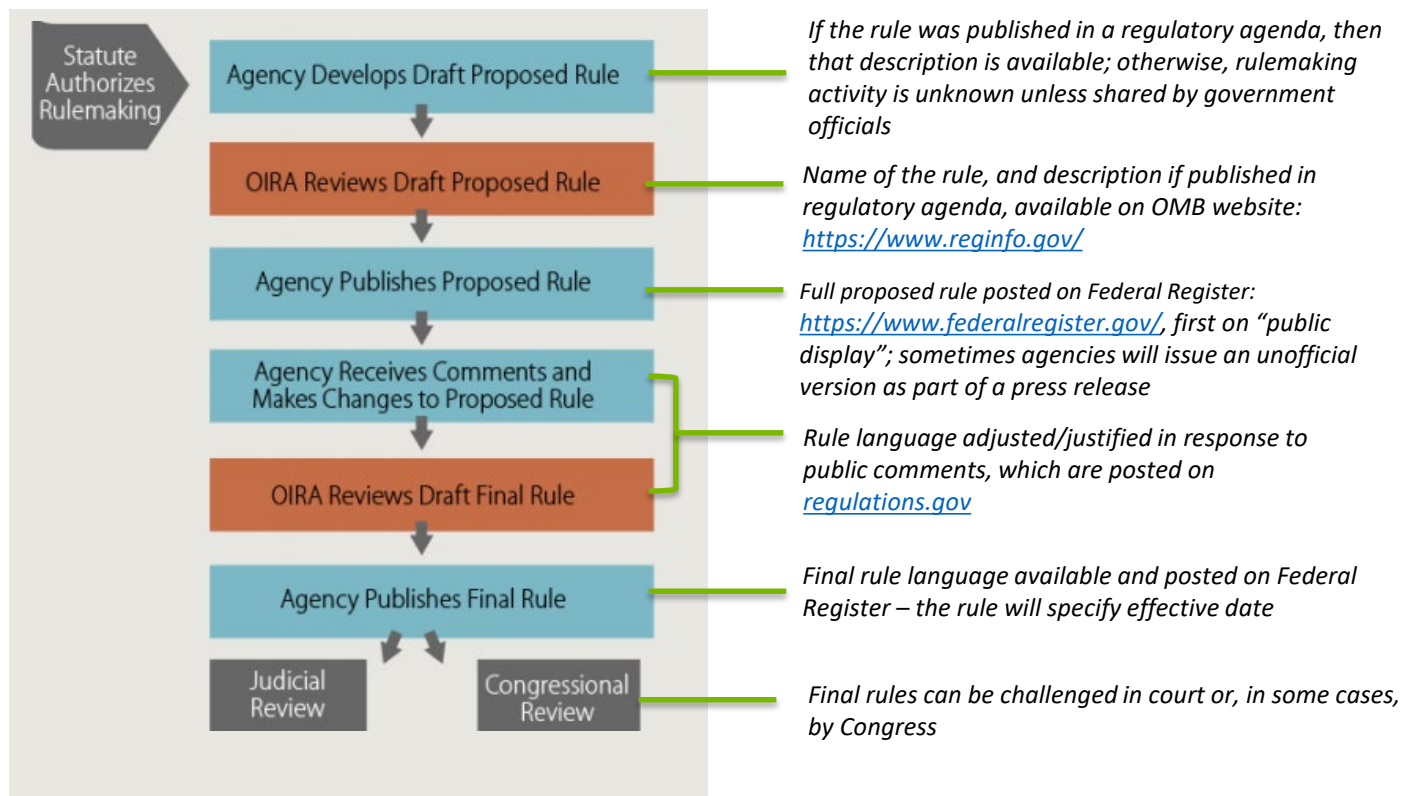
Key takeaway: rulemaking takes time!

The Congressional Review Act

- “Major Rules” – with an annual effect on the economy of \$100 million or more – are submitted to Congress
- Congress has 60 *session days* from when a rule is received by Congress and is published in the Federal Register to advance a “resolution of disapproval”
 - Typically, rules issued after May/June of an election year are subject to CRA resolutions of disapproval
 - The President can veto the disapproval resolution and send it back to Congress for the 2/3 override attempt



Typical Rulemaking Process



Source: Graphic created by Congressional Research Service

Guidance may follow to clarify elements/implement the rule

Administration Continues to Consider How to Incorporate Equity into Rulemaking

- January 2021 Presidential Memo to Agencies on [Modernizing Regulatory Review](#) directs the Office of Information and Regulatory Affairs (OIRA) to modernize regulatory policy
 - Directs OMB to revise [Circular A-4](#), which has provided guidance to agencies on best practices for regulatory analysis. The Circular aims to standardize how analyses are conducted across federal departments and is used to help agencies determine if the benefits of an action are likely to justify the costs
 - The memo also calls for procedures that “take into account distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities”
- OMB/OIRA has not yet released the required update, which could impact rulemaking and how the federal government addresses equity

Other OIRA Information Policy Levers

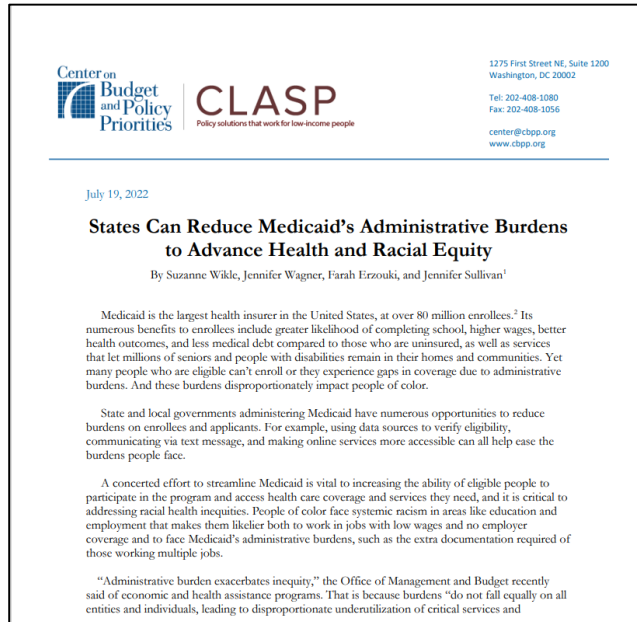
- **Statistical Policy**

- OMB is [reviewing and updating](#) the 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity and in the meantime [reminded agencies](#) that “collection of more detailed race and ethnicity data beyond the minimum categories is encouraged” as long as they can be aggregated into minimum categories

- The **Paperwork Reduction Act** governs federal information collection.
 - OIRA must approve any federal information collection of questions to 10 or more entities. OIRA review seeks to assure appropriate balance between burden and accuracy of information
 - OMB/OIRA recently issued a memo re: [Improving Access to Public Benefit Programs Through the Paperwork Reduction Act](#)

The types of information that government programs ask can deter people from participating, but information about program participants can also help drive policy changes

What could this look like in practice?



[States Can Reduce Medicaid's Administrative Burdens to Advance Health and Racial Equity](https://www.cbpp.org/reports/medicaid/states-can-reduce-medicaid-administrative-burdens-to-advance-health-and-racial-equity)

- **Seven million people are eligible for Medicaid but not enrolled because of administrative burdens, which both reflect and perpetuate systemic racism and racial inequity**
- **Taking a critical look at Medicaid to understand how its administrative burdens disproportionately affect communities of color is vital to removing those burdens**
- **States should take concrete steps to reduce administrative burdens**
- **The federal government should provide guidance, support, and accountability to create more equitable access to Medicaid and reduce health inequities**

What could this look like in practice?



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January 15, 2021

Administration Should Act to Expand and Improve Health Coverage

By Sarah Lueck

Alongside legislation to expand health coverage and make it more affordable, the Biden Administration can take administrative actions to reduce the uninsured rate, begin to address disparities in health coverage, and improve the affordability and quality of coverage for many people.

The following list is far from comprehensive, but it highlights examples of changes that would likely have significant impact. The Administration should make it easier for people to get and keep coverage through Medicaid and the Affordable Care Act (ACA) health insurance marketplaces, improve people's ability to afford coverage, and bolster protections to ensure that people get good-quality coverage. It should also use Medicaid and ACA waivers and demonstration projects to encourage states to expand and improve coverage, rather than to take it away, as the Trump Administration has done.

Make It Easier for More People to Get and Stay Covered Through Medicaid and the Marketplaces

More than one-third of people who are uninsured are already eligible for Medicaid or for premium tax credits in the marketplace.¹ Some may be unaware that affordable coverage is available, or bureaucratic or other hurdles may have kept them from enrolling in or maintaining their coverage. Improvements that jumpstart efforts to spread the word about coverage options, along with changes to policies and procedures that keep people out of coverage, represent some of the greatest opportunities to stanch the erosion in coverage experienced under the Trump Administration and to grow enrollment, potentially by millions of people.

- **Reinvigorate outreach and enrollment assistance.** The Trump Administration slashed funding for in-person assistance, outreach, and marketing. These programs should be rebuilt and improved by increasing funding for navigators and other consumer assisters and investing in outreach and marketing efforts to inform consumers about the coverage they and their families may be eligible for, whether through the marketplaces, Medicaid, or the Children's Health Insurance Program (CHIP).

The Biden Administration can and has issued policies, guidance, and regulations to reduce the uninsured rate, begin to address disparities in health coverage, and improve the affordability and quality of coverage:

- Make it easier for more people to get and state covered through Medicaid and the Marketplaces.
- Improve affordability in the Marketplaces
- Improve consumer protections in the Marketplaces and Medicaid
- Use waivers and demonstration projects to encourage states to expand and improve coverage, rather than take it away

Administration Should Act to Expand and Improve Health Coverage

Other Policy Levers: Waivers, Demonstrations, and Model Tests

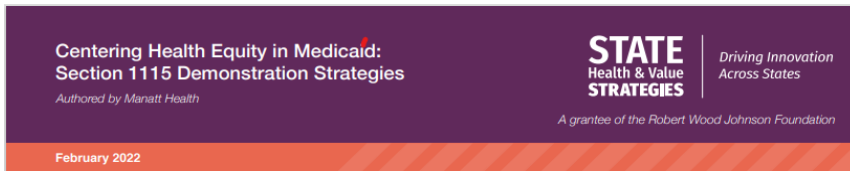
- **Section 1332 Waivers**

- Section 1332 of the Affordable Care Act (ACA) permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing residents with access to high quality, affordable health coverage while meeting certain guardrails consistent with basic ACA protections
- States have recently used Section 1332 to create “public option” plans and to use savings to help expand coverage, including to immigrant populations who might not otherwise qualify for assistance

- **Medicaid Section 1115 Demonstrations**

- Section 1115 demonstrations, or waivers, enable states to test new policy ideas by waiving certain Medicaid/CHIP requirements and utilizing Medicaid funds in non-traditional ways
- CMS can set out its own “vision” for how to use demonstrations and also work with states to advance priorities, including equity
- Section 1115 waivers must be requested by a state, reflect solicited public input, be approved by the Secretary of HHS, promote the objectives of the Medicaid program, and be budget neutral

What could this look like in practice?



Roadmap to Center Equity Through the Section 1115 Demonstration Lifecycle	
1.0. Eligibility Policy	
1.1. Global Eligibility Expansion	
1.2. Targeted Eligibility Expansion	
1.3. Postpartum Eligibility Expansion	
1.4. Continuous Eligibility	
2.0. Benefit Enhancements	
3.0. Coverage Affordability Strategies	
4.0. Expenditure Authority for Investment in Targeted Providers/Services	

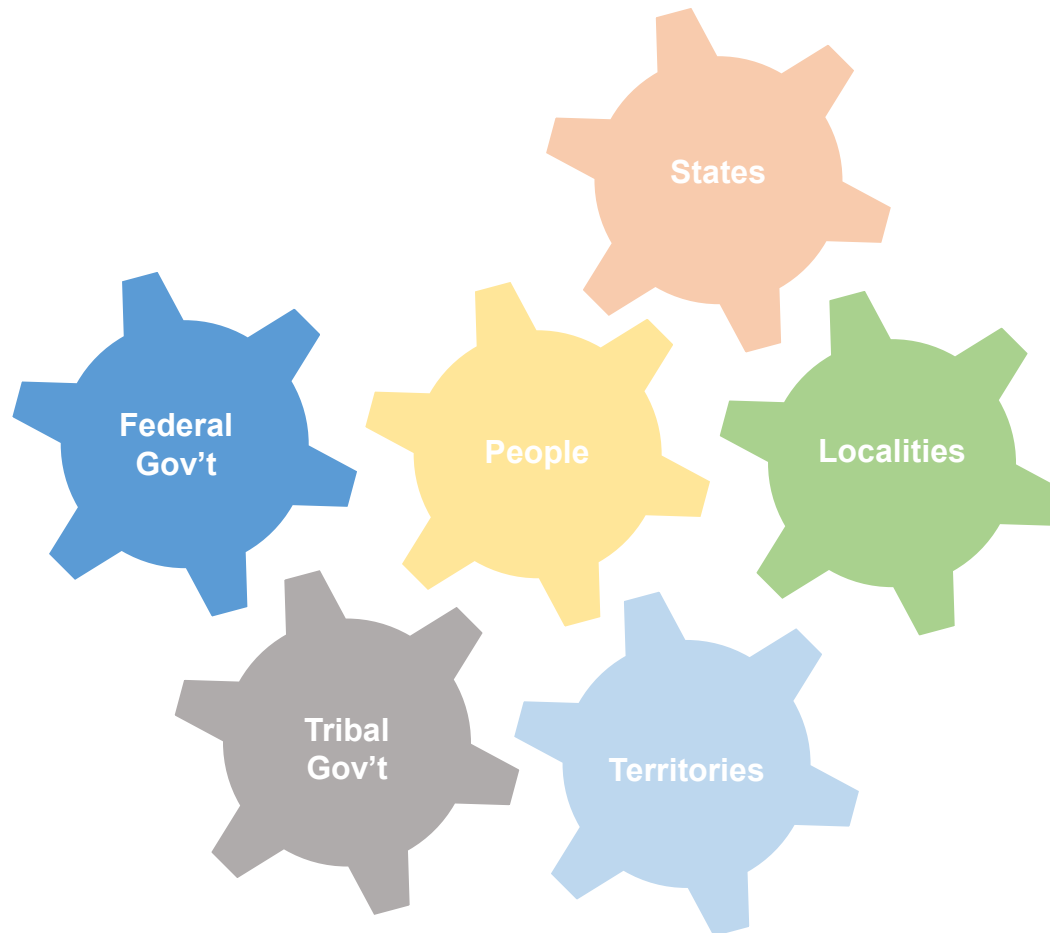
[Centering Health Equity in Medicaid
Section 1115 Demonstrations \(shvs.org\)](https://shvs.org)

- CMS could issue guidance about how to use Section 1115 demonstrations to advance equity
- CMS could issue guidance about how to streamline approval of strategies to address social drivers of health
- CMS is developing guidance (in response to the SUPPORT Act) on using Section 1115 demonstrations to deliver in-reach services to justice-involved populations

Center for Medicaid & Medicaid Innovation (CMMI)

- The Affordable Care Act created CMMI, which has statutory authority to experiment with policy improvements that enhance or preserve the quality of care while reducing costs
- CMMI uses this authority to test innovative payment models within Medicare or Medicaid
- CMMI released a [white paper](#) detailing 5 strategies for innovation to achieve equitable outcomes through high quality, person-centered care:
 - Drive Accountable Care
 - Advance Health Equity
 - Support Care Innovations
 - Improve Access by Addressing Affordability
 - Partner to Achieve System Transformation
- In March, CMMI leadership authored a Health Affairs [blog](#) providing details about how equity will be embedded throughout CMMI models

Intersections Across Jurisdictions & With People Who Benefit from Federal Programs



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