Stetson 2026 National Conference
Legislative Update Outline
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1. OBBBA: Where Are We Now?

Interim Final Rule on Community Engagement Requirements for Medicaid Expansion

1.1 Medicaid Expansion: The Basics

- Optional program covering adults with incomes below 138% of the Federal Poverty Level (approximately $22,025 per year for a single individual).
- Not to be confused with categorical eligibility under SSI or an HCBS waiver program.

1.2 OBBBA Work Requirements: Overview

States must implement work reporting requirements by January 1, 2027.

Individuals must show either:

- 80 hours per month of work, volunteering, or half-time study; **or**
- Earnings of at least the federal minimum wage × 80 hours (approximately $580 per month).

1.3 Categorical Exemptions: Overview

- "Medically frail" individuals.
- Parents, guardians, caretaker relatives, or family caregivers of:
    - A dependent child (under 14); or
    - A disabled individual.
- Pregnant and postpartum individuals, and more.

1.4 Defining the Caregiver Exemptions

- **Parent:** Legal mother or father, including by adoption under state law.
- **Guardian:** Court-appointed adult caregiver and decision-maker.

- **Caretaker Relative:** Relative by blood, adoption, or marriage who lives with and is primarily responsible for the individual's care. States may expand the defined relationships.
- **Family Caregiver:** Adult providing regular, non-incidental assistance, qualifying under any of three scenarios:
    - Resident;
    - Nonresident relative; or
    - Non-relative providing 80+ hours per month.

1.5 Key Terms Underlying the Caregiver Definitions

- **Dependent Child:** Age 13 or under and relies on another for care.
- **Disabled Individual:** Meets the ADA definition (28 C.F.R. § 35.108); any age; need not be Medicaid eligible on a disability basis.

1.6 Medical Frailty Exemption: Full Definition

Condition must "significantly impair" the ability to comply with the community engagement requirement, where the individual is:

- Blind or disabled (per SSA § 1614);
- Living with a substance use disorder (excludes "stable recovery," defined by CMS as 5+ years in recovery);
- Living with a disabling mental disorder;
- Living with a physical, intellectual, or developmental disability that significantly impairs one or more activities of daily living; or
- Living with a serious or complex medical condition (broadly defined: life-threatening, seriously disabling, high pain or interruption to life activities, heavy caregiver burden, frequent monitoring, multi-organ, multi-specialty, high-risk treatment, etc.).

1.7 Short-Term Hardship Exceptions

- Hospitalization or institutionalization.
- Travel for medical care (self or dependent).
- Federal emergency or disaster declarations.
- High local unemployment.

1.8 Litigation Controversies

Narrowing issue: States must verify not just a qualifying condition, but that it "significantly impairs" the ability to work.

Case: Massachusetts v. Oz (D. Mass.)

- Brought by 26 states and D.C. against CMS Administrator Mehmet Oz, CMS, HHS Secretary Robert F. Kennedy Jr., and HHS, challenging the Interim Final Rule.
- On July 30, 2026, Judge Richard Stearns denied a preliminary injunction, finding no irreparable harm (CMS covers 90% of state implementation costs).
- The merits of the claims were not decided; the case continues.

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2. New Provider Tax Limits

2.1 What Are Provider Taxes?

Medicaid provider taxes are mandatory fees, assessments, or charges that state governments place on health care providers (such as hospitals, nursing homes, and managed care organizations) to help finance the state's required non-federal share of Medicaid spending.

2.2 CMS Actions After OBBBA

Final Rule: Generally Redistributive Requirement

- Implements H.R. 1 by barring provider taxes structured to disproportionately burden Medicaid.

Proposed Rule CMS-2452-P

- Released July 21, 2026.
- The proposed rule would implement H.R. 1's new provider tax limits and beyond.
- CMS estimates the rule would reduce federal Medicaid expenditures by $246 billion over 10 years compared to the Congressional Budget Office's original estimate of $183 billion in deficit reduction from the OBBBA's provider tax provisions.

2.3 Budget Neutrality for Section 1115 Waivers

Section 1115 waivers let states test Medicaid programs that go beyond standard federal rules, but they must be "budget neutral," meaning they cannot cost the federal government more than Medicaid would have without the waiver.

A June 11 letter from CMS, implementing H.R. 1, makes that test much tougher starting January 1, 2027.

States will now:

- Need the CMS Chief Actuary to certify budget neutrality before approval;
- Need to count administrative and indirect costs for the first time; and
- Lose the flexibility that previously let them cover people or services not otherwise allowed under Medicaid.

A forthcoming rule is also expected to cap waivers at five years.

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3. End of Temporary Status for Haiti and Other Countries

3.1 Impact on the Health Care Workforce

- Impacts when there is already a shortage of workers.
- Immigrants represent 28% of direct care workers nationwide.

Source: PHI Midterm Policy Brief Series: *Support Immigrants*
https://www.phinational.org/resource/phi-midterm-policy-brief-series-support-immigrants/

3.2 South Florida Health Care Industry

https://www.nbcmiami.com/news/local/revoking-tps-for-haitians-would-create-crisis-for-south-florida-health-care-industry/3758754/

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4. Community Integration

4.1 Background on Olmstead v. L.C. (1999)

The Supreme Court held that the unjustified segregation of people with disabilities in institutions is a form of discrimination under Title II of the Americans with Disabilities Act.

The Court ruled that states must provide community-based services when:

- Treatment professionals find it appropriate;
- The individual does not oppose it; and
- The placement can be reasonably accommodated given the state's resources and the needs of others with disabilities.

Olmstead remains the legal foundation for the shift toward home and community-based services, including many Medicaid waiver programs that special needs clients rely on today.

4.2 Department of Justice Memo

On June 18, 2026, the Justice Department's Office of Legal Counsel issued a memorandum reinterpreting federal disability rights obligations under the ADA and Section 504 as they relate to *Olmstead*.

The memo concludes that neither the ADA nor Section 504 requires states to provide services to people with disabilities in the most integrated setting appropriate to their needs, and it suggests that DOJ lacked authority to adopt an "integration mandate" in its Title II regulations.

In a July 2026 Federal Register notice, the Department stated that it plans to revisit its *Olmstead* guidance in light of the Supreme Court's *Loper Bright* decision and will not rely on that guidance when enforcing Title II of the ADA.

The memo:

- Does not change the law;
- Does not overturn the *Olmstead* decision;
- Does not invalidate existing court orders; and
- Does not prevent individuals from bringing *Olmstead* claims.

However, because OLC opinions apply to all executive branch agencies, the interpretation is likely to affect how DOJ and HHS approach enforcement, including existing *Olmstead* settlements and agreements.

4.3 The Arc / DOJ Olmstead Enforcement Resources

DOJ Olmstead Enforcement: Disability Rights Resources | The Arc

https://www.phinational.org/resource/phi-midterm-policy-brief-series-support-immigrants/

4.4 Texas v. Kennedy

On September 23, 2026, the U.S. District Court for the Northern District of Texas entered an order implementing a settlement between the federal government, Texas, and four other states that had challenged HHS's 2024 Section 504 regulations.

The order vacates the provisions of those regulations referencing community integration for people with disabilities.

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5. Fraud, Waste, and Abuse Initiatives

5.1 New Scrutiny on So Many Fronts

5.2 Impact on Social Security Overpayments

An OIG audit determined 46% of the overpayment notices it reviewed did not meet SSA's policy requirements.

Deficiencies included:

- Missing explanations of how and when the overpayment occurred;
- Omitted reconsideration and waiver rights;
- Inaccurate dollar amounts;
- Conflicting or unclear language; and
- Insufficient detail on calculation methods.

Source: *Audit Identifies Issues in SSA's Overpayment Notices, Impacting Beneficiaries' Understanding and Program Integrity | SSA Office of the Inspector General*

https://oig.ssa.gov/news-releases/2026-09-04-audit-identifies-issues-in-ssa%E2%80%99s-overpayment-notices-impacting-beneficiaries%E2%80%99-understanding-and-program-integrity/

5.3 Implementation of HOTMA Regulations

- Now vs later: treatment of SNT distributions as income. Will only interest be counted? Dividends? No clear answers
- Full mandatory compliance with HOTMA for HUD Multifamily programs is set for January 1, 2027, to allow HUD to finalize software systems like TRACS and update required forms.
- See: PIH_2026-15 https://www.hud.gov/sites/default/files/hudclips/documents/PIH-2026-15.pdf

5.4 Inconsistent Implementation in the Meantime

- Varying reports of local agencies following HOTMA or pre-HOTMA rules.

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6. Trump Accounts (TA)

6.1 What Are Trump Accounts?

https://www.irs.gov/trumpaccounts

6.2 Who Is Eligible?

- The child must be under 18 years old at the end of the calendar year when the account is opened.
- The child must have a valid Social Security number.
- No income limits.
- No earned-income requirements.
- Non-citizen children with a valid Social Security number can still qualify for an account.
- Only one TA is permitted per child.

6.3 Who Can Establish a TA?

- Parents;
- Guardians; or
- Others who are authorized to establish a TA for an eligible child.

6.4 Who Contributes?

- The federal government will make a one-time $1,000 contribution for each eligible child's account.
- The child must be born between January 1, 2025, and December 31, 2028.
- Authorized contributions from individuals, any other third parties, and employers are allowed up to $5,000 per year (indexed for inflation after 2027).
- Employers can contribute up to $2,500 per year toward an employee's or dependent's TA.
- Funds must be invested in certain mutual funds or exchange-traded funds that track a U.S. stock index such as the S&P 500.

6.5 Withdrawal and Use

- Generally, money cannot be withdrawn before the year the child turns 18 ("growth period").
- After that point, the account is treated like a traditional IRA with similar tax rules.

6.6 SSA Treatment During the Growth Period

SSA POMS SI 01120.250 — Trump Accounts (TA)
https://secure.ssa.gov/poms.nsf/lnx/0501120250

Growth Period: Prior to January 1 of the year the TA beneficiary attains age 18.

- The entire value of a TA is not considered a resource for SSI purposes.
- Distributions from the TA generally are not permitted.

The following do not count as distributions:

- Rollover to another TA during the growth period;
- ***Rollover to an ABLE account permitted during the calendar year the TA beneficiary turns age 17;***
- Removal of excess contributions over the annual limit; and
- Distributions upon the death of the TA beneficiary.

6.7 Contributions to TA

- Generally not considered income.
- However, a TA beneficiary cannot avoid income counting by direct depositing funds into a TA.
- Representative Payees cannot arrange to have beneficiary's Social Security or SSI payments paid via direct deposit into a TA, as Representative Payees generally

would not be able to use the benefits to provide for the beneficiary's current needs.

6.8 SSA Treatment During the Post-Growth Period

Post-Growth Period: Beginning January 1 of the calendar year the TA beneficiary attains age 18.

- TA is a countable resource.
- The value of the TA is the amount of money that the TA beneficiary can withdraw from the TA after any penalty for early withdrawal (i.e., early distribution tax).
- Distributions of TA funds are not income, but a conversion of a resource.
- Contributions to a TA are income or a conversion of a resource, depending on the source of the contribution.

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7. SNA's Latest Legislative Efforts

7.1 Child Disability Benefits Fairness Act

Childhood Disability Benefits Fairness Act (H.R. 9846)
https://www.govtrack.us/congress/bills/119/hr9846

- Introduced by Rep. Debbe Dingell.
- Now seeking Republican co-sponsor.

7.2 Assigning Federal Pensions to d4A SNTs & Pooled Trusts

- Bill anticipated to be introduced by Sen. Wyden and Sen. Grassley either by the end of the year or at the beginning of the new Congress.
- It amends three separate federal retirement systems to allow the SNT payment election:
    - Civil Service Retirement System (CSRS);
    - Federal Employees' Retirement System (FERS); and
    - Foreign Service Retirement and Disability System.

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8. Social Security Administration and Trusts

8.1 Potential Use of AI to Review Documents

Artificial Intelligence at SSA
https://www.ssa.gov/ai

SSA Enterprise AI Strategy
https://www.ssa.gov/ai/policy/SSA%20Enterprise%20Artificial%20Intelligence%20Strategy%20Report.pdf

8.2 Concern Over Recent Challenges on Pooled Trusts

1. Concerns regarding documents with previous precedents in the system.
2. Investment Duties POMS SI 01120.225.D
   https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120225
3. Policy on Use of For-Profit Entities:

If a non-profit association employs the services of a for-profit entity, the non-profit association must maintain ultimate managerial control over the trust.

The for-profit entity may handle certain trust functions on behalf of the non-profit association; however, the use of a for-profit entity must always be subordinate to the non-profit managers of a pooled trust under section 1917(d)(4)(C).

For example, the non-profit association must be responsible for:

- *Determining the amount of the trust corpus to invest;*
- *Removing or replacing the trustee; and*
- *Making the day-to-day decisions regarding the health and well-being of the pooled trust beneficiaries.*

***Note:** This list is not intended to be exhaustive. These are a few examples of the type of authority that must vest in the non-profit association.*

4. Using Funds for Legal Counsel: **POMS SI 01120.201.F.4**
   https://secure.ssa.gov/poms.nsf/lnx/0501120201

This provision addresses the sole-benefit rule and expressly permits reasonable costs associated with investment, legal, or other services rendered on behalf of the individual with regard to the trust.

See also:

SSA - POMS: PS 01825.025 - Michigan - 05/18/2018

5. Precedents "Disappearing" From System
   Not all precedents are found in the PS section of the POMS:
   https://secure.ssa.gov/poms.Nsf/lnx/1601825000
   Some organizations are reporting they can no longer be found.

8.6 True Link Transfers Being Counted as Income

- 2026 report that a local SSA office in California was counting all True Link transfers as income.

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9. Extras — Worth a Mention

9.1 HCBS Impacts Tracker Project

George Washington University, along with HSRI, ATI Advisory, and the UMass Boston LTSS Center, have launched the **HCBS Impacts Tracker Project**, looking at how states are implementing federal policy changes (including those under H.R. 1/OBBBA) in their HCBS systems and the impacts of those changes on people with disabilities and older adults.

There is a project webpage where you can regularly check the tracker. They will be updating it every two weeks and will note on the webpage when it was last updated:

https://hpmmatters.publichealth.gwu.edu/HCBS-impacts-tracker-project