

Medicaid Monitoring

New Questions for the Medicaid Expansion

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Background

State Medicaid programs have entered a new period of uncertainty following the much-anticipated U.S. Supreme Court ruling on the Patient Protection and Affordable Care Act (PPACA). The court determined that the federal law violated the U.S. Constitution by wielding too big a club over states when it came to the planned expansion of the Medicaid program to millions of low-income Americans.

However, the court did not strike down the expansion. Instead, it severed the penalty provision — loss of all federal Medicaid funds — from the law.

With that, the Medicaid expansion scheduled to go into effect in January 2014 essentially became optional for states. And a whole new host of questions has arisen as to what the ruling means at the state level.

Medicaid: What It Is and What It Was To Be

Through the Medicaid program, states and the federal government share in the costs of providing medical services to low-income children and to low-income adults who generally are also blind, disabled, pregnant, or over the age of 65. The federal government pays at least 50% of each state's Medicaid costs, using a formula based on the state's per capita income as compared to the national average. Montana currently pays about 34% of the costs of most medical services, while the federal government pays about 66%.

Under PPACA, states were to begin covering all individuals under the age of 65 who are at or below 138%¹ of the federal poverty level. The change would have extended coverage to many people who don't qualify for Medicaid now, including able-bodied, single adults. The Congressional Budget Office estimated that 16 million more people would qualify for Medicaid nationwide.

The law also called for the federal government to pay the full costs of providing Medicaid coverage to people who are enrolled under the new eligibility standards for the first three years of the expansion. After that, states will gradually start paying a share of those costs until their share reaches 10% in 2020. They will continue paying for people eligible under the current standards using the same formula now in effect for determining federal matching rates.

Expansion Ruled Coercive

PPACA called for states to lose all of their federal Medicaid funds if they did not take part in the expansion as scheduled in 2014. Opponents challenged the Medicaid expansion on the grounds that the penalty was so severe it essentially coerced states into making the changes Congress wanted.

¹The law establishes eligibility at 133% of the federal poverty level with a 5% income disregard, resulting in an effective eligibility threshold of 138% of poverty.

The Supreme Court agreed, with Chief Justice John Roberts noting that the financial incentive Congress chose was "much more than 'relatively mild encouragement' — it is a gun to the head." He also said the Medicaid expansion amounted to creation of a new program, rather than a modification of the existing program, adding: "It is no longer a program to care for the neediest among us, but rather an element of a comprehensive national plan to provide universal health insurance coverage."

The court, however, determined that the constitutional flaw could be fixed by eliminating the penalty. Thus states will not lose all their Medicaid funds if they don't expand their programs.

Not the End of the Discussion

The June ruling didn't end the discussion over PPACA and Medicaid. Instead, it raised a new question: "What's next?"

And that's actually a multi-faceted question.

Within days of the ruling, both the National Association of Medicaid Directors and the Republican Governors Association submitted lengthy lists of questions to the Obama administration. The questions touched on numerous topics, including whether states:

- must submit proposals to either opt in or opt out of the expansion;
- could receive the new federal funds if they expanded Medicaid to a lesser degree than PPACA called for;
- may opt in to the Medicaid expansion after 2014 or opt out of the expansion if they initially take part in it; and
- may change their current Medicaid eligibility standards before Jan. 1, 2014.

They also asked whether payments to hospitals that serve a high number of low-income patients will still be reduced as planned in states that don't expand their Medicaid programs. The so-called "disproportionate share hospital" (DSH) payments are set to decrease as the Medicaid population increases, because the Medicaid expansion was expected to reduce the amount of uncompensated care that hospitals now provide.

So far, the U.S. Department of Health and Human Services has provided these answers:

- No deadline exists for states to indicate whether they will expand their programs.
- States that receive extra federal funds for Medicaid information technology costs and for health insurance exchange planning will not have to return those funds if they decide against expanding Medicaid or operating a state exchange.
- Low-income individuals in states that don't expand Medicaid may qualify for a hardship exemption and thus would not face a tax penalty if they don't buy insurance.

HHS is holding four regional meetings this month to take questions from states about the court ruling and its effects. However, many questions likely will remain unanswered well into the future.