What Does the Supreme Court Decision Mean for Medicaid Expansion?

Compiled by Sadia Sorathia and Brian Lindberg

The Patient Protection and Affordable Care Act (PPACA) was designed to extend insurance to more than 30 million people by expanding Medicaid coverage and providing federal subsidies to help eligible Americans buy private coverage. The individual mandate was included to help finance the increased costs and requires nonexempt uninsured individuals to purchase insurance or pay a penalty.

Proponents of PPACA argued that the individual mandate was constitutional under the Commerce Clause. In the Supreme Court decision released on June 28, 2012, Chief Justice Roberts did not accept that the Commerce Clause provided the federal government with the authority to require individuals to purchase health insurance. He reasoned that the individual mandate creates and compels commerce rather than regulating it. He, however, found the individual mandate constitutional under the taxing power. Although the primary intent of the mandate is to have people buy insurance rather than to raise money, the mandate is still a tax.

Another aspect of the Supreme Court included the discussion of whether PPACA's Medicaid expansion is constitutional. Under PPACA, the State must provide Medicaid coverage to adults under the age of 65 with income below 133% of the federal poverty level by 2014. Additionally, PPACA increases federal funding, which helps States comply with the required expansion of Medicaid coverage. If a State fails to comply with the new requirements regarding Medicaid expansion, it may be subject to losing not only the additional federal funding but all of the State's federal Medicaid funds. It is this chance of losing existing funds that opponents argue is outside of Congress' authority under the Spending Clause.

As the Supreme Court has held in the past, the Spending Clause allows Congress, with certain limitations, to place conditions on federal grants paid to the States. However, such conditions may not take the form of “undue influence.” The Secretary of Health and Human Service's ability to revoke existing Medicaid funds is unconstitutional as it does more than provide “relatively mild encouragement” by leaving no practical option other than to participate in the expansion. A State that wishes to opt out of the Medicaid expansion may lose approximately 10% of that State's budget, and it is this departure from “mild encouragement” that the Court finds unconstitutional. The unconstitutionality, however, is remedied by preventing the Secretary from withholding existing Medicaid funds for failure to comply with expansion requirements. The withholding of the additional funds is constitutional.
This ruling now allows States the real opportunity to decide whether to opt out of the Medicaid expansion. Although the federal match may be too good an offer for most States to turn down, it is predicted that some States will now opt out of the expansion rather than accept the additional federal funds. The Medicaid expansion provided under PPACA would have added a collective 16 million people to Medicaid. Due to the Supreme Court decision, it is unclear whether this Medicaid expansion will be nearly as successful but it is estimated that 8 to 9 million people who would have been part of the expansion may not receive coverage.

Mississippi, one of the States that challenged the federal law, may make the decision to opt out of the expansion and not accept the additional federal funds. The Mississippi Governor has stated that he believes the State should consider opting out of the expansion now that there is no fear of losing existing Medicaid funds, citing budget concerns as the primary reason. The Mississippi Hospital Association believes that Mississippi does not have the luxury to opt out of the expansion due to the reduction of Medicaid funding to hospitals for uninsured patients in 2014. They fear that without the federal grants hospitals may be forced to close as they will not be able to afford to provide care to the uninsured.

Many States agree with Mississippi that there is no room in the budget to participate in the expansion. South Carolina’s Governor has stated that the State will not expand Medicaid and South Carolina’s Medicaid director sees no way the State can afford to participate in the expansion. He estimates that the expansion would add half a million people in South Carolina at a cost of approximately $2.4 billion over 10 years. Texas Governor Perry thinks the expansion is a “punch” to the economy and does not believe there is room in the Texas budget for expanding Medicaid. Florida Governor Rick Scott has also expressed his intent to opt out.

Although a few Republican Governors have addressed their desire not to expand Medicaid, there may be too much pressure from the electorate, hospitals and Medicaid managed care plans for the States to walk away from the federal funding. It seems more likely that the States will use the Supreme Court’s decision to strike a deal with the federal government. States may be able to negotiate a way that would expand coverage while reshaping Medicaid according to the State’s concerns. Louisiana Governor Bobby Jindal has already indicated that Republicans can use this opportunity to negotiate the federal funding into “unrestricted lump payments.” The States could negotiate eligibility requirements, resulting in a decrease in the number of participants in the program. The States may be able to force the federal

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2 States Already Taking Radically Different Approaches to Court Ruling, Kaiser Health News (July 2, 2012).
government to decrease coverage to only those with incomes under 100% of the federal poverty level and not 133% in exchange for State participation.⁴

It is likely that many governors will see how health care reform impacts national and local elections before making a decision on whether to participate in the Medicaid expansion. The Supreme Court decision has motivated the Republic base. Republicans can now campaign against health care by arguing against the individual mandate tax. The decision that the individual mandate is a tax may cause problems in November for Democrats with a more conservative electorate. The Romney campaign has made the issue more interesting by first saying it disagreed with the Court’s ruling that it was a tax and then agreeing that it is a tax.

⁴ JoAnne Kenen & J. Lester Feder, 4 Ways States Might React to Medicaid Ruling, Politico Pro (July 3, 2012).