

# MEDICAID OPTIONS AFTER THE SCOTUS DECISION

An Update on the Impact  
of the U.S. Supreme Court Decision  
on the state Medicaid Program

Presented by Cathy Dupont  
For the Social Services Appropriations  
Subcommittee  
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# The Patient Protection and Affordable Care Act (ACA)

- ◎ The Patient Protection and Affordable Care Act (P.L. 11-148), enacted March 23, 2010
- ◎ Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), enacted March 30, 2010

# Challenge to the ACA

- The plaintiffs argued that the requirement for an individual to purchase health insurance was a violation of Congress's powers under the Commerce Clause.
- The plaintiffs argued that the Medicaid expansion up to 138% of the FPL and the authority of HHS to withhold all Medicaid monies for failure to comply was coercive and a violation of Congress's spending power.

# Supreme Court Decision - Individual Mandate

- ◎ The individual mandate is constitutional under Congress's taxing power. An individual must either purchase health insurance or pay a tax to the federal government.
- ◎ There are certain exemptions from the individual mandate (income and affordability, religious exemptions, tribal affiliation).

# Supreme Court Decision - Medicaid Expansion

- ◎ Congress may provide financial incentives and conditions for a state to expand Medicaid.
- ◎ Congress may not withhold all Medicaid money from a state that declines to expand the Medicaid program. The Court found this provision to be a “gun to the head” of the states, not merely a “relatively minor encouragement.”

# Supreme Court Decision - Medicaid Expansion

- ◎ Chief Justice Roberts said:
  - “What Congress is not free to do is to penalize States that choose not to participate in the new program by taking away their existing Medicaid funding.” (page 55)
  - “In light of the Court’s holding, the Secretary cannot apply 1396c to withdraw existing Medicaid funds for failure to comply with the requirements set out in the expansion.” (page 56)

# Clarity for Medicaid?

- ◎ We know that:
  - a state has the option to expand the income eligibility ceiling to 138% FPL beginning 1/1/14 and receive 100% federal funding through 2016, with a phase-out to 90% through 2020; and
  - HHS may not take all of the state's Medicaid match money if the state does not expand Medicaid .

# Unanswered Questions – Medicaid Expansion

- ◎ What does the Court mean by the new expansion program?
  - Is the “new program” limited to the expansion of eligibility to 138% of poverty for all individuals?
  - Does the “new program” include other Medicaid reforms in the ACA ?
  - Does the “new program” include maintenance of effort?

# Does “New Program” Include Other ACA Medicaid changes?

- Eliminate asset test (except for long-term care)
- Expand coverage to foster care graduates through age 25
- Presumptive eligibility by hospitals
- Legal immigrants < five years may enroll
- Disproportionate share hospital payments decrease
- Pay primary care providers at Medicare rates for 2013, 2014 with 100% federal match

# How Do You Plan?

- ◎ The Medicaid match rate is different depending on whether the enrolling individual is part of the “new expansion program” or part of the changes to the existing program
- ◎ Understand your assumptions about Medicaid populations when projecting cost
- ◎ Examples:
  - Asset test change will impact children currently enrolled in CHIP. Some will now be eligible for Medicaid – what is the match for those children?

# Will Congress, HHS, or Courts Clarify?

- Will the “new program” apply only to the eligibility expansion? Could Utah receive a preferred-match-rate expansion after 1/1/14? At something less than 138% FPL?
- Could pending or future waiver requests be jeopardized if Utah rejects the expansion?
- Is Medicaid the next round of ACA litigation?

# HHS Comments at NCSL

- ⦿ The states have no deadline for deciding on the Medicaid expansion program
- ⦿ A state may choose to expand and then chose to take away the expansion at a later date
- ⦿ The “new program” includes only the adult expansion population, other changes are mandatory

Cindy Mann at NCSL Summer Forum

# MEDICAID OPTIONS

# Medicaid Expansion Options

## ◎ Option One:

- Utah may expand income eligibility ceiling to 138% FPL beginning 1/1/14 and receive 100% federal funding through 2016 only for the expansion population, with a phase-out to 90% through 2020.

## ◎ Option Two:

- Utah may choose to continue the state's current Medicaid program as modified by the new requirements.

# Medicaid Must-do's? (subject to uncertainty from SCOTUS decision)

- Eliminate asset test (except for long-term care)
- Expand coverage to foster care graduates through age 25
- Presumptive eligibility by hospitals
- Legal immigrants < five years may enroll
- Disproportionate share hospital payments decrease
- Pay primary care providers at Medicare rates for 2013, 2014 with 100% federal \$. Then what?

# Considerations for Medicaid Options Under the ACA

- The cost of Medicaid expansion in the “new” Medicaid program is initially funded by the federal government, but funding is reduced by 2020 when the state will be responsible for 10% of the cost.
- Without Medicaid expansion, the Supreme Court decision creates a group of individuals who will not be eligible for state Medicaid programs, are below 100% of the FPL, and will not be eligible for premium subsidies in the exchange.

# Medicaid Considerations – cont.

- ⦿ What is the cost for the state when the federal subsidies decrease and the state must pay 10% of the cost of Medicaid expansion?
- ⦿ What is the cost to the state under the current Medicaid program if enrollment increases due to:
  - individuals currently eligible but not enrolled
  - individuals eligible under MAGI
  - children moving from CHIP to Medicaid
- ⦿ Can Utah negotiate with HHS regarding Medicaid expansion – (take it or leave it?)

# Impact on Health Care Providers in the State

- ◎ Hospitals and other health care providers will experience significant reductions in reimbursements under the provisions of the ACA.
  - The intended trade-off for the reductions in reimbursements was that the previously uninsured would have insurance or Medicaid coverage.
  - The Medicaid and premium subsidy “gap” will cause financial consequences for providers.

# Will HHS or Congress Act?

- The individuals who fall into the ACA coverage gap are the same individuals who are currently not covered by Utah's Medicaid program.
- Will Congress or HHS address this gap in coverage and eligibility for premium subsidies?
- Will Congress address provisions of the ACA that were related to the Medicaid expansion, such as reductions in DSH payments for hospitals?

# Questions?

Cathy Dupont

801-538-1032

[cdupont@le.utah.gov](mailto:cdupont@le.utah.gov)