# The Medicaid Expansion

## Background

Among the four issues that will be argued before the Supreme Court, the hour devoted to the expansion of the Medicaid program and its impact of the states has garnered the least attention. In their appeal to the Supreme Court, the 26 states argue that the Patient Protection and Affordable Care Act (PPACA) and it expansion of the Medicaid program coerces the states to participate in the voluntary program that is a federal-state partnership. Under the law, the Medicaid program will face the largest expansion in its history – covering Americans under age 65 who have incomes less than 133% of the federal poverty level (with a 5% "income disregard" provision that effectively raises that threshold to 138%) which is equivalent to $14,500 for an individual and $29,700 for a family of four in 2011.

Medicaid is a jointly funded federal-state health insurance program for low income individuals. Prior to PPACA the program focused on children, pregnant women, parents of eligible children, people with disabilities and the elderly needing nursing home care. In order for states to participate in Medicaid, federal law requires states cover certain population groups while allowing them to have the flexibility to expand the program as they see fit for their state. The Medicaid program is jointly financed by both the federal and state government and the federal reimbursement to the state is determined by an equation known as the Federal Medical Assistance Percentage (FMAP). Each state is reimbursed differently by the federal government due to a variety of components such as per capita income. The average state FMAP is 57%, but can range from 50% to upwards of 75% and is reevaluated and adjusted every three years.

Under PPACA the states are required to drastically expand their program by opening it to all Americans under 65 who have an income 133% of the federal poverty level regardless of the state's current Medicaid structure. In the expansion states will receive 100% federal funding for the first three years to support the new Medicaid population, phasing down to no less than 90% federal funding in subsequent years.

## The States' Opinion

The states claim the expansion of the Medicaid program is overly coercive and requires them to transform to transform their Medicaid program from a cooperative program that was designed to meet the needs of several population groups to one that was devised only as a mechanism to fulfill the individual mandate for all those that fall below the 133% poverty threshold. By broadening Medicaid under PPACA, the states believe the federal government has changed the basic nature of the program.

The states are basing their argument on Article 1, section 8 of the Constitution – the spending clause. This challenge highlights the need for the expansion to be unambiguous so the states know their requirements - including new costs associated with the expansion - in order to make an informed choice whether to participate in the program.

In the 1986 Supreme Court case, *South Dakota v. Dole* it was determined, "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which [permissible] pressure turns into [impermissible] compulsion."

The states argued at the district court level in Florida that the individual mandate uses enrollment in Medicaid as one option to fulfilling its obligations, and since states are not given any alternative to insuring its neediest citizens, they feel that they are coerced into remaining in the program. The states offer the exchanges as an example. The PPACA mandated the establishment of health benefit exchanges to be set up in each state. If a state was unwilling to establish their own, there was an alternative: the federal government would step in and set it up for the state. The Medicaid expansion offers no federal solution – the states must comply or risk losing all federal Medicaid funding.

In addition, exchange subsides made available by the federal government for eligible individuals participating in exchanges are disallowed under statue for those with incomes under 138% of the poverty line. In the event a states chooses to discontinue its participation in the Medicaid program, its lowest income citizens would be barred from receiving the same benefits afforded to their higher earning counterparts. This makes the voluntary federal-state partnership more burdensome on the states and makes it exceeding more difficult for them to decide to opt out of the program.

<u>The Federal Government's Opinion</u>

The federal government agrees with the 11th Circuit of Appeals who rejected the states' argument that the expansion of the Medicaid program could be deemed coercive. The basis of their claim is that no court has "invalidated a federal funding condition on the coercion theory." In short, the Court has never established a coercion test for health policies. They argue that the tenants of the Medicaid program, which include the federal government setting requirements for coverage of certain population in return for federal funding, sets the precedent that the program can and will be amended through time and PPACA was simply an expansion no different than past federally mandated expansions.

In addition, the case *New York v. United States*, determined that Congress may "fix the terms on which it distributes federal money to the states." The states will receive 100% federal funding for the first three years to support this expanded coverage, and then after full implementation states will receive 90% federal funding for the new population

group. Since the federal government will be responsible for the majority of this funding, they argue this cannot be deemed coercive.

Finally, the federal government argues that participation in the Medicaid program is completely voluntary. The states have four years from the date of enactment to determine if they will remain in the program or opt out.

Why this is Important

Since the inception of Medicaid in 1965 Congress has gradually expanded its program from one with 4 million beneficiaries to one that now has over 46.7 million on its rolls. It began as a safety net program which covered only families receiving assistance from the Aid to Families with Dependent Children Program. In the 1970's it expanded when Congress created the Supplemental Security Income (SSI) and then began covering the elderly and the disabled. In 1985, the program was expanded for all eligible pregnant women who chose to accept assistance. Finally, in 2000 the program was expanded under the 2000 Breast and Cervical Cancer Treatment and Prevention Act, to allow any uninsured woman – regardless of income eligibility - who was diagnosed with breast or cervical cancer to receive Medicaid benefits. Under PPACA, the 2014 Medicaid expansion will be the largest in history and is expected to add an additional 20 million Americans to the system.

The ruling by Supreme Court on the Medicaid expansion could be paramount because the growth of the program mandated by PPACA is no different than previous expansions. If the Supreme Court concurs with the states that there was evidence of coercion, and subsequently overturns this provision, this could lead the unraveling of the entire program and certainly past expansions that have covered several vulnerable populations that have come to rely on Medicaid. In theory, the Supreme Court could hear cases walking back each expansion of Medicaid. If this were the case the program which we have today would drastically shrink and cover only a fraction of its current beneficiaries.

Also important to note is if the Supreme Court determines the Medicaid expansion is not overly burdensome on the states, it will establish that there is no coercion test for health care. It would also set the precedent that no future expansion of Medicaid could be challenged in court. This is significant for the federal-state partnership to the effect the federal government could make decisions and the states would have no judicial recourse.