

Analysis of the Supreme Court's PPACA Decision



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas



Joy Johnson Wilson, Health Policy Director
National Conference of State Legislatures

Before the
Idaho Joint Legislative Health Care Task Force
July 30, 2012





SCOTUS Recap

- Tax Anti-Deficiency Act – Not applicable
- Severability – Provisions are severable
- Constitutionality of the Individual Mandate
 - Yes, under the Congress' taxing powers
 - No, under the Commerce Clause (maintains limits on Congress with respect to the Commerce Clause)
- Constitutionality of the Medicaid Expansion
 - No, the penalty that would permit the HHS Secretary to take all of a state's Medicaid funds for noncompliance is UNCONSTITUTIONALLY COERCIVE
 - Remedy – States can keep old Medicaid or implement new Medicaid



What is “Old Medicaid”?

- The section of the Patient Protection and Affordable Care Act (PPACA) that authorizes the Medicaid expansion to able-bodied, childless adults under age 65 also includes other provisions.....
 - Changing Medicaid eligibility standard to Modified Adjusted Gross Income (MAGI);
 - Extension and expansion of the Maintenance of Effort (MOE) from the American Recovery and Reinvestment Act (ARRA);
 - Expansion to additional children;
 - Expansion to adult, former foster care children
- Can states pick and choose among these provisions?



Administration Response

- The “expansion” is limited to able-bodied childless adults under age 65.
- All other provisions stand and are mandatory.
- Extended availability of establishment grant funds.
- Reminds states of the availability of 90/10 matching funds (administrative) to upgrade Medicaid computer systems.
- No recoupment of grant funds if a state decides not to establish an exchange or to expand Medicaid to cover the new adult population.



Medicaid Expansion Issues

- The impact of the Medicaid expansion varies by state.
 - States need to run numbers to determine overall impact!!!
- States that don't expand
 - New adult population with incomes below 100% of the federal poverty level (FPL) are left uncovered because they are not eligible to participate in the health insurance exchange.
 - The individual mandate will not apply to most of these individuals and if it does, the HHS Secretary has the authority to grant hardship waivers.



Health Insurance Exchange Update

- Choices
 - State-based
 - Federally-facilitated
 - Partnership
- HHS has requested states to declare what kind of exchange they plan to be by November 16, 2012.
- Question – Are subsidies available in the federally-facilitated exchanges? (yes, no, maybe so)
 - PPACA - silent
 - IRS – yes
 - Others - no



Essential Health Benefit Package

- States must select an Essential Health Benefit package by September 30, 2012.
 - Default plan is the small group plan with the largest number of enrollees.
 - Insurance Commissioners are making the decisions for the most part.
 - Some legislatures enacted legislation to guide the selection.
 - Some legislatures are participating in an oversight capacity.
 - Some do both.



Deficit Reduction Plans

- Congress continues to discuss deficit reduction.
- Issues to watch.....
 - Significant reductions to discretionary health programs;
 - Limits on state's use of provider taxes;
 - Acceleration of Disproportionate Share Hospital (DSH) reductions; and
 - "Blended" matching rate for Medicaid and the Children's Health Insurance Program (CHIP).



What's Next?

- November elections
- Continued litigation
- Continued efforts in Congress to:
 - Repeal and replace
 - Eliminate funding for some PPACA provisions
 - Modify the PPACA
- Some states will move forward with implementation of the exchanges, the Medicaid expansion or both and some will do none of the above.
- Which state will do what????????????

Joy Johnson Wilson
Health Policy Director, NCSL

Joy.Wilson@ncsl.org

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