

**LEGAL OVERVIEW OF SUPREME COURT'S AFFORDABLE CARE ACT DECISION**  
Governor's Working Group to Evaluate Medicaid Eligibility Expansion Option  
Monday, August 6, 2012

I. **INTRODUCTION**

- A. The Court considered the constitutionality of 2 major provisions of the Affordable Care Act (ACA) – the individual mandate and Medicaid expansion.
- B. Supreme Court's decision in *National Federation of Independent Business v. Sebelius* (**NFIB**) marks the **first time the High Court has struck down** conditions on federal grants to states that it determined "**cross the line from enticement to coercion.**"
  - 1. The Court held that **Congress cannot threaten the states with the loss of all federal Medicaid funding** if a state does not expand its Medicaid coverage as mandated by the Affordable Care Act.

II. **BACKGROUND**

- A. Medicaid program is **voluntary** for states: states are not required to participate, but all states currently do.
- B. There are **federal requirements** – conditions that Congress has placed on the state's receipt of federal Medicaid funds (Idaho – 70%/30% match) – such as **mandatory coverage groups**.
  - 1. **Prior to the ACA non-disabled, non-pregnant adults without dependent children were excluded** from Medicaid coverage unless the state obtains a waiver to cover them.

III. **ACA – enacted in March 2010**

- A. **Expands the mandatory coverage groups** to cover nearly all people **under age 65 with household incomes at or below 133% FPL** beginning in January 2014 (\$14,856 per year for an individual and \$30,657 per year for a family of 4 in 2012).
- B. The Act **increases federal funding** to cover the States' costs in expanding Medicaid coverage. [§1396d\(y\)\(1\)](#). (100% 2014 – 2016 gradually reduced to 90% by 2020)
- C. **But if a State does not comply** with the Act's new coverage requirements, it may lose not only the federal funding for those requirements, but **all of its federal Medicaid funds**. [§1396c](#).

IV. **THE SUPREME COURT'S DECISION**

- A. **Plaintiffs – NFIB & 26 states – contend that the expansion exceeds Congress' authority under the Spending Clause; i.e., the federal government may not compel the states to enact or administer a federal regulatory program.**
- B. **The most complex part of the Court's decision upheld the Medicaid expansion, but limited the ability of the federal government to withhold all federal Medicaid funding** unless the states accept and comply with the ACA Medicaid expansion requirements.
- C. The Court found that **compelling the states to participate in** the Medicaid expansion, which the Chief Justice found to be essentially a "**new program,**" or else face the possible loss of all federal funds under the current Medicaid program, was **coercive and unconstitutional under the Spending Clause of the US Constitution and the 10<sup>th</sup> Amendment.**
- D. **Two reasons the ACA's Medicaid expansion went too far:**

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1. The changes were so broad that they essentially created a different program from the one states originally signed up for.
  - a) The **state could not have anticipated** that Congress' reserved right to alter or amend the Medicaid program would include such drastic changes.
2. The **threat of losing all their federal Medicaid dollars**, which accounts for about 10% of state budgets, **doesn't give the states a real choice** about whether or not to participate.

E. The **Holding**

1. **Congress acted constitutionally in offering** states ACA federal funds to expand Medicaid to the new coverage group (100% in 2014 - 2016 gradually decreasing to 90% in 2020)
  - a) If a state accepts the expansion funds, it must abide by the ACA expansion coverage rules
2. If a state chooses *not* to participate in the ACA expansion it cannot lose all its federal matching funds under the current Medicaid program
  - a) **States must have a genuine choice to accept or reject the expansion funds** & corresponding requirements

F. The **Remedy**

1. **Only federal funds offered** to finance Medicaid for the new adult coverage group **may be withheld** if a state chooses not to expand its Medicaid program to include the new population.
  - a) If a state accepts the new ACA federal funds to expand coverage to the new group, and the state becomes non-compliant with any conditions applicable to the expansion group, again, **only ACA Medicaid federal funds may be withheld because they are the only funds tied to this "new grant program."**
  - b) Important to recognize that the Court's decision only limited this new program's *enforcement* mechanism; **it did not specifically affect, change or limit any other Medicaid or ACA provisions.**
    - (1) Chief Justice said the Court was "confident" that **"Congress would have wanted the rest of the Act to stand had it known that States would have a genuine choice whether to participate in the new Medicaid expansion."** NFIB at 57.

V. **LOOKING AHEAD**

- A. Court determined that the ACA Medicaid expansion and the current Medicaid programs are **separate and distinct programs.**
  1. Secretary of **HHS general authority to withhold** all Medicaid payments to a state if the state is out of compliance with any Medicaid requirement **continues to be valid except** as applied to the ACA Medicaid expansion.
  2. The decision leaves all other provisions of the ACA intact – primary care provider payments, new options to expand HCBS, gradual reductions in DSH payments, MOE standards & MAGI provisions
- B. Maintenance of Effort (**MOE**) & Modified Adjusted Gross Income (**MAGI**) Provisions

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1. **Congressional Research Service** analysis finds that these two provisions are **unaffected by the decision**
    - a) MOE is not a requirement that is attached to the new ACA expansion funds; it is a requirement already in effect
    - b) MAGI basically same analysis – even if state did not expand Medicaid coverage MAGI standards would still be applicable to other parts of the state's Medicaid program
  2. Letter from **Secretary Sebelius to nation's governors** said the Court limited enforcement of Medicaid expansion; **other ACA & Medicaid provisions remain intact.**
- C. HHS Secretary retains considerable discretion to interpret ACA
1. **Practical deadlines** related to Medicaid expansion
    - a) Law didn't contemplate states being allowed to opt out so no deadline for that decision
  2. **May utilize waiver authority** to provide some flexibility
    - a) **CRS thinks expansion is an all-or-nothing proposition** but Sec could use waiver authority to allow a state to expand coverage to adults only up to 100% FPL
    - b) So long as demonstration project is "likely to assist in promoting the objectives" of the Medicaid program
  3. Even so – **not clear whether waiver would allow access to enhanced match**
- D. The **Court did not set out a test for future coercion challenges** related to Spending Clause legislation - Somewhere **between less than half of 1% of a state's budget & 10% of a state's budget.**
- a) Discussed a South Dakota case related to setting the drinking age and the potential of losing 5% of its highway funds, which was less than half of one percent of the state's budget – Court found that legislation not to be coercive
  - b) **"In this case, the financial "inducement" Congress has chosen is much more than "relatively mild encouragement"—it is a gun to the head"** NFIB at 51