Affordable Care Act: State Action Newsletter

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

June 17, 2011

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Twenty-Six State AGs Seek Appeals Court Ruling

The Affordable Care Act had another day in court as the federal 11th Circuit Court of Appeals in Atlanta heard the lawsuit brought by 26 states' attorneys general and governors. On June 8, Justice Department lawyers asked a panel of three judges to overturn Florida federal Judge Roger Vinson's decision that voided the entire law.

The state plaintiffs argued that the law goes beyond the federal scope of the Commerce Clause of the Constitution in requiring that U.S. residents buy a private product. "They're not engaged in commerce, they're sitting in their living rooms," said Paul Clement, the former U.S. Justice Department solicitor general who represents the states. Acting U.S. Solicitor General Neal Katyal presented the administration's argument that the health insurance market was unlike others because all Americans eventually need medical care. Katyal said, "every single person can't guarantee that they won't need health care at some point in the future, someone can walk out of this courtroom and get hit by a bus or get struck by cancer." The administration argued that the Commerce Clause gives it the power to mandate buying insurance.

Similar to the five previous U.S. district court hearings and opinions, this latest step has no immediate binding effect on the federal law, pending future appeals. Seven days earlier, Florida became the latest to enact a separate state statute (Chapter 2011-126) providing that "A person may not be compelled to purchase health insurance."

NCSL's online report "State Legislation & Actions Challenging Certain Health Reforms, 2011" is available at www.ncsl.org/?tabid=18906.

Insurance Rate Review

Nineteen state legislatures so far this year have considered bills to change the way insurance premium rate reviews are done. As of June 16, Indiana, North Dakota, New Mexico, Tennessee, Vermont and Washington had passed laws, while California, Iowa, Illinois, Massachusetts, Pennsylvania, Rhode Island still had legislation pending. Similar legislation was considered, but failed this year in Arkansas, Connecticut, Montana, Utah, and West Virginia, and bills are being carried over to the 2012 legislative session in Kansas and Oklahoma.

Under the 2010 Affordable Care Act, health insurers that offer individual or group coverage must justify premium rate increases before they can go into effect. The secretary of the Department of Health and Human Services is required to make the rate increases and the justifications from the health issuers available to the public. Health insurers are required to post the information prominently on their websites. States may continue to enforce state laws or regulations that go beyond those specified in the federal act, or they can amend state laws to coordinate with the new federal requirements.

New Mexico's new law requires public hearings and administrative and judicial review of rate increases. Washington's law requires transparency of the rate review process and eliminates the insurance commissioner's authority to review and disapprove rates for individual products. Vermont and North Dakota passed laws that require that state law be in line with federal law.

For more information about state actions on rate reviews, please visit NCSL's Health Insurance Rate Approval / Disapproval Web page.

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Republican Governors Outline Medicaid Reform Principles

On June 13, Republican governors in 28 states and Puerto Rico sent a letter to House Energy and Commerce Committee Chairman Fred Upton and Senate Finance Committee ranking member Orrin Hatch calling for more flexibility in administering their state Medicaid programs and outlining seven principles for reforming Medicaid. The governors anticipate using the principles as a core message in their discussions with Congress on how best to reform Medicaid.

In addition to the full repeal of the Affordable Care Act, the letter urges Congress to establish Medicaid rules so states can "make necessary adjustments without constantly seeking permission from the federal government for changes [they] already know work."

In the letter, the governors state that Medicaid has become "one of the most challenging components of the budget puzzle, consuming between 15 to 25 percent of most state spending," and cite a 2010 study estimating that Medicaid will consume up to 35 percent of spending in some states by 2030. Among the principles for reform outlined in the letter, the governors call for "the opportunity to innovate by using flexible, accountable financing mechanisms," and the ability to "leverage the existing insurance marketplace." The governors' letter comes in response to a May 23 letter from Congressman Upton and Senator Hatch sent to the governors of all 50 states and the U.S. territories requesting feedback and ideas to improve the Medicaid program.

Michigan Governor Rick Snyder was the only Republican governor to decline to sign the letter. Speaking at a news conference on June 15, Snyder said: "My role is not to be a large advocate on the national scale. I was hired to be governor of Michigan. We're focused on Michigan issues." With all but unanimous support, Republican governors hope the letter's 29 signatures will lead to significant Medicaid reform.

Texas House Passes Medicaid Waiver Bill

The Texas House passed House Bill 13 on June 10 that would require the state Health and Human Services Commission to seek a waiver from the Obama administration for more flexibility to operate its Medicaid program. "This could potentially give us the flexibility to tailor-make health care reform" for Texas, said Representative Lois Kolkhorst, the bill's author.

The commission, which operates the state Medicaid program, wants to modify the federal funding formula from the current state-federal matching system to a relatively fixed amount for a five-year period.

The bill also would create an oversight committee to provide leadership, design the waiver program, and help establish the new reimbursement system, if the waiver is approved.

According to the Texas House Research Organization, the objectives of the waiver are to:

- Provide flexibility in setting income eligibility levels and benefits.
- Encourage the use of private rather than public insurance providers.
- Create a culture of shared financial responsibility with the use of copayments, health savings accounts and vouchers.
- Consolidate related federal funding streams, including funding for the disproportionate share hospitals program and the upper payment limit supplemental payment program.
- Allow more flexibility in using state funds to draw federal matching funds.
- Empower uninsured people to purchase health coverage by using a sliding scale and fees for services.
- Promote the redesign of long-term care services to increase the availability of patient-centered care.

Supporters of the bill point out that the

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- State Actions Newsletter is online: Archive newsletters are available on NCSL's website
- Online Legislative Tracking Database
- Visit NCSL's Health Reform State Implementation Entities Web Page
- See state reports on federal health reform on NCSL's State Reports on Health Reform
- A table with the Number of Affordable Care Act Grants and Amount Awarded by State is available

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waiver would allow officials to design a program that works specifically for Texas. They also say the waiver will help contain Medicaid costs by allowing the state to raise eligibility requirements, change health care benefits, and introduce co-payments, among other things.

Opponents argue that the waiver would significantly decrease the amount of federal funding for Texas health care programs, and would reduce the number of people covered by the state's Medicaid program.

The bill passed the House with a vote of 97 to 25. If passed by the Senate with at least a two-thirds vote, the bill will take effect immediately.

Connecticut Looks at Long-Term Care Funding Options

Connecticut is considering legislation to increase funding for long-term care options financed by the Affordable Care Act (ACA). Senate Bill 297 would require the commissioner of the Department of Social Services to improve the availability of home- and community-based services for seniors by seeking a Section 1915(i) amendment to the Medicaid state plan.

The Connecticut bill also would require the commissioner to submit an application for the Balancing Incentive Payment Program established under the ACA, which begins Oct. 1, 2011, and runs through Sept. 30, 2015. Under this program, an eligible state will receive a 2 percent increase in the federal Medicaid reimbursement rate for reducing the proportion it currently spends on long-term institutional care.

The program is intended for states that spent only 25 percent to 50 percent of their Medicaid long-term care money on home- and community-based services in FY 2009. To be eligible, within six months of applying for the program, states must establish a single point of entry or "no wrong door" system so that all long-term care information, program eligibility, and referrals are available from one agency. States have four years to shift their funding so that at least 50 percent of their long-term care funds go to home- and community-based services.

Pennsylvania, Maryland, New Jersey, Michigan, South Carolina, Indiana and New York all have developed a single point of entry or "no wrong door" system required under the program that helps seniors easily find the services and information they need at the first place they go for help.

Oregon is often touted as the state that most successfully rebalanced its long-term care programs. It uses its network of Area Agencies on Aging facilities to provide single point of entry locations for information and services. The facilities are not yet available statewide, but they already serve more than 90 percent of Oregon's seniors and there is momentum to continue expanding their availability.

Private Foundations Ease Cost of Implementation

Facing budget shortfalls and implementation deadlines, many states have turned to private foundations to help pay for the extra work required to implement the Affordable Care Act. The Robert Wood Johnson Foundation is contributing up to $10 million to assist Alabama, Colorado, Maryland, Michigan, Minnesota, New Mexico, New York, Oregon, Rhode Island and Virginia. States receiving support from other foundations include Kansas, Ohio and California. These non-partisan foundations include expanding health care access as part of their organizational missions. According to Heather Howard from the Robert Wood Johnson Foundation, "Political leaders in some of those states oppose the [Affordable Care Act], but requested the technical help."

In addition to easing budget concerns, the extra funding has enabled states to pay for experts to help implement health reform. California, for example, has used private foundation support to create a timeline for its health care overhaul, hired actuaries to advise legislators and policymakers on the state's Medicaid enrollment process, and hired independent consultants to advise the board governing their health care exchange.