Affordable Care Act and Health Reform Update

Presented August 2, 2012

Northern Region Meeting, Network for Public Health Law

St. Paul, Minnesota
General Overview of the ACA

» **Reforms to the Private Insurance Industry**
  
  Preexisting Conditions
  
  Discriminatory Rates
  
  Young adults (age 18-26)

» **Health Insurance Exchanges**

» **Medicaid Expansion**

» **Medicare Provisions**

» **Technological Innovation**

» **Public Health Provisions**

» **Indian Health Care Improvement Act**
The Path to the Supreme Court

» Passage of Patient Protection and Affordable Act

» Federal District Court Decision (Florida)
  January 31, 2011

» 11th Circuit Court of Appeals Decision(s)
  August 12, 2011

» Supreme Court Oral Arguments
  March 26-28, 2012

» Supreme Court Decision
  June 28, 2012
The Path to the Supreme Court

» **Case Name(s)**
  
  Department of Health & Human Services v. Florida
  National Federation of Independent Businesses v. Sebelius
  Florida v. Department of Health & Human Services

» **Four Issues on Appeal**
  
  Anti-Injunction Act
  Individual mandate/ minimum coverage requirement
  Medicaid expansion
  Severability
Anti-Injunction Act (AIA)

Question: Whether the AIA bars the challenge to the minimum coverage requirement and penalty at this time?

» No. Congress designated the responsibility as a “penalty” and was careful not to use the word “tax.” The purpose is to provide an incentive to have minimum coverage, not raise revenue.
Minimum Coverage Requirement

Question: Whether the minimum coverage provision is a valid exercise of Congress’ Commerce Clause Powers?

» No. The requirement to purchase insurance is unprecedented and goes beyond Congress’ authority. It is regulating “inactivity” and, if allowed, there would be no principle to limit Congressional authority.
Minimum Coverage Requirement

Question: Whether the minimum coverage provision and penalty are a valid exercise of Congress’ Taxing Clause Powers?

» Yes. Congress’ use of the word “penalty” is not decisive for constitutional analysis.

» The penalty has many of the important characteristics of a tax. For example, it is collected and enforced by the IRS and raises revenue.
Medicaid Expansion

Question: Whether the Medicaid expansion impermissibly coerces the states into continuing their participation in the Medicaid program?

» Yes. Medicaid has grown to the point where states cannot afford to decline to participate. Potential loss of all federal Medicaid funds due to failure to participate in the expansion is too onerous a condition.

» Changes in eligibility were a “shift in kind, not merely degree”

Medicaid Expansion creates a program to meet the health care needs of the entire nonelderly population with income below 133% of the federal poverty level"
Medicaid Expansion

In light of the conclusion that the Medicaid expansion impermissibly coerces the states, what is the remedy?

» Congress may not withdraw all federal Medicaid funding from states that decline to participate in the Medicaid expansion. (i.e. States may choose to participate only in “old” Medicaid and retain federal Medicaid funds)
Severability

Question: Whether a provision found unconstitutional can be severed from the remainder of the ACA?

» **Yes.** Medicaid provision authorizing the HHS Secretary to withhold all Medicaid funding for failure to comply with all Medicaid requirements is unconstitutional as applied to the Medicaid expansion under the ACA, but it is severable. The Court has the responsibility to consider the remedy that Congress would want and to upend as little as possible.

» **The Medicaid expansion remains as an option for states**
ACA Design: Impacts if a State Does Not Participate in the Expansion

» The Medicaid expansion was projected to add up to 17 million people to the program

» Only individuals with income over 100% of the federal poverty level will be eligible for tax credits and premium assistance to buy insurance on a health insurance exchange

» Uncompensated care issues would continue
ACA Design: Disproportionate Share Hospital Payments (DSH)

» DSH provides funds to states and safety net providers to offset uncompensated care costs

Medicaid: $ 11.3 billion per year (2011)
Medicare: $ 10.8 billion per year (2011)

» Assuming fewer uninsured persons/ less uncompensated care, the ACA reduced DSH funding:

Medicare: reduced by $22.1 billion (2014-2019)
ACA Design: Disproportionate Share Hospital Payments (DSH)

» If a state decides not to participate in the Medicaid expansion, the expected reduction in numbers of uninsured persons may not occur and uncompensated care will continue

» The Supreme Court decision does not address this aspect of the design of the ACA.
If a State Does Not Participate in the Medicaid Expansion

» **Hospitals may:**
  - Provide less care
  - Pursue aggressive collection actions
  - Apply political pressure to either participate in Medicaid expansion or to restore federal DSH funding

» **Patients may:**
  - Be ineligible for help to buy insurance
  - Seek care from public health departments
  - Lack access to care
In States that Participate in the Medicaid Expansion

» Public Health Departments may:

Receive Medicaid payments for services and care previously provided at no cost or sliding scale. Medicaid eligible clinical care may include:

• Adult immunizations
• Tuberculosis screening and treatment
• STD screening and treatment
• Family planning
If a State Opt in to the Medicaid Expansion, May it Ever Opt Out?

» No official HHS guidance yet

» States would make an informed choice at opt in, knowing that the federal contribution is scheduled to decrease from 100% to 90% by 2020

» In general, once a state has opted in to an optional Medicaid category, it has been treated as mandatory and permanent.
ACA Design: Public Health

» Modernizing public health systems
  Prevention and Public Health Fund
  National Prevention Health Promotion and Public Health Council
  Clinical and community preventive services
  Public health workforce

» Increased access to clinical preventive services
  School-based health centers
  Oral healthcare prevention activities
  Coverage of prevention services with no cost-sharing
  Substance use disorder treatment/mental health parity
ACA Design: Public Health

» Creating healthier communities
  Community Transformation Grants
  Community Health Needs Assessments (nonprofit hospitals)
  Improved adult immunization coverage
  Nutrition labeling of food in chain restaurants
  Reasonable break time for nursing mothers

» Innovation
  Improved data collection regarding health disparities
  Employer-based wellness programs
  Pain-care management research
Future of the Affordable Care Act

» Pending and possible future court challenges

» Possible legislative challenges/changes

» Letter from Republican Governors’ Association (July 10, 2012) regarding Medicaid

Acknowledgements

This Powerpoint presentation is based in part on a July 19, 2012 Public Health Law webinar presentation by Sarah Somers and Corey Davis. That webinar is also available under “Past Webinars” at http://www.networkforphl.org/network_resources/webinar_series/
Contact Me

Jill Krueger
The Network for Public Health Law
St. Paul, Minnesota
651-695-7624
jkrueger@networkforphl.org