



The Supreme Court's Decision on the ACA's Medicaid Expansion July 23, 2012 NHeLP Q&A # 1

The Affordable Care Act (ACA) makes a number of changes to the Medicaid Act. One such change requires states, by January 1, 2014, to expand Medicaid to nearly all uninsured individuals with incomes at or below 133% of the federal poverty level (FPL). In *National Federation of Independent Business v. Sebelius (NFIB)*, the Supreme Court decided that the Medicaid Expansion was unduly coercive on the states, and it limited the federal government's enforcement authority if a state fails to implement the expansion. *NFIB*, 132 S.Ct. 2566 (2012). *NFIB* is raising questions about implementation of the ACA and Medicaid.

The following Q&A addresses some of these questions.

1. Does *NFIB* relate to all of the Medicaid provisions in the ACA?

No. As limited by Chief Justice Roberts, *NFIB* only addresses the following three ACA Medicaid provisions:

The Medicaid provisions of the Affordable Care Act ... require States to expand their Medicaid programs by 2014 to cover *all* individuals under the age of 65 with incomes below 133 percent of the federal poverty line. [42 U.S.C.] § 1396a(a)(10)(A)(i)(VIII). The Act also establishes a new “[e]ssential health benefits” package, which States must provide to all new Medicaid recipients.... §§ 1396a(k)(1), 1396u–7(b)(5), 18022(b). The Affordable Care Act provides that the Federal Government will pay 100 percent of the costs of covering these newly eligible individuals through 2016. § 1396d(y)(1). In the following years, the federal payment level gradually decreases, to a minimum of 90 percent. *Ibid*.

NFIB, 132 S.Ct. at 2601. These provisions are referred to, below, as the “Medicaid Expansion provisions.”

2. What is a “holding,” and what did the Supreme Court hold in *NFIB*?

The “holding” is the specific part of a court’s decision that answers the legal question before it. A Supreme Court’s holding establishes legal precedent and is binding on lower courts. Other language in an opinion is called *obiter dictum* or *dicta* (Latin, meaning “said in passing”). While important to understanding the court’s holding, *dicta* does not establish a binding legal rule. As Justice Scalia has said, a court “is bound by holdings, not language.” *Alexander v. Sandoval*, 532 U.S. 275, 282 (2001).

In *NFIB*, the Court held that Congress did not have the authority under the Spending Clause of the U.S. Constitution to require states to implement the Medicaid Expansion provisions or lose their existing federal Medicaid funding. This was unduly coercive. The Court also held that the violation is fully remedied by prohibiting the Secretary of Health and Human Services (HHS) from enforcing a long-standing Medicaid provision, 42 U.S.C. § 1396c, that would otherwise authorize her to withhold all the existing federal Medicaid funding of a state that does not properly implement the Medicaid Expansion. Thus, the *NFIB* holding is a narrow one, finding only that it was coercive for Congress to force states to adopt the Medicaid Expansion or lose all federal funding for their existing Medicaid programs.

3. Does *NFIB* affect the enhanced federal funding that the ACA provides to states when they implement the Medicaid Expansion?

No. The Medicaid Act's enhanced funding provisions are not affected by *NFIB*. When states implement the Medicaid Expansion as set forth at § 1396a(a)(10)(A)(i)(VIII), they will receive generous federal funding: 100% federal funding for three full years, to be phased down to 90% by 2020. This compares with a national average of 57% for most Medicaid services. (The federal share of funding varies in different states.)

4. Does *NFIB* affect requirements for states that implement the Expansion to comply with other Medicaid provisions?

No. States that implement the Medicaid Expansion must comply with all mandatory provisions of the Medicaid Act. As Justice Roberts said, "Nothing in our opinion precludes Congress from ... requiring that states accepting such [ACA] funds comply with the conditions on their use." *NFIB*, 132 S.Ct. 2566, 2607. Thus, beneficiaries covered through the Medicaid Expansion will be protected by long-standing Medicaid provisions requiring medical assistance to be provided with reasonable promptness, 42 U.S.C. § 1396a(a)(8), and for due process to be accorded when assistance is denied, reduced or terminated, *id.* at § 1396a(a)(3). States implementing the Medicaid Expansion will be required to provide the Essential Health Benefits package to the expansion population and comply with all other requirements associated with the Medicaid Expansion.

5. If a state does not implement the Medicaid Expansion provisions, does *NFIB* affect the Secretary's ability to terminate federal funds if the state fails to comply with other Medicaid provisions?

No. States that do not implement the Medicaid Expansion but that otherwise continue to participate in Medicaid must comply with all other provisions of the Medicaid Act or risk losing their federal Medicaid funding. As Chief Justice Roberts stated, "Today's holding does not affect the continued application of [42 U.S.C.] § 1396c to the existing Medicaid program." 132 S.Ct. at 2607.

6. Can states expand Medicaid eligibility to a poverty level lower than 133% and still receive 100%/90% federal funding?

No. The Court held that the undue coercion was fully remedied by prohibiting the Secretary of HHS from applying 42 U.S.C. § 1396c to withdraw existing Medicaid funds from a state that fails to comply with the requirements of the Medicaid Expansion. The Court expressly left the remainder of the ACA intact. See 132 S.Ct. at 2607. Thus, the Medicaid Act, as amended by the ACA, still makes generous federal matching funding available only to states that cover “all individuals” with incomes below 133% of the poverty line by 2014. 42 U.S.C. §§ 1396a(a)(10)(A)(i)(VIII), 1396d(y)(1).

It is possible that the Secretary of HHS could interpret § 1115 of the Social Security Act to allow a state to “waive” the requirements of § 1396a(a)(10)(A)(i)(VIII) and extend Medicaid to a level below 133% of the FPL. However, § 1115 projects must “demonstrate” something. Section 1115 authorizes the Secretary to waive provisions in §1396a of the Medicaid Act only to allow states to implement “experimental, pilot or demonstration” projects. At this point, it is not clear what experiment could be tested by a waiver, because by 2008, the Secretary of HHS had already approved experimental projects allowing 18 state Medicaid programs to cover the adult population now covered by § 1396a(a)(10)(A)(i)(VIII). Even if an experimental purpose is devised, neither § 1115 nor the Medicaid Act would appear to allow the demonstration project to receive the generous federal funding of the ACA. It also assumed that the project would need to comply with HHS’s traditional budget neutrality requirements for § 1115 projects.

7. Are the other newly added ACA Medicaid provisions affected?

No. *NFIB* leaves the rest of the ACA intact. 132 S.Ct. at 2607. Thus, the other newly added Medicaid provisions continue in full force and effect in all states, including requirements for coverage of young adults leaving the foster care system, temporary Medicare-Medicaid rate parity for primary care providers, and options for expanding coverage of community-based services and supports for people with disabilities and the elderly.

This also includes an ACA provision requiring states to extend Medicaid coverage to children aged 6-19, with family incomes between 100% and 133% of the FPL. This provision, 42 U.S.C. § 1396a(l), is not part of the specific Medicaid Expansion provisions at issue in *NFIB*. See Q&A No. 1, above. Moreover, the modification contained in this provision fits neatly within the alterations and expansions related to low-income children that Congress has made to the Medicaid program from its inception. 132 S.Ct. at 2605 (contrasting the Medicaid Expansion with alterations and expansions affecting low-income children). This provision affects not only coverage of uninsured children but also children who will move from separate Children’s Health Insurance Programs (CHIP) into Medicaid. *NFIB* should not affect the enhanced federal funding that is provided for these children when they move from CHIP into Medicaid.

8. The ACA's maintenance of effort (MOE) provision requires states temporarily to maintain Medicaid eligibility levels. Does the MOE continue to apply?

Yes. Whether or not a state implements the Medicaid Expansion, the Medicaid MOE provision should continue to apply. The provision is not discussed in *NFIB* and is not tied to the Medicaid Expansion. It requires states to maintain their Medicaid eligibility “standards, methodologies, [and] procedures” as they stood on March 23, 2010, the date the ACA was enacted, until “the State has an exchange approved by the Secretary.” 42 U.S.C. § 1396a(gg). *NFIB* also does not reach the MOE requirement for children under age 19 who are enrolled in Medicaid or CHIP, which lasts through September 30, 2019. However, if Congress stops funding CHIP, the MOE requirement would presumably fall as well (because there would be no funding for the population).

9. The ACA contains a requirement that states determine Medicaid eligibility for some population groups using modified adjusted gross income (MAGI). Does this provision continue to apply?

Yes. Regardless of whether a state implements the Medicaid Expansion, the provisions for determining Medicaid eligibility using the new MAGI methodology will continue to apply. Section 2002 of the ACA specifically applies to most categories of non-disabled children and adults under 65, even without the Medicaid Expansion.

10. If a state does not take up the Medicaid Expansion, will coverage for people with incomes below 133% of poverty be affected?

Yes. Beginning January 2014, people with limited incomes will be eligible for tax subsidies to help them purchase health insurance. However, individuals with incomes below 100% of the FPL are generally not eligible for these subsidies.

11. Do we know the timing for states to inform the Secretary of HHS of compliance with the Medicaid Expansion and in what format must they do so?

No. The Medicaid Act requires each state to have a state Medicaid plan that certifies the state's compliance with the mandatory provisions of the Medicaid Act and informs the federal government about eligibility and service options the state has decided to include. See 42 U.S.C. § 1396-1, 1396a. Presumably, state plans will need to be updated no later than January 1, 2014. However, in a July 13, 2012 letter, HHS told the Republican Governors Association there is no deadline for a state to tell HHS of its plans on the Medicaid Expansion. It is not clear whether HHS intends this statement to allow flexibility beyond 2014. The letter does not address the format states should use to inform HHS of its plans.

For additional information, please contact Jane Perkins (perkins@healthlaw.org) or Sarah Somers (somers@healthlaw.org).