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10 Advocacy Steps To Support A Medicaid Expansion In Your State

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In National Federation of Independent Business v. Sebelius, the Supreme Court decided that the ACA provision requiring states to expand their Medicaid programs to individuals with incomes below 138% of the federal poverty level was unduly coercive on the states. The Court remedied the problem by prohibiting the Secretary of Health and Human Services from exercising her authority to terminate all federal funding to a state that does not implement the expansion. As a result, some states' elected officials have said they may ignore the Medicaid Expansion requirement.

Fully implemented, the Medicaid Expansion will extend much-needed health insurance coverage to 17 million uninsured individuals. However, if your state doesn't implement a Medicaid Expansion, individuals below the poverty level will have *no access* to affordable coverage, because the ACA subsidies for private insurance in the Exchange were only designed and provided for individuals above the poverty line. Advocates must therefore develop strong arguments to support their states implementing the Medicaid Expansion and work hard to ensure coverage of the most vulnerable. In some states with reluctant leadership, this will mean being prepared with an informed and convincing message. Here are ten important ways you can advocate for your state to take up the Medicaid Expansion.

1. Publicize that the Medicaid Expansion is free for the first three years (2014, 2015, 2016).

For most Medicaid categories, the federal government pays an average of 57% of the bill, meaning states pay the remaining 43%.[1] In the Medicaid expansion, however, the federal government pays 100% of the costs in 2014, 2015, and 2016.[2] This means it is free for your state to provide coverage to individuals who are below 138% of the federal poverty limit. (While there may be some added administrative costs for your state, these will be offset by other savings. See #5 below for more details.)

Advocacy should focus on getting the state to take up the Expansion in 2014. You can argue that it's free money from 2014 to 2016. (Remember: if people are covered in 2014

[1] Depending on the state, the federal government pays between 50% and 74% of the costs in normal Medicaid categories. State by state data is available at: http://aspe.hhs.gov/health/fmap12.shtml. The national average has the federal government paying about 57% of the costs. For more details, see a report from the National Association of Medicaid Directors available at: http://medicaiddirectors.org/node/228.

[2] 42 U.S.C. 1396d(y)(1).

and see how good the program is, it will be much harder for the state to take away the program later.) So the emphasis should be on making it clear in your state what an easy decision this should be for *any* responsible politician:

- "In difficult financial times, our state cannot afford to leave free money on the table."
- "Our state has free money available to cover uninsured people. The Governor is engaging in ugly political posturing when she says she is going to turn the money down."

2. Publicize that after 2016 the Medicaid Expansion is still an amazing deal for states.

Some state leaders are saying things like, "sure, it's free in the first years, but then it costs the state a lot." Well, here's the truth: instead of paying the average 43% of Medicaid costs, under the Medicaid Expansion category the state will pay only 5% in 2017, 6% in 2018, 7% in 2019, and then 10% in 2020 and beyond.[3] So the most the state *ever* pays for the new category is 10% of the cost – far below the 43% states pay on average for existing categories. Every state currently participates in Medicaid and voluntarily pays 43% (on average) of the cost for Medicaid, so clearly paying 10% of the costs for the expansion category is reasonable:

- "Medicaid is a joint state-federal program, and in this case the federal government is willing to pay 90% of the costs. This is a really favorable long-term partnership for the state."
- "Other states are going to expand their Medicaid programs. We should not allow our federal taxpayer dollars to go to those states while we get nothing."

3. Be prepared to provide context to budgetary numbers.

Some state leaders will try and throw out big cost numbers instead of talking about the small percentage of spending that the costs represents. So instead of saying "our state will only pay 4% more," they'll say something like: "this will cost the state $10 billion dollars over the next decade." That number sounds big, but it doesn't tell you how much money that is compared to the overall budget. For example, $10 billion over a decade is only $ 1 billion a year. And if the state's Medicaid budget is $25 billion a year, than $1 billion would only be a 4% increase. You can then compare that percentage to the percentage of people who stand to gain coverage. You simply need to figure out how many people in your state are currently covered, and how many stand to gain coverage with the Medicaid Expansion. (Nationally, there are about 52.6 million people in Medicaid, and about 17 million more would get covered through the Medicaid Expansion – a 32% increase.)[4]

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[3] *Id.*

[4] *See* Henry J. Kaiser Family Foundation, Medicaid Enrollment: June 2011 Data Snapshot (June 2012), available at http://www.kff.org/medicaid/upload/8050-05.pdf, and Congressional Budget Office, CBO's Analysis of the Major Health Care Legislation Enacted in March 2010 (March 30, 2011), available at http://www.cbo.gov/publication/22077.

- "The cost of this program only represents 4% of our current Medicaid budget, and for that money we would cover 32% more uninsured people. This is a fantastic deal for our state."

4. Be prepared to correct bogus numbers.

It is true that the Medicaid Expansion, by covering new people, will create *some* new costs to states. However, a lot of conservative state leaders are using fuzzy math to exaggerate the cost. For example, one thing they are doing is counting people who are already eligible for Medicaid in the Medicaid Expansion costs. Any time a new program starts, it generates attention, and some people who are already eligible but somehow weren't enrolled for existing programs may try and enroll. This is not a cost of the Medicaid Expansion – it's the result of the state under-enrolling the existing Medicaid program to begin with! And note: no matter what, the state Exchanges will also be starting up in 2014, so all of these lost individuals will be identified at that time and end up entering the Medicaid program even if the state doesn't take the Medicaid Expansion.

Another popular trick is to assume that 100% of eligible individuals will enroll (meaning higher costs), even though in reality statistics show that on average 63% of individuals in programs such as this actually enroll. [5] You will need to correct the false information:

- "The Governor quotes a cost of $3 billion dollars, but that includes $1 billion dollars for people who were already eligible and the state had simply failed to enroll."
- "Even if the state doesn't do the Medicaid Expansion, the state Exchanges will be starting at the same time. When these people who are already eligible go to the Exchange, they will be referred to the Medicaid program and, thus, come into the system no matter what."
- "The Governor is quoting numbers assuming every single person will enroll, when historically the state only ever enrolls half that many people."

5. Be prepared to talk about how the Medicaid Expansion *saves* your state money.

The Medicaid Expansion will generate some indirect new costs for the state – costs related to enrollment processes and administering a larger Medicaid program after the expansion. These are real costs. However, these costs will be offset by large state savings. In fact, in the first years of the Medicaid Expansion these savings will be *greater* than the costs nationally – your state will likely turn a profit.[6]

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[5] Stan Dorn, The Urban Institute, Considerations in Assessing State-Specific Fiscal Effects of the ACA's Medicaid Expansion (August 2012), available at http://www.urban.org/UploadedPDF/412628-Considerations-in-Assessing-State-Specific-Fiscal-Effects-of-the-ACAs-Medicaid-Expansion.pdf. For more tips on correcting inaccuracies, *see* Center on Budget and Policy Priorities, Guidance on Analyzing and Estimating the Cost of Expanding Medicaid, available at http://www.healthlaw.org/images/stories/Memo_on_Medicaid_Expansion_Costs_FINAL_080912.pdf.

[6] A report from The Urban Institute finds that, from 2014 to 2019, aggregate state spending will *decrease* between $92 and $129 billion dollars. Buettgens, et. al., The Urban Institute, *Consider Savings as Well as*

Your state will save money in at least three major areas if it implements a Medicaid Expansion. First, your state will save large sums of state dollars it currently spends on state programs used by the uninsured, including local county and municipal governments which pay for many safety net services such as mental health services.[7] Second, the huge influx of federal Medicaid dollars (health spending) into your state will significantly increase state tax revenue.[8] Third, your state may also save money because some current Medicaid populations will transition into the Medicaid Expansion category (which is less costly to the state) if your state implements the Medicaid Expansion.[9] You will need to explain how all of these savings will offset costs:

- "Covering the uninsured population in our state will save the state millions of dollars spent on uninsured people in the state-funded health care programs and will save millions of local dollars spent in the county mental health system."
- "Local community health centers will be able to bill Medicaid for the uninsured patients they currently see using state and local dollars."
- "The state is spending millions/billions on mental health and substance abuse services, and we will see huge reductions in that spending for patients who will now qualify for Medicaid."
- "Everyone in the state will save money, because hospitals will stop passing on to everyone else the costs of providing care to uninsured individuals."
- "The Medicaid Expansion will fund millions of dollars of health care spending in our state, and this will generate millions of dollars of new state tax revenue."
- "Our state will save millions of dollars by transitioning individuals into a program that costs the state four times less money."

6. Explain how covering the uninsured is good for the state economy.

A workforce that has health insurance gets more medical attention, lives in better health and is more productive.[10] Covering the uninsured through the Medicaid Expansion will help your state and local economies. Employers, for example, won't have to worry about

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Costs (July 2011), available at http://www.urban.org/publications/412361.html. The savings for each state will vary depending on many factors in each state Medicaid program, but overall there will be significant savings for state governments. These savings have been confirmed by some state analyses. For example, data from Arkansas Health and Human Services predicts net state *savings* of $372 million over the same period. Report available at http://www.healthlaw.org/index.php?option=com_content&view=article&id=701:state-advocacy-resources&catid=51:health-reform&Itemid=176.

[7] The Urban Institute estimates states will save $26 to $52 billion dollars in aggregate related to uncompensated care. *See infra*, note 6.

[8] For example, Arkansas Health and Human Services has estimated that the state will generate $35 million per year of additional state tax revenues due to the increased federal Medicaid funds that come with the Medicaid Expansion. *See infra,* note 6.

[9] The Urban Institute estimates that there would be $66 billion in aggregate state savings for existing Medicaid enrollees who are transitioned to the Medicaid Expansion. *Id.*

[10] *See* Kaiser Comm'n on Medicaid and the Uninsured, The Uninsured: A Primer (2011), available at http://www.kff.org/uninsured/upload/7451-07.pdf, and Kaiser Comm'n on Medicaid and the Uninsured, Sicker and Poorer: The Consequences of Being Uninsured 12 (2003), available at http://www.kff.org/uninsured/upload/Sicker-and-Poorer-The-Consequences-of-Being-Uninsured-Executive-Summary.pdf.

employees who lack coverage. In addition, more people accessing medical care means more business for doctors, clinics, health systems, and insurers – and this helps the state and local economy.

- "A sick work force is less productive. The Medicaid Expansion will improve the health of workers in our state, and this has been shown to boost productivity."
- "The health industry is an important part of state and local economies, and the Medicaid Expansion will increase business in the health industry and stimulate the state economy."

7. Explain why Medicaid is the best coverage for the low-income population.

Medicaid isn't just one way to cover the low-income population, it's the *best* way. This is because Medicaid benefits have been specifically designed to meet the needs of low-income individuals. For example, Medicaid coverage in the Medicaid Expansion will have more benefits helpful to low-income individuals than insurance offered in the Exchange.[11] In addition, the Medicaid Expansion includes special protection that gets the most vulnerable populations (such as medically frail individuals or individuals with disabilities) access to an even broader set of Medicaid benefits.[12]

- "The individuals below the poverty line often live in very poor health, and Medicaid benefits are specifically designed to meet the needs of low-income people with serious health care needs."

8. Explain why Medicaid is also the most affordable coverage for the low-income population.

Medicaid coverage is designed for low-income people. Therefore, Medicaid includes numerous protections to limit the premiums, deductibles, copays, and cost-sharing that otherwise make insurance too expensive for low-income people.[13] Low-income people can afford to be enrolled in Medicaid and they can afford to see the doctor when they get sick. In contrast, for example, the Exchange was not designed with people below the poverty line in mind, so the costs to Exchange coverage (even *if* subsidies were available) would be a barrier to care for low-income individuals.

- "The Medicaid Expansion is the best way to cover low-income individuals, because Medicaid is designed to be affordable for low-income families, meaning people can afford to go to the doctor when they get sick."

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[11] By law, Medicaid Expansion benefits are required to have at least all the benefits offered in the Exchange. 42 U.S.C. § 1396u-7(b)(5). Furthermore, states have less flexibility to offer a weak benefit plan in the Medicaid Expansion and more flexibility to add extra benefits.

[12] 42 U.S.C. § 1996u-7(a)(2)(B) requires that the following vulnerable populations be provided the full Medicaid state plan of benefits: mandatorily covered pregnant women, individuals with blindness or disabilities, individuals entitled for Medicare, terminally ill hospice patients, institutionalization, medically frail and special medical needs individuals, individuals eligible for long-term care services, many children in foster care, some parents in low income families, and women in the breast or cervical cancer program, among others.

[13] For example, default Medicaid rules limit the total cost sharing that low income families can pay and prohibit premiums in most categories of Medicaid (with some exceptions). 42 U.S.C. §§ 1396o(a) and (e).

9. Explain that the Medicaid Expansion is also the most affordable option for the government.

You will probably hear complaints that providing Medicaid Expansion coverage is too expensive. But, know the facts. Fact: Medicaid is the least expensive health insurance program in the country.[14] Fact: Medicaid is by far the least expensive way to cover low income individuals, and is far less expensive than providing coverage in the Exchange.[15] Your state may argue for expanded Exchange coverage, since the cost of that coverage is entirely paid for by the federal government. But that is fiscally irresponsible, since Exchange coverage is as much as three times more expensive for the health care system as a whole. The CBO estimates that covering an individual through Medicaid costs the federal government $1,826 as opposed to $5,926 to cover someone in the Exchange. Using these numbers, a state arguing for Exchange coverage instead of a Medicaid Expansion would effectively be arguing that the federal government should pay $5,926 per person, to save the state from paying $182.60 – the state's 10% share of the $1,826 Medicaid cost. That leaves the government paying $5,926 instead of $1,643.40 – the federal government's 90% share of the Medicaid cost. This is not fiscally responsible. Nor does it reflect well on notions of "shared responsibility."

- "Medicaid is the least expensive way for the government to provide coverage for low-income individuals. In fact, it is three times more expensive for the government to cover individuals through the Exchange."

10. Form a coalition with other important stakeholders.

Local hospital associations, community health centers, and public health workers have a strong interest in your state taking the Medicaid Expansion – they will be the ones who continue to provide free care to uninsured individuals while at the same time the ACA actually *reduces* separate government payments hospitals get for uninsured people (on the assumption they would be getting payments from Medicaid).[16] Managed

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[14] Medicaid costs per person have risen only 6.1%, while private health insurance has risen at 10.6% and premiums for employer sponsored coverage at 12.6%. Medicaid is even more efficient than Medicare, which has risen at 6.9%. Kaiser Comm'n on Medicaid and the Uninsured, Ten Myths About Medicaid (2005), available at http://www.kff.org/medicaid/upload/7306%20Ten%20Myths%20about%20Medicaid_Final-3.pdf.

[15] Sara Rosenbaum, Medicaid and National Health Care Reform, 361 New Eng. J. Med. 2009, 2011 (2009), noting that the CBO estimated that covering an individual through Medicaid cost the federal government $1,826 as opposed to costs of $5,926 to cover someone in the Exchange. Using these numbers, a state arguing for Exchange coverage instead of a Medicaid Expansion would effectively be arguing that the federal government should pay $5,926 per person, to save the state from paying $182.60 – the state's 10% share of the $1,826 Medicaid cost. That leaves the government paying $5,926 instead of $1,643.40 – the federal government's 90% share of the Medicaid cost. This should allow you to make your own arguments about "fiscal responsibility" and "shared responsibility"!

[16] 42. U.S.C. § 1396r-4(f)(7). *See* Gordon Bonnyman, Helping Hope and History Rhyme: Why and How EVERY Legal Services Advocate Can Contribute to Making Health Reform a Reality, 46 Clearinghouse Review (forthcoming Nov. 2012). *See also* Corey Davis, National Health Law Program, DSH Payments and Medicaid Expansion (July 2012), available at http://www.healthlaw.org/index.php?option=com_content&id=704.

Care Organizations may have a lot of political clout in your state, and the new Medicaid Expansion population represents new business for them, so they are likely to support your effort. At the same time, groups who sometimes opposed the ACA (for example, a local chamber of commerce group), may be neutral about the Medicaid Expansion, or even support it, since it represents free coverage for lower-income employees and may create jobs for the community. A coordinated effort should be able to identify a range of stakeholders, some of whom may be very politically powerful, that can influence a state's decision to take up the Medicaid Expansion.

- "There is broad support across the state, including individuals, doctors, hospitals and health systems, and businesses, for the state implementing the Medicaid Expansion."
- "Implementing the Medicaid Expansion protects our local hospitals by ensuring that they get paid for providing coverage to people who would otherwise be uninsured."

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