

## THE IMPACT OF THE SUPREME COURT'S DECISION ON MEDICAID EXPANSION IN MISSOURI: EARLY OBSERVATIONS.

Joel Ferber, Legal Services of Eastern Missouri, July 18, 2012

On June 28, 2012, the Supreme Court upheld the controversial “individual mandate” and the constitutionality of the Affordable Care Act (ACA).<sup>1</sup> The Court, however, did what no district or appellate court had done - finding that the ACA’s provision allowing the federal government to remove all federal Medicaid funding for states that do not expand coverage to 133% of the federal poverty level was unconstitutional, even though the *expansion itself* is constitutional.<sup>2</sup> The Court treated the ACA’s expansion of the Medicaid program as if it were a *new* program and decided the federal government could not condition funds for the existing Medicaid program on participation in the “new program” created by the ACA. This ruling did not actually make the Medicaid expansion an “optional” program for states, but will likely have the same effect by stripping the Secretary of HHS of meaningful enforcement authority to require states to implement the ACA’s mandatory expansion. This decision means that many states, including Missouri, are going to treat the expansion as if it were a state option. Such action is very significant since *more than half* of the uninsured individuals projected to receive coverage under the ACA would receive such coverage pursuant to the Medicaid expansion. The remaining uninsured would largely be covered through the premium tax credits available to individuals purchasing coverage through the newly created health insurance exchange (“Exchange”).

If states do not choose to adopt the expansion to cover these individuals under Medicaid, the ACA’s impact on covering the uninsured will be substantially reduced. This reduction is especially important for Missouri which has 780,000 uninsured individuals according to recent estimates<sup>3</sup> and provides very low levels of coverage in its current MO HealthNet program.

**Impact on the Uninsured:** The Missouri Department of Social Services estimates that 255,000 uninsured Missourians are expected to enroll in the MO HealthNet Program under the expansion.<sup>4</sup> These figures include parents and caretakers with incomes between 18% and 133% of the federal poverty level, given the low level of coverage for low income parents and caretakers in Missouri’s current MO HealthNet Program.<sup>5</sup> These figures also include *childless adults* that MO HealthNet (like most states’ Medicaid programs) does not cover at all, unless they are aged, blind or disabled. Also included are some Missourians with disabilities who are only eligible for MO HealthNet on a spenddown basis, but not those who are dually eligible for Medicaid and Medicare. If Missouri chooses not to implement the expansion based on the Supreme Court’s decision, then most of these 255,000 very low-income Missourians will remain uninsured.<sup>6</sup>

The premium tax credits for Exchange coverage - untouched by the Supreme Court’s decision - are generally available only to people with incomes between 100% and 400 percent of the federal poverty level.<sup>7</sup> Therefore, of those eligible for the Medicaid expansion, only those between 100% and 133% of the federal poverty level would be

covered by the premium credits offered through the Exchange if the State chooses not to implement the expansion. Thus, without the Medicaid expansion, some of the lowest income Missourians will have no coverage at all, while people with more moderate incomes will have coverage through the Exchange. And people with coverage in the Exchange whose income fluctuates could well go *on and off of coverage* when that happens rather than transitioning into a Medicaid program. This scenario is highly problematic in terms of ensuring any continuity of coverage and access to care for low income working Missourians.

**Federal Funding:** The ACA's Medicaid expansion, as is widely known, provides 100% federal funding for such expansion during the first three years. Funding gradually is lowered to a 90 percent federal matching rate in 2020, in contrast to the current Missouri Medicaid program in which funds are generally matched at a 63 percent rate. The State estimates that the Medicaid expansion would bring in approximately \$11.3 billion in federal matching funds to Missouri from 2014 through 2019 and cost the State \$375.3 million in state match. Over that six-year period, 97% of the Medicaid expansion would be funded with federal funds and 3% with State funds. This 3% increase in State funding would also result in a 33% reduction in Missouri's rate of uninsured.

Taking these federal Medicaid funds will be a significant boon to Missouri's economy. The \$11.3 billion will bring an enormous amount of economic activity to our State. This unprecedented amount of federal matching funds will be an important source of funding for hospitals, doctors, pharmacists, and nursing homes in every part of the state -- funding which, in turn, will lead to economic ripple effects as these health care providers pay rent, purchase food, pay taxes and so on.

**DSH Cuts:** Another important factor for Missouri is that the new law would reduce Disproportionate Share Hospital (DSH) payments to the state for uninsured patients. The assumption under the law was that the reduction in DSH payments would be more than made up for by an increase in the insured population from both the Medicaid expansion and the other ACA provisions and a corresponding reduction in uncompensated care. The Supreme Court ruling did not change the DSH reduction. If the state does not take up the Medicaid expansion, most of the 255,000 low-income Missourians covered by the expansion will remain uninsured. This effect will no doubt place a great strain on the Missouri budget, not to mention the budgets of hospitals and other providers.<sup>8</sup>

**Funding other State Services:** While a more detailed analysis is needed, these new federal funds through the expansion will also cover services (e.g., mental health and other services) that are currently paid for exclusively with State funds for individuals who currently have no health coverage at all. National data from a variety of sources already demonstrates that there will significant savings in other areas of state spending that will offset much of the state cost of the Medicaid expansion.<sup>9</sup> These savings are another reason why the infusion of federal funds will have such a significant positive impact on the State budget. Moreover, the additional tax dollars generated by the infusion of federal funds into Missouri's economy could well provide funds for some of the state match required to draw down these additional federal funds.

**Funding Other States' Medicaid Expansions:** In addition, a decision to *decline* these funds means that Missouri taxpayers would be helping to fund the states that *do* adopt the Medicaid expansion. As Justice Scalia noted in his dissent to Chief Justice Roberts' opinion in the Supreme Court's decision on the Affordable Care Act, "[t]hose States that decline the Medicaid Expansion must subsidize, by the federal tax dollars taken from their citizens, vast grants to the States that *accept* the Medicaid Expansion."<sup>10</sup> With Medicaid expansion, Missouri imports federal revenues and increases both health care and jobs. Without expanding, Missouri effectively exports both jobs and money to other states. It will be interesting to see if policymakers ultimately choose to turn down Missouri's allotment under the ACA, thereby allowing New York, Illinois, California and other states to get the benefit of the federal tax dollars paid by Missourians.

**Uncompensated Care Costs:** Finally, without the expansion, working Missourians in low wage jobs will be left without insurance. When they have a major illness or injury, other Missourians *with insurance* will still have to pick up the cost of their care (through higher premiums). As the Supreme Court noted, Congress estimated that the cost of uncompensated care raises family health insurance premiums, on average, by over \$1,000 per year.<sup>11</sup> Without the expansion, Missourians will continue to bear that cost entirely on their own, without having the benefit of federal Medicaid funds.

These are among the many factors that Missouri policymakers must consider now that the ACA's Medicaid expansion is effectively a state option. It is well-established that having health insurance coverage improves access to health care and health outcomes, and increasing coverage through the ACA's Medicaid expansion furthers that important goal.<sup>12</sup> However, it is also important to note the impact of \$11.3 billion in federal funding for our state and its economy, not to mention local economies, hospitals, and providers.

### **Conclusion**

Substantially reducing the number of uninsured Missourians, with *100% federal funding* in the first three years and no less than 90% in the long-term, is a great deal for the State and one which policymakers should embrace. The consequences of turning down these funds would be extremely detrimental to the state, its providers, and its economy, as well as the low-income uninsured individuals whose health is on the line.

Before the Supreme Court's decision, some state officials were upset by the federal government forcing them to expand Medicaid, which was viewed by some as an affront to state sovereignty. The state now has the opportunity to make a *choice*, but it is important to make that choice based on full and complete information, and not to rush to a political decision that could ultimately hurt the state's economy and its citizens. Medicaid expansion will strengthen Missouri's economy at a time when the state needs help.

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## Endnotes

<sup>1</sup> *National Federation of Independent Business, et al. v. Sebelius, et al.*, 2012 U.S. LEXIS 4876 (2012).

<sup>2</sup> Patient Protection and Affordable Care Act, 111 P.L. 148, § 2001(a) (hereinafter “ACA”). The law actually expands coverage to individuals at or below 138% of the poverty level given the 5% income disregard in the law. Health Care and Education Reconciliation Act, 111 P.L. 152, §1004(e).

<sup>3</sup> See Genevieve M. Kenney, Lisa Dubay, et al., *Making the Medicaid Expansion an ACA Option: How Many Low-Income Americans Could Remain Uninsured*, Urban Institute, Table 1, June 29, 2012.

<sup>4</sup>Department of Social Services, MO HealthNet Division statistics, July 2, 2012. The Urban Institute estimates that 351,000 currently uninsured Missourians would potentially be made eligible by ACA’s Medicaid expansion 267,000 of these newly eligible individuals (about 76%) have incomes at or below 100% of the poverty level and thus could not receive coverage through the premium tax credits available for Exchange coverage. See Genevieve M. Kenney, Lisa Dubay, et al., *Opting out of the Medicaid Expansion under the ACA: How Many Uninsured Adults would not be Eligible for Medicaid*, Exhibit 2, July 5, 2012.

<sup>5</sup> Missouri’s current eligibility limit for family coverage is \$234 a month for a family of 2 and \$292 per month for a family of 3, a capped amount that does not increase when the poverty level increases. Currently this limit is about 18% of the federal poverty level.

<sup>6</sup> If we assume based on figures from the Urban Institute that 76% of the currently uninsured at or below 133% of the federal poverty level would not receive premium tax credits (note 4 supra), then 193,800 Missourians would remain uninsured if Missouri elects not to implement the Medicaid expansion.

<sup>7</sup> ACA, § 1401(c)(1). Certain *legal* immigrants with incomes below the poverty level who are not eligible for Medicaid can receive premium credits.

<sup>8</sup> For more information about the DSH program and the DSH provisions in the ACA, *see*, Corey Davis, Q & A: Disproportionate Share Hospital Payments and the Medicaid Expansion, National Health Law Program, July 2012

<sup>9</sup> See January Angeles, *How Health Reform’s Medicaid Expansion Will Impact State Budgets*, Center on Budget and Policy Priorities, July 12, 2012, at 1-2, 5-6 (and citations therein) regarding the impact of the Medicaid expansion in reducing other state costs (available at: <http://www.cbpp.org/cms/index.cfm?fa=view&id=3801>).

<sup>10</sup> *National Federation of Independent Business*, 2012 U.S. LEXIS 4876 at \*318 (emphasis added).

<sup>11</sup> *National Federation of Independent Business*, 2012 U.S. LEXIS 4876 at \*36-37; 42 U.S.C. Section 18091(2)(F).

<sup>12</sup> See, e.g., Cover Missouri, *The Significance of Missouri’s Uninsured*, Missouri Foundation for Health (and citations therein) (available at: <http://covermissouri.org/docs/Significance%20of%20Missouris%20Uninsured%20-%20FS%20Final.pdf> )