
Supreme Court Ruling on Medicaid: *Challenges and Opportunities for State Advocates*



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Preface

Implementing the Affordable Care Act is already a daunting task for advocates in states across the country. From Exchanges to community benefits to outreach and enrollment, there is a long list of issues that need to be addressed.

For advocates in many states, the list just got longer.

In its recent decision to uphold the Affordable Care Act, the United States Supreme Court ruled that states can opt out of the Medicaid expansion. This puts the health of the poorest and most vulnerable Americans in the hands of governors and state legislatures, many of whom are vociferously opposed to the legislation. If the Medicaid expansion is not implemented in some states, inequality in health care will reach absurd levels, with some states leaving the lowest-income people uninsured while providing subsidized coverage to others who have many more resources.

Community Catalyst was founded 15 years ago with the mission of providing policy and advocacy expertise to state and local organizations focused on improving the health of people in their states and communities. Our goal then and now is to assure that people, especially those most disenfranchised, have a say in decisions that affect their health. Having the resources, skills and knowledge to exercise that right is particularly important now that states will determine whether the poorest of the uninsured will benefit from the Affordable Care Act. In those states where governors and legislatures are threatening not to implement the Medicaid expansion, advocates must be fully engaged.

This enormous responsibility is not lost on Community Catalyst. We will stand with advocates as they fight for a just and equitable health system.

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Introduction

The Supreme Court's ruling on the Affordable Care Act was a major victory. States must now move swiftly to implement the law and provide affordable health care to millions of Americans. But the Court's decision also introduced a new challenge: it opened the door for states to reject the law's Medicaid expansion.

Fortunately, most states will not consider opting out of this expansion; it would be irrational and irresponsible to turn down federal funds that would cover virtually all the costs of insuring the lowest-income families. But policymakers in some states may allow political posturing to override what's best for their state: Officials in at least six states are already suggesting they will reject the expansion.¹ This would leave millions of our most vulnerable citizens uninsured, saddle hospitals with uncompensated care costs, and exacerbate racial, ethnic and class disparities in health care.

The ruling presents a challenge as well as a mobilizing and organizing opportunity for the health justice community. State consumer advocates are uniquely positioned to organize the vulnerable Americans who would be left uninsured without Medicaid, and hold policymakers accountable for choosing the health of their constituents over political grandstanding. Not only will advocates have the moral and fiscal imperative on their side, but compared to previous campaigns to expand Medicaid, they are also more likely to have powerful allies such as hospitals and insurers on their side.

This memo explains the key policy implications of the Supreme Court's ruling on Medicaid expansion. It also outlines strategic considerations for consumer advocates planning a state-based campaign to implement the Medicaid expansion.

¹ See <http://www.nytimes.com/2012/06/30/us/politics/some-states-reluctant-over-medicaid-expansion.html?pagewanted=1&r=1&hp>

Summary of Medicaid Ruling and Policy Implications

The Court's ruling renders the law's Medicaid expansion voluntary.

- As the Affordable Care Act (ACA) was written, if a state failed to expand Medicaid to adults earning up to 133 percent of the Federal Poverty Level (FPL) by 2014, CMS could withhold *all* of the state's federal matching funds – not just for the expansion population, but also for the populations the state was already covering.
- The court ruled that if a state fails to comply with the expansion, CMS cannot withhold all of its Medicaid funds; CMS can only withhold the funds that would have been associated with the ACA Medicaid expansion. This means states would face no financial penalty for failing to comply with the expansion.²

If a state opts out of the Medicaid expansion, most people below 100 percent FPL will have no affordable coverage options.

- Those earning between 100 and 400 percent FPL can qualify for tax credits to lower their premiums in the Exchange. Because the law intended for those between 100 and 133 percent FPL to be covered through Medicaid, tax credits available to this population in the Exchange are likely inadequate to make coverage truly affordable.
- Americans below 100 percent FPL cannot qualify for tax credits in the Exchange; they will get no help affording coverage³. While this group is permitted to purchase coverage without subsidies in the Exchange, the premiums will be out of reach for these extremely low-income adults.
- Although the vast majority of people below 100 percent FPL who would have benefited from the Medicaid expansion will remain uninsured, it is unlikely they will have to pay the penalty associated with the individual mandate. This is because the law exempts the following groups from penalties:
 - People earning less than the tax filing threshold. The 2011 tax filing threshold is about 85 percent FPL for a childless adult or 80 percent FPL for a single mother of one.
 - People who cannot find coverage that would cost less than 8 percent of their income. For a childless adult at 133 percent FPL to be penalized, he would have to have a coverage option with a premium of less than \$100 a month.

² While the ruling is clear that CMS cannot take away all of a state's Medicaid funds if it fails to comply with the ACA expansion, CMS may have other tools to encourage state participation.

³ The law allows documented immigrants under 100 percent FPL to qualify for tax credits in the Exchange if they are not eligible for Medicaid because of their immigration status (usually because they have been in the country for less than 5 years.)

It appears states cannot implement the Medicaid expansion part-way – it is an all-or-nothing decision.

- The court ruled that if a state does not comply with the terms of the Medicaid expansion laid out in the ACA, CMS can withhold the higher matching funds that the law provides for the “newly eligible.” So if, for example, a state wanted to expand coverage to 100 percent FPL, rather than 133 percent FPL as the law requires, CMS would not pay the enhanced matching rate for this expansion.
- It is possible that there are other means for a state to expand coverage to less than 133 percent FPL, such as through an 1115 waiver. But until CMS releases further guidance on this issue, advocates should assume an expansion to less than 133 percent FPL would not qualify for the enhanced matching funds.

The ruling does *not* impact the Maintenance of Effort requirement, the Medicaid expansion for youth aging out of foster care, the funding for increased primary care reimbursement, or other Medicaid provisions in the ACA.

- The Court’s ruling was limited to the provision that allows CMS to deny Medicaid funds to states that fail to comply with the Medicaid expansion. All other aspects of the ACA, including other Medicaid provisions, remain intact.

The ruling does not jeopardize previous coverage expansions.

- The Court allows CMS to continue enforcing previous mandatory Medicaid expansions, such as to pregnant women and children up to certain income levels. The Court explicitly argues that the Medicaid expansion in the ACA is different in nature from these previous mandatory Medicaid expansions. This means CMS can still withhold all of a state’s Medicaid funds if it stops complying with the terms outlined in these previous expansions.
- The Court’s ruling does not impact CHIP in any way.

Designing a Campaign to Implement the Medicaid Expansion

While most states would never consider opting out of the Medicaid expansion, officials in at least six states have already threatened to reject the expansion. Consumer advocates in these states will play a vital role in preventing policymakers from following through with this threat.

To win this fight, advocates will have to plan and implement a strong campaign incorporating five capacities that are central to effecting policy change: building broad-based coalitions and maintaining strategic alliances with other stakeholders; building and maintaining a strong grassroots base of support; analyzing the policy issues; using media and other communications strategies to build public and political support; and generating resources to support the campaign.⁴

An effective campaign plan explicitly identifies: the overall campaign goal; specific strategies, tactics and activities; deliverables; desired outcomes; key decision-maker(s) and opponents; and the timeline (see sidebars on pages 8 and 9 of this document for tips on how to identify the key decision-maker(s) and the timeline in each state.) Advocates can use the [Spitfire Smart Chart](#) to help assemble a campaign plan.

Coalition building

Although state advocates may already have coalitions interested in Medicaid, the high profile of this issue and the unprecedented volume of people impacted by the Affordable Care Act's (ACA) Medicaid expansion may help to engage groups not previously involved, and build the strength and influence of existing coalitions.

Advocates should start by reaching out to groups who represent the populations that would benefit from the Medicaid expansion. These include:

- **Groups that organize low-income populations and communities of color.**
- **Faith-based groups:** Such as social justice committees in churches, synagogues, temples, and other faith institutions
- **Voluntary health organizations:** Such as the state chapter of the American Cancer Society, Multiple Sclerosis Society, National Alliance on Mental Illness, etc.
- **Children's groups:** Although this Medicaid expansion will not impact children, children's advocates may care about ensuring parents get coverage.
- **Veteran's groups:** Veterans will benefit tremendously from the ACA Medicaid expansion – nearly half of uninsured veterans would qualify for expanded Medicaid coverage.⁵

⁴ For more information on these capacities, see Community Catalyst's report [Where the Rubber Meets the Road: Strategies for Successful State Implementation of the Affordable Care Act](#).

⁵ For more information of the impact of the ACA and its Medicaid expansion on access to care for veterans, see the Urban Institute's analysis "Uninsured Veterans and Family Members: Who Are They and Where Do They Live?" available at <http://www.rwjf.org/files/research/74428.quickstrike.veterans.052412.pdf>.

Advocates should also prioritize building new or strengthened partnerships with stakeholders.

Identifying the Key Decision-Maker in Your State

In some states, the decision-maker will be the governor; in other states it will be the legislature.

States wishing to comply with the Medicaid expansion must submit a State Plan Amendment (SPA) to CMS that updates their state plan to incorporate the new expansion population.

Advocates must research their own state statute to determine if:

- the legislature must first act to allow and/or compel the governor to submit the SPA
- the governor can decide on his/her own to submit the SPA
- the Governor is already required by existing state law to comply with the Medicaid expansion.

For example, Alaska's Medicaid statute requires the state to cover "all residents of the state for whom the Social Security Act requires Medicaid coverage." The ACA frames the population earning up to 133 percent FPL as a mandatory population; the Supreme Court did not change that language, they merely removed CMS' means of enforcement. As a result, Alaska's statute compels the governor to submit a SPA complying with the Medicaid expansion.

Advocates should check whether their state's Medicaid law includes similar language. In these states, advocacy will still be needed to ensure the Governor complies with the law and that the legislature does not amend the statute.

- **Hospitals:** Hospitals have a strong financial incentive to support the Medicaid expansion. The ACA reduced reimbursement to hospitals in return for expanding insurance coverage for uninsured patients. Without the expansion, hospitals would suffer the cuts without the benefit of new revenue from previously uninsured patients. In addition the ACA and associated regulations requires non-profit hospitals to develop written financial assistance policies for emergency and medically-necessary care, prohibits them from requesting upfront payments in hospital emergency rooms, and requires them to hold off on certain collection actions while they give all patients about eight months to apply for financial assistance.⁶ These requirements give hospitals an even greater financial stake in seeing the Medicaid expansion take place.

Advocates should meet with local hospitals to ask for their support in expanding Medicaid coverage. It is worth focusing on hospitals that currently treat a high percentage of low-income patients. These hospitals are more likely to benefit from a Medicaid expansion, which could result in additional revenue and lower their uncompensated care costs.

⁶ For more information on the new requirements on non-profit hospitals, see Department of the Treasury and the Internal Revenue Service, "Additional Rules for Charitable Hospitals," Notice of Proposed Rulemaking Reg-130266-11, available at <http://www.irs.gov/pub/irs-drop/reg-130266-11.pdf>. It is important to note that these proposed rules are not final. To protect patients in states that opt out of the expansion, advocates should weigh in for strong final rules on financial assistance and debt collection. Community Catalyst will have more resources on this topic in the coming weeks.

State hospital associations can also be important allies in the fight to expand Medicaid. However, associations can sometimes be hamstrung by the preferences of less progressive members. At a minimum, state associations can be a good source of data on aggregate spending on care for the uninsured and may be willing to help advocates identify hospital leaders with whom to speak further.

- **Insurers:** Medicaid managed care plans are natural allies for this campaign. Commercial insurance plans might also weigh-in in favor of the Medicaid expansion; advocates should help them understand that without the Medicaid expansion, hospitals will shift more uncompensated care costs onto them.
- **Community Health Centers:** They will have a strong stake in ensuring the state expands Medicaid since they will be caring for the population regardless, and without the Medicaid expansion they will not be reimbursed for this care.
- **Other provider groups:** Primary care physicians may be more willing to weigh-in on this issue because of the Medicaid payment rate increase mandated in the ACA. Nurses, community health workers and substance use disorder treatment providers who work with these vulnerable populations would also be good allies.
- **The pharmaceutical industry:** Drug manufacturers, drug store chains and pharmacists also have a stake in seeing more people covered; more insured means more people purchasing prescription drugs.
- **Others:** Groups outside the health care industry who are invested in the economic security of low-income Americans, such as teachers, local food banks, homeless shelters and other service providers may also be willing to weigh-in for the Medicaid expansion.

Identifying the timeline for this decision in your state

To be compliant with the expansion in the ACA, states must have their SPAs approved by January 1, 2014.

In states where the legislature must act to authorize/require the Governor to submit a SPA, the 2012/2013 legislative session will define the timeline for the decision.

As you bring new groups to the table, make sure to spend time educating everyone on the impact of the ruling and collectively develop your campaign strategy, tactics and outcomes. Reaching agreement on your strategies and goals will give the coalition a solid base for when quick strategic decisions need to be made.

Grassroots Organizing

Unlike many ACA implementation issues, the Medicaid expansion naturally lends itself to grassroots organizing and mobilizing. It is not a technical policy issue, it's about people, and the stakes are clear: will low-income Americans get coverage, or will they be left behind. The local, state-by-state nature of this fight also makes it easier to engage grassroots supporters than other Medicaid policy fights that play out on the federal level.

Below are some tips for you to consider as you build the grassroots capacity of your campaign:

- **Target diverse constituencies.** Engage diverse constituencies from across the state. Each organization in the coalition should identify the target population to whom they will reach out.
- **Make it personal, not virtual.** Identify where your target population are most likely to reside, and go to where they are. Many organizations have a listserv and community they have been reaching out to as a part of passing and implementing the ACA; and it is important to mobilize, activate, and organize these people. But this organizing effort cannot be left to list serves and on-line mobilizing alone – it must also be done face to face, through small group meetings, door knocking and educational sessions.
- **Compile supporters’ stories.** These stories help put a face on your campaign and can be a powerful rallying point.
- **Develop easy-to-understand materials** that explain what’s at stake, and tailor these materials to the different communities you are engaging.
- **Establish regular communication** with grassroots supporters – keep them engaged and updated on campaign and policy developments.
- **Conduct grassroots trainings for specific activities**, such as:
 - Lobby days
 - Legislative letter writing campaigns
 - Signature gathering
 - Media monitoring and writing letters to the editor
 - Media interviews
 - Organizing and outreach efforts

Research and Policy Analysis

To strengthen the case against turning down the Medicaid expansion, advocates can gather data that shows:

- **The impact on the state budget:** There is data already that quantifies how many federal dollars the Medicaid expansion would bring into states, and how little the expansion will cost each state. Community Catalyst has compiled this data into a spreadsheet, available [here](#).

The Medicaid expansion will lower state uncompensated care costs, which will partially offset the relatively small state costs associated with expansion. Advocates can help build this case by gathering data about how many people would remain uninsured without the Medicaid expansion (available in [this spreadsheet](#)). They may also want to research how much their state is currently spending on uncompensated care.

- **The impact on economic activity** and the job loss resulting from lower federal Medicaid funds in states that reject the expansion. Advocates can use the data on the amount of federal

dollars their state would lose (available in [this spreadsheet](#)) and the [Families USA's Medicaid multiplier tool](#) to quantify this economic impact.

Communications and Messaging

It is critical to present all stakeholders – legislators, partners, funders, the media, and grassroots supporters – with a consistent message through multiple channels. Success depends on the campaign's ability to:

- Build timely public and political support,
- Counter opposing arguments,
- Reach the intended audience,
- Take advantage of media opportunities.

Tips for building a compelling message in support of the Medicaid expansion:

- **Target your message to your audience.** With many policymakers, our most persuasive argument will be the financial effects of turning down federal funding and increasing uncompensated care costs on the state and the provider community.
- **Stories, stories, stories.** Stories of those who will be impacted are the most effective way to remove the political framing from this story, and illustrate the human dimensions of this decision. Highlight the impact the Medicaid expansion would have on people's health and on their family's financial stability. Many are working parents who play by the rules but who don't have access to insurance from their employers – these families are likely to draw the public's sympathy and help them understand what's really at stake.

Fundraising

This campaign offers the opportunity to engage funders beyond those who traditionally fund advocacy on health policy issues. Rejecting the Medicaid expansion would not only jeopardize the health of vulnerable Americans, it would undermine their financial stability, widen the gap between the haves and the have-nots, and exacerbate racial and ethnic disparities. Potential funders to consider engaging are those interested in social justice, improving racial equity, addressing poverty and service delivery. By framing the campaign in these broader social justice terms, advocates may be able to interest new funders.

This campaign may also present an opportunity to fundraise from the provider community. Since the hospital industry has a financial stake in ensuring states expand Medicaid, individual hospitals and/or the state hospital association may be willing to contribute resources to the campaign.

Conclusion

The decision to expand Medicaid should be a no-brainer. It would be morally and fiscally bankrupt for states to turn down federal funds that would cover virtually the entire cost of expanding coverage to the most vulnerable Americans, leave millions without health insurance, and burden hospitals with uncompensated care costs.

Nevertheless, rejecting this expansion offers an enticing opportunity for some ideological elected officials to score political points. While their opposition to the Medicaid expansion may simmer after the election, we cannot afford to wait – advocates should plan their campaigns now, and be prepared to hit the ground running in 2013.