WebMemo

Published by The Heritage Foundation

No. 2559
July 23, 2009

Undercutting State Authority: The Impact of the House and Senate Health Bills

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State officials will lose a great deal of their authority over the financing and delivery of health care under the House and Senate health bills, particularly in the area of Medicaid.

In the House bill, "America's Affordable Health Choices Act of 2009" (H.R. 3200), Congress would expand Medicaid to reduce the number of people without health insurance. But this expansion will create new inequities among and between the several states that administer the program. The House version also expands the federal role in the administration of Medicaid that will reduce the states' sovereignty and position as "laboratories of democracy."

As of now, the Senate has not made its specific Medicaid recommendations public, but it is expected that the Finance Committee will also expand Medicaid eligibility and that there will be interactions between Medicaid, public subsidies, and the federal regulation of insurance.

Financially Breaking the States. Medicaid is a joint federal–state program that gets 43 percent of funding (on average) from state and local governments. According the National Association of State Budget Officers, "[t]he states are facing one of the worst fiscal periods in decades."[1] In recognizing this situation earlier this year, Congress provided states with a temporary increase in the federal match for Medicaid worth $87 billion through the American Recovery and Reinvestment Act of 2009.

That temporary increase did not prevent states from making difficult budget decisions; it only meant that states made deeper cuts in education and other programs rather than in Medicaid. When the temporary increase expires in December 2010, states will have to replace the lost federal dollars with their own.

Congress is counting on using Medicaid to provide coverage to 30 percent of the uninsured. According to *The New York Times*, states are now in full revolt against bearing any new costs of a Medicaid expansion.[2]

Reduced State Authority. H.R. 3200 creates two new eligibility categories in Medicaid that will cover individuals with income at or below 133 of the federal poverty level (FPL). However, the legislation also uses income and expense disregards to determine eligibility, which is likely to mean the real eligibility level for many individuals and families is 150 percent of (FPL).[3]

The expansion will provide coverage for childless adults for the first time and replace the current state option of providing parents of low-income children with a mandate to cover them. For these two new groups, the federal government will provide a match rate of 100 percent. However, whenever there is an expansion to a new eligibility group,

This paper, in its entirety, can be found at:
www.heritage.org/Research/HealthCare/wm2559.cfm

Produced by the Center for Health Policy Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002–4999
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enrollment of current eligibles also goes up, for which there are no new federal dollars.

In return for the extra federal funding, states will be prohibited from changing their eligibility levels, including methodologies for determining and re-determining eligibility. A state that covers adults above 150 percent FPL will not receive additional funds for them, and the state will not be able to lower its eligibility level. States that were more generous in determining eligibility will forfeit their authority to make any changes in those procedures. States will also forfeit their authority under current law to apply any asset tests to certain populations.

New Inequities. Because states have the authority to set optional eligibility levels, there are considerable variations in Medicaid eligibility among the states. The Kaiser Commission on Medicaid and the Uninsured reports that 17 states cover parents at 100 percent FPL or higher, 20 states cover parents between 50 and 99 percent FPL, and 14 states limit eligibility of parents to below 50 percent FPL.[4]

According to Kaiser, parents of Medicaid children in Maine are eligible at 206 percent FPL, but parents of Medicaid children in Alabama are eligible only up to 17 percent FPL. This means that under the House bill, federal taxpayers will pay 100 percent of the cost of expanding Medicaid coverage for parents between 17 percent FPL and 133 percent FPL in Alabama to insure more people. Meanwhile, in Maine, where coverage already exceeds 133 percent, the federal dollars will simply replace state dollars. Since Medicaid eligibility will be frozen while new subsidies become available, a family in one state will migrate to the new "public option" with the benefit of subsidies, while a family in a neighboring state will go to Medicaid.

With the stimulus bill, the Obama Administration prevented states from modifying their cost-sharing requirements as well. Thus, a family in one state at 175 percent FPL will receive a subsidy that can be used through a public option and be required to pay part of a premium and out-of-pocket costs, while another family in a different state at the same income level will pay nothing because they are on Medicaid.

Health Czar. The House bill creates a new federal Health Choices Administration with a commissioner who will have new powers over the entire health insurance system—and the states as well—through a "Medicaid memorandum of understanding."[5] States have no choice as to whether to enter into the memorandum of understanding. Among other things, the commissioner will have the power to make eligibility determinations and put people on a state's Medicaid rolls. A state will be prohibited from challenging the commissioner's decision. Among other things, the federal government would supplant state authority for:

- Establishing network adequacy of managed care organizations;[6]
- Regulating profits of managed care organizations by setting medical loss ratios;[7] and
- Determining benefits and cost sharing by setting the standards of a basic public option.[8]

Impact on Waivers. Much of the expansion of health insurance coverage and innovation in service delivery has come through Section 1115 demon-

1. National Governors Association and National Association of State Budget Officers, "The Fiscal Survey of States, June 2009," at *http://www.nasbo.org/Publications/PDFs/FSSpring2009.pdf* (July 21, 2009).
2. See Kevin Sack and Robert Pear, "Governors Fear Costs in Health Plan," *The New York Times*, July 19, 2009, at *http://www.nytimes.com/2009/07/20/health/policy/20health.html?_r=1* (July 21, 2009).
3. Based on the 2009 Poverty Guidelines, the 150 percent threshold means an individual with income up to $16,245 and parents in a family of four with income up to $33,075 will be on Medicaid.
4. Kaiser Commission on Medicaid and the Uninsured, "Expanding Health Coverage for Low-Income Adults: Filling the Gaps in Medicaid Eligibility," May 2009, at *http://www.kff.org/medicaid/upload/7900.pdf* (July 21, 2009).
5. America's Affordable Health Choices Act of 2009, H.R. 3200, 111th Cong., 1st Sess., Section 1702.
6. *Ibid.*, Section 1701.
7. *Ibid.*, Section 1755.
8. *Ibid.*, Section 1703.

stration projects known as "waivers." Arizona has operated its entire Medicaid program as a waiver since 1982. Other states that have significant 1115 waivers include Arkansas, Hawaii, Indiana, Massachusetts, New York, Oregon, Rhode Island, Tennessee, Utah, and Vermont. The fate of these waivers under the legislation is unclear.

Section 1703 provisions that pertain to maintenance of effort requirements refer to "any waiver… that is permitted to continue." Section 1781, mislabeled "Technical Corrections," is likely to have a chilling effect on states as it expands the entitlement of a state plan to populations covered by a waiver.

Historically, the entire point of a demonstration project has been to experiment with coverage, benefits, and cost sharing. If a state will be required to treat a demonstration population in the same manner as those covered by the state plan, states are likely to abandon waivers.

CLASS Conflict. The Senate HELP Committee would create a new program, "Community Living Assistance Services and Supports" (CLASS), which would provide benefits to individuals with limitations in their activities of daily living. The Congressional Budget Office estimates some small Medicaid savings from the CLASS program paying benefits on behalf of some individuals who rely on Medicaid. However, in exchange, states are required to forfeit current law authority to control access to home and community-based waivers.

A Bad Bargain for States. The states are being invited into a shaky bargain that trades dollars for control over the administration of Medicaid. These changes strongly suggest the need for a second look.

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