

# ISSUE BRIEF

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## The Supreme Court's Medicaid Decision: The Obamacare Mess Just Got Messier

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If the Administration's attempt to centralize health care decision making in Washington was unworkable, its unconstitutional imposition on the states has made its problems even worse. Long before the Supreme Court's decision to strike down the Medicaid mandate on the states as unconstitutionally coercive, opponents of the health care law argued that it would be financially unsustainable and administratively unworkable. The Court's decision likely puts the law on a faster pace to collapse.

Under the law's unconstitutional Medicaid expansion, states would have been required to expand their Medicaid program to cover all individuals up to 138 percent of the federal poverty level (FPL) or risk losing *all* of their federal Medicaid funds.

As a result of the Supreme Court's ruling, states are now free to make

their own decisions on the Medicaid expansion. As directed by the law, they can expand their Medicaid programs and receive enhanced federal Medicaid funding for this new population. But a state can also choose *not* to expand its Medicaid program and no longer risk losing their existing federal Medicaid funds. In essence, the ruling makes the Medicaid expansion voluntary.

**Fewer Insured, Higher Costs.** While the Administration is generally celebrating the Court's decision on the constitutionality of the individual mandate, the Medicaid decision has major implications for the law's cost and coverage. To achieve promised coverage gains, Obamacare depends on two sources for coverage: the Medicaid expansion for persons with incomes up to 138 percent FPL and the new federal subsidies through the exchanges for those persons between 100 percent FPL and 400 percent FPL.

However, those persons between 100 percent FPL and 138 percent FPL do *not* qualify for the subsidy unless they are found ineligible for Medicaid. This is where the trouble begins for the President's health care overhaul. Specifically, the decision could lead to:

- **Fewer insured.** Half of the reduction in uninsured "promised" under the law was based on mandating that states expand Medicaid. Now, as a result of the Court's ruling, the federal government is in the position of seeing the number of people gaining coverage as a result of the law shrink. Estimates by the Urban Institute show that there are almost 11.5 million individuals below 100 percent FPL who would not qualify for the federal subsidy and 6.1 million individuals below 100 percent FPL in the 26 states that sued over the Medicaid expansion.<sup>1</sup>
- **Higher costs.** As noted, the law stipulates that only individuals who are not eligible for Medicaid can qualify for the federal subsidy. With the Court's decision, many of those would-be Medicaid eligible under an expansion—specifically those above 100 percent FPL—will now qualify for the federal subsidy. Heritage estimates that there are between 3.5 million and 6.2 million persons who will now qualify for the subsidies, raising the cost of the subsidies between \$35 billion and \$63 billion over 10 years. These figures are based on either

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26 states opting out or all 50 states opting out of the expansion.<sup>2</sup>

**States Should Not Buckle.** The Administration and its allies in Congress and elsewhere are trying to distract attention away from the Medicaid ruling by urging states to proceed with implementation. There are several reasons why states should not buckle under this pressure:

- **The law remains unsettled business.** The Administration would like to argue that the Court's ruling put an end to debate over the future of the health care law, but that is not the case. The American people have yet to have their say. Between now and the elections, there is little benefit for states entangling themselves in implementing the law, in particular with regard to preparing for the exchanges or committing to a Medicaid expansion.
- **States' hands were strengthened, not weakened, by the Court's decision.** Even if President Obama is re-elected and full repeal fails, the law will undoubtedly have to be re-opened. States could push for re-opening

and use their power to reverse and restructure key provisions in the law.

- **States are already struggling to maintain their existing Medicaid programs.** Medicaid remains the largest portion of total state spending, consuming over 23 percent of states' budgets and squeezing out other state priorities, including education, transportation, and emergency services.<sup>3</sup>
- **States may face increased enrollment even without the expansion simply through aggressive enrollment outreach**—or as certain people who are eligible for Medicaid but not enrolled will seek out coverage through Medicaid to avoid the possibility of the individual mandate tax applying.<sup>4</sup>
- **Despite an enhanced federal match for the expansion population, states would still be obligated to meet their share of the expansion, including administrative costs.** At a time when states revenues are already tight, even a small cost share can

have a significant impact on state budgets. With mounting fiscal pressures, there is no certainty that the federal government will not require states to contribute more in the future. What Medicaid needs is reform, not expansion.

**The Future Looks Even Worse.** The potential fallout effects of the Medicaid ruling are not the fault of the states but of the authors of the health care law. It is yet another example of the shortcomings of this complex and highly tangled law and likely just a sign of things to come. As Heritage senior fellow Robert Moffit argued at the time of enactment, the President's signature on Obamacare does not end the national debate on federal control of health care. "The debate merely enters a new and perhaps even more difficult and divisive phase. Based on current revelations and previous experience, this continuing debate gives Congress ample justification to repeal Obamacare."<sup>5</sup>  
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1. Genevieve M. Kenney et al., "Opting Out of the Medicaid Expansion Under the ACA: How Many Uninsured Adults Would Not Be Eligible for Medicaid?," Urban Institute, July 5, 2012, <http://www.urban.org/UploadedPDF/412607-Opting-Out-of-the-Medicaid-Expansion-Under-the-ACA.pdf> (accessed July 7, 2012).

2. Drew Gonshorowski, "Comparing Spending Predictions on the Supreme Court Ruling on Medicaid," The Heritage Foundation, The Foundry, July 6, 2012, <http://www.foundry.org/2012/07/06/comparing-spending-predictions-on-the-supreme-court-ruling-on-medicaid/>.

3. National Governors Association and National Association of State Budget Officers, "The Fiscal Survey of States," Spring 2012, p. 53, [http://www.nasbo.org/sites/default/files/Spring percent202012 percent20Fiscal percent20Survey\\_0.pdf](http://www.nasbo.org/sites/default/files/Spring%202012%20Fiscal%20Survey_0.pdf) (accessed July 7, 2012).

4. It is worth noting that those currently eligible but not enrolled receive standard federal matching rates, not enhanced rates.

5. Robert E. Moffit, "The Prospects for Ending Obamacare: Learning from Health Policy History," Heritage Foundation *Background* No. 2424, June 21, 2010, <http://www.heritage.org/research/reports/2010/06/the-prospects-for-ending-obamacare-learning-from-health-policy-history>.