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MERCER GOVERNMENT HUMAN SERVICES CONSULTING

AFFORDABLE CARE ACT
SUPREME COURT DECISION AND IMPLICATIONS FOR MEDICAID

Since 1985, Mercer has consulted to more than 30 states and the federal government on a wide variety of health care and human service issues, including actuarial, data/systems analysis, clinical, policy, operations, and procurement.

CONSTITUTIONALITY OF THESE MAJOR PROVISIONS OF THE ACA

- The individual mandate.
- Medicaid eligibility expansion up to 133% of the Federal Poverty Level (FPL).

THE COURT'S DECISION

- The individual mandate is constitutional and was upheld under the federal taxing authority.
- The mandatory nature of the Medicaid eligibility expansion is unconstitutional. States now have the option of expanding Medicaid eligibility or not, and the federal government cannot withhold existing Medicaid funds from states that decline to expand Medicaid eligibility up to 133% of FPL.

WHAT WE KNOW ABOUT THE MEDICAID ELIGIBILITY EXPANSION DECISION:

- The decision does not directly impact any Affordable Care Act (ACA) reform efforts implemented to date, so states can continue to implement current ACA initiatives.
- Individuals with income below 100% of FPL will not be eligible for premium tax credits (except for some legal residents).
- Congress acted constitutionally in offering states funds to expand coverage to millions of new individuals.
- States can expand coverage up to 133% of FPL in exchange for those new funds and new rules that accompany the coverage expansion.
- A state can choose not to participate in expansion without losing all of its federal Medicaid funds.

OUTSTANDING QUESTIONS ABOUT THE MEDICAID ELIGIBILITY EXPANSION DECISION:

- What flexibility will the federal government provide to cover those individuals not currently eligible for Medicaid, and ineligible for the premium tax credits available to those with incomes 100% of FPL and above?
- How flexible will the federal government be on partial expansions through Section 1115 demonstrations or other mechanisms?
- Will any individuals below 133% of FPL be subject to a tax penalty if they do not obtain health insurance, or will the federal government broadly interpret tax penalty exemptions?

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- Will those states that do not choose to expand be faced with any funding limitations for future years (for example, is it the current funding amount or the funding mechanism that is not in jeopardy)?
- Can a state implement the Medicaid eligibility expansion and then discontinue the expansion when the federal share is reduced?
- If a state does not elect to expand Medicaid eligibility, do its current eligibility criteria have to change? That is, does it have to be based on Modified Adjusted Gross Income (MAGI)?
- What other Medicaid requirements in the ACA, if any, can be linked to the Supreme Court's determination that withholding federal funds for the entire program is "coercion"?

NEXT STEPS FOR STATES

- By November 16, 2012, states must inform the Centers for Medicare and Medicaid Services (CMS) of their intentions regarding:
  - Setting up a state-based Health Insurance Exchange
  - Deferring entirely to the federal government with a federally facilitated Exchange
  - Sharing responsibility through a state partnership Exchange
- States will need to work through the issues around whether or not to expand now that Medicaid expansion to 133% of FPL is optional:
  - Evaluate the budget situation, program status (such as a waiver in place), and policy/political objectives.
  - Analyze the cost-effectiveness of expanding Medicaid for low-income individuals, given 100% federal matching funds (2014–2016).
  - Assess the "woodwork effect" of a Medicaid eligibility expansion or through coordination with the Exchange. The state may see increases in regular Medicaid enrollment (as awareness increases) and the additional cost would not be eligible for 100% of federal matching funds.
  - Consider whether to implement a Basic Health Program and how that would interact with Medicaid and the Exchange under the scenarios of expansion and non-expansion.
  - Decide philosophically on the best course of action for individuals in the gap between current Medicaid and premium tax credit eligibility levels if an expansion is not elected.
  - Should the state choose to expand Medicaid it must analyze, prepare, and execute for several operational and financial challenges that will be faced, including network capacity, managed care infrastructure, and rate and fee adequacy.

HOW MERCER CAN HELP

- Identifying key decision points and policy priorities for states.
- Outlining policy options available for states.
- Performing analysis to quantify potential "woodwork" costs.
- Conducting analysis on amount of potential federal funding related to Medicaid eligibility expansion.
- Facilitating stakeholder discussions regarding state options.
- Evaluating the financial and operational changes that will be required as a result of Medicaid eligibility expansion (or alternative approaches) and the Exchange.

CONTACT MERCER

Mercer is available to begin discussions with states regarding the Medicaid expansion decision and what it means for your program.

States can submit questions to Mercer via email to michele.walker@mercer.com.

For more information:

ATLANTA
+1 404 442 3100

MINNEAPOLIS
+1 612 642 8600

PHOENIX
+1 602 522 6500

WASHINGTON DC
+1 202 331 5200

www.mercer-government.mercer.com

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