



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE MELISSA SARGENT

FROM: Brian Larson, Staff Attorney

RE: State Flexibility Regarding Medicaid Expansion

DATE: July 23, 2014

This memorandum responds to your request for information regarding state flexibility with respect to the expansion of Medicaid under the federal Affordable Care Act (ACA). A restatement of your request is included below, along with my response. This is preceded by a background section describing relevant aspects of federal law.

Background

The ACA, as enacted by Congress, was to extend Medicaid eligibility to all non-Medicare eligible individuals, under age 65, with incomes at 133% of the federal poverty level (FPL) or lower, beginning January 1, 2014. When included with the standard 5% income disregard available under the ACA, this expansion of Medicaid created a national eligibility standard based on income at 138% FPL or lower.

To help fund the expansion, the ACA required enhanced federal matching funds for coverage of the so-called “newly eligibles” (i.e., individuals not eligible under pre-ACA eligibility requirements, but who qualify under the expansion). The percentage of the federal government’s contribution for coverage for newly eligibles will be as follows:

- 100% federal funding through 2016.
- 95% federal funding in 2017.
- 94% federal funding in 2018.
- 93% federal funding in 2019.
- 90% federal funding in 2020 and subsequent years.

The Supreme Court, in *National Federation of Independent Business v. Sebelius*, held that the ACA provision authorizing the Secretary of Health and Human Services to cut off funds for non-compliance with Medicaid was unconstitutional as applied to the Medicaid expansion. As a result, the expansion became optional for the states. A state that does not adopt the ACA's minimum eligibility standard based on 138% FPL income will not, on that basis, be denied federal funding for its existing state Medicaid program.

Discussion

You have requested information concerning state flexibility to expand Medicaid in 2015 or beyond. Based on our discussion, I have interpreted this as a two-part question:

- May the state expand Medicaid to cover childless adults up to 138% of the FPL, in 2015 and beyond, and still qualify for enhanced federal matching funds?
- If the state were to expand Medicaid to cover childless adults up to 138% FPL in 2015 or beyond, could the state opt out of the expansion at a later time without jeopardizing its remaining Medicaid funding?

These questions are not directly addressed in the text of the ACA, nor elsewhere in federal statutes. However, based on current guidance from the federal Centers for Medicare and Medicaid Services (CMS), it appears that the answer to these questions is *yes*. The CMS guidance that addresses these issues was published on December 10, 2012, as a frequently asked questions (FAQ) document. The FAQ document is attached for your reference. In answer #24, beginning on page 10 of the FAQ, the FAQ confirms that "there is no deadline" by which a state must make a decision regarding expansion. The answer goes on to provide as follows:

While states have flexibility to start or stop the expansion, the applicable federal match rates for medical assistance provided to 'newly eligible individuals' are tied by law to specific calendar years outlined in the statute: states will receive 100 percent support for the newly eligible adults in 2014, 2015, and 2016; 95 percent in 2017, 94 percent in 2018, 93 percent in 2019; and 90 percent by 2020, remaining at that level thereafter.

In addition, the issue of state flexibility regarding the Medicaid expansion is addressed in answer #25, on page 11, which reads along with its question as follows:

25. If a state accepts the expansion, can a state later drop out of the expansion program?

A. Yes. A state may choose whether and when to expand, and, if a state covers the expansion group, it may decide later to drop the coverage.

Based on this current CMS guidance, it appears that a state may expand Medicaid in 2015 or beyond with enhanced federal matching funds. According to the FAQ text, there is no deadline for states to make a decision regarding expansion. After a state chooses to expand, the coverage of the expansion population will qualify for the enhanced federal matching rate in effect in the year in question (thus, 95% in 2017, etc.).

Also, based on this current CMS guidance, it appears that a state may opt out of the expansion without jeopardizing remaining Medicaid funding. The FAQ clarifies that if a state covers the group known as “newly eligibles,” the state may decide later to drop the coverage.

These interpretations of ACA provisions may be revised in subsequent guidance issued by CMS.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

BTL:jal

Attachment