

Last month's Supreme Court decision, [National Federation of Independent Business v. Sebelius](#), brought clarity to the future of health care reform and the implementation of the Affordable Care Act (ACA). The following represents PHLP's initial analysis of the ruling and its implications. In the weeks ahead, PHLP will provide more perspective on how the ruling impacts Pennsylvanians.

The impact of the decision is dramatic: it maintains all aspects of health reform including the requirement that individuals obtain coverage; insurance reforms that guarantee individual's access to coverage regardless of pre-existing medical conditions; creation of health insurance exchanges and premium tax subsidies; and, with some limitations, the Medicaid expansion to 133% of the poverty level. Attention will now turn from whether and if reform will happen to how and at what pace. The decision puts Harrisburg—and the Corbett administration in particular—in the driver's seat to create and operate state health insurance exchanges and to modernize its Medicaid system.

The Decision: A sharply divided Court ruled that the ACA requirement for individuals to have insurance or pay a tax penalty is constitutional. In a surprise move, the Court declared the enforcement mechanism for expanding Medicaid to 133% of the poverty level to be overly coercive. In short, the Court did not strike down the Medicaid expansion. It did hold that the Secretary of Health and Human Services could not terminate all Medicaid funding for a state that does not implement the expansion.

Impact on the ACA: With the exception of the ruling that states cannot have their Medicaid funding withheld as a penalty for failure to expand Medicaid, the Court leaves intact the entire ACA, most notably:

- The requirement that individuals obtain coverage or pay a tax penalty;
- The law's insurance reforms including those that guarantee individuals' access to coverage regardless of pre-existing conditions and do not allow premiums to vary based on health status or gender;
- Federal funding for the creation of health insurance exchanges in every state in the country;

- Substantial premium and cost sharing subsidies to those with incomes under 400% of the poverty level to purchase insurance through Exchanges; as well as tax credits for small businesses; and,
- Insurance reforms such as premium rebates when insurers exceed standardized medical loss ratio, and reviews of premium increases for individuals and small businesses.

Implications for the ACA Medicaid Expansion: Pennsylvania now confronts a new landscape. Expansion of Medicaid programs to cover **all** Pennsylvanians under the age of 65 with income below 133% of poverty (*i.e.*, annual income of \$14,404 for a single person, and \$30,657 for a family of four) is a lynchpin for successfully providing insurance coverage and bending the cost curve. The coverage expansion is an attractive option offering Pennsylvania the opportunity to provide health insurance to an estimated 680,000 of its lowest income residents and driving new revenue to health care providers—almost entirely funded by the federal government. The Medicaid expansion is 100% funded by the federal government for the first three years scaling back gradually to 90 percent of the costs of the Medicaid expansion by 2020 and thereafter.¹ For the six year period (2014-2020), federal spending on Medicaid expansion in Pennsylvania alone is estimated to be at least \$17 billion.²

The Court decision still requires states to change how they determine eligibility for Medicaid and CHIP. The ACA requires electronic verification systems, real-time eligibility determinations, and prompt enrollment into coverage. Pennsylvania’s current method—documentation of eligibility through paper proof—is expensive and inefficient. These new requirements will increase state administrative efficiencies. There is an unprecedented opportunity for federal support. HHS has made funds available for states to make Medicaid eligibility system upgrades, with a match rate of 90 percent. To date, 28 states have received match grants for upgrades to their eligibility systems.³ Pennsylvania has not submitted a plan or applied for funding for Medicaid Eligibility system upgrades. For more detail see [*Meeting the Expectations of the Affordable Care Act: Implications for Eligibility, Enrollment & Renewal in Pennsylvania’s Medicaid and CHIP Programs*](#), A WHITE PAPER CO-AUTHORED BY COMMUNITY LEGAL SERVICES AND PHLP (March 2012) (available at www.phlp.org).

¹ For three years beginning in 2014, the federal government will reimburse states 100 percent of the cost of expanding Medicaid eligibility. The reimbursement decreases to 95 percent in 2017, and 90 percent in 2020.

² Medicaid Coverage and Spending in Health Reform, KAISER COMMISSION ON MEDICAID AND THE UNINSURED <http://www.kff.org/healthreform/upload/medicaid-coverage-and-spending-in-health-reform-national-and-state-by-state-results-for-adults-at-or-below-133-fpl.pdf> (last visited July 9, 2012)

³ *Pennsylvania’s Adoption of Key Medicaid Options*, THE KAISER FAMILY FOUNDATION, STATEHEALTHFACTS.ORG, <http://www.statehealthfacts.org/profileind.jsp?rep=120&cat=4&rgn=40> (last visited July 9, 2012)

Implications for Exchanges: With the Supreme Court case decided, Pennsylvania must pay more attention to HHS certification of state exchanges by January 1, 2013. One immediate and looming deadline is November 16, 2012—the date for Pennsylvania to submit its exchange implementation plans to the HHS Secretary.

In November 2011, the Corbett administration announced it would pursue a state-based health insurance exchange. Since then, Pennsylvania has delayed action and passed no authorizing legislation. The critical period for passage of enabling legislation will be the three to four week session in September and October before the legislative session closes for the campaign season.

Assuming Pennsylvania enacts exchange legislation, it will still have a difficult time achieving full certification from HHS to operate its own exchange. However, HHS' regulations give Pennsylvania other options: conditional certification of a state Exchange or a state/federal partnership Exchange. Conditional certification allows states that are making substantial progress toward meeting the requirements for a state-run Exchange more time to prove their readiness to operate an Exchange by October of in 2013. In a state/federal partnership, Pennsylvania would have the option to provide Qualified Health Plan management, oversee the in-person consumer assistance functions or both. Pennsylvania would also have the option to operate the re-insurance function of the ACA and to maintain their role in determining eligibility for Medicaid and CHIP.

Given the tight timelines and the political ambivalence surrounding the ACA, it is highly likely that Pennsylvania's only option is a partnership Exchange.

What's Ahead: The political repercussions of the Supreme Court's decision will dominate the news but, very quickly, the practical implications will come to the forefront. States like Pennsylvania that have been reluctant to implement the ACA are likely to accelerate their efforts.