

# UTAH'S OPTIONS AFTER THE SCOTUS DECISION

An Update on the Impact  
of the U.S. Supreme Court Decision  
on Implementation of the Affordable Care Act

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For the Health System Reform Task Force  
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# Goal

- ⦿ Review the Supreme Court ruling
- ⦿ Identify state options and policy decisions
- ⦿ Suggest a framework for managing the issues

# The Patient Protection and Affordable Care Act (ACA)

- ◎ The Patient Protection and Affordable Care Act (P.L. 11-148), enacted March 23, 2010
- ◎ Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), enacted March 30, 2010

# Challenge to the ACA

- The plaintiffs argued that the requirement for an individual to purchase health insurance was a violation of Congress's powers under the Commerce Clause.
- The plaintiffs argued that the Medicaid expansion up to 138% of the FPL and the authority of HHS to withhold all Medicaid monies for failure to comply was coercive and a violation of Congress's spending power.

# Supreme Court Decision - Individual Mandate

- ◎ The individual mandate is constitutional under Congress's taxing power. An individual must either purchase health insurance or pay a tax to the federal government.
- ◎ There are certain exemptions from the individual mandate (income and affordability, religious exemptions, tribal affiliation).

# Supreme Court Decision - Medicaid Expansion

- ◎ Congress may provide financial incentives and conditions for a state to expand Medicaid.
- ◎ Congress may not withhold all Medicaid money from a state that declines to expand the Medicaid program. The Court found this provision to be a “gun to the head” of the states, not merely a “relatively minor encouragement.”

# Supreme Court Decision - Medicaid Expansion

- ◎ Chief Justice Roberts said:
  - “What Congress is not free to do is to penalize States that choose not to participate in the new program by taking away their existing Medicaid funding.” (page 55)
  - “In light of the Court’s holding, the Secretary cannot apply 1396c to withdraw existing Medicaid funds for failure to comply with the requirements set out in the expansion.” (page 56)

# Clarity for Medicaid?

- ◎ We know that:
  - a state has the option to expand the income eligibility ceiling to 138% FPL beginning 1/1/14 and receive 100% federal funding through 2016, with a phase-out to 90% through 2020; and
  - HHS may not take all of the state's Medicaid match money if the state does not expand Medicaid .

# Unanswered Questions – Medicaid Expansion

- ◎ What does the Court mean by the “new program” and the “expansion”?
  - Is the “new program” limited to the expansion of eligibility to 138% of poverty for all individuals?
  - Does the “new program” include other Medicaid reforms in the ACA ?
  - Does the “new program” include maintenance of effort?

# Does “New Program” Include Other ACA Medicaid changes?

- Eliminate asset test (except for long-term care)
- Expand coverage to foster care graduates through age 25
- Presumptive eligibility by hospitals
- Legal immigrants < five years may enroll
- Disproportionate share hospital payments decrease
- Pay primary care providers at Medicare rates for 2013, 2014 with 100% federal match

# Will Congress, HHS, or Courts Clarify?

- Will the “new program” apply only to the eligibility expansion?
- Will a choice not to expand negatively affect a state-based exchange’s use of federal data services?
- Could Utah receive a preferred-match-rate expansion after 1/1/14? At something less than 138% FPL?
- Could pending or future waiver requests be jeopardized if Utah rejects the expansion?
- Is this the next round of litigation?

**The ACA is LAW.  
What Are Utah's  
Options?**

# Requirements for Compliance with the ACA

- ⦿ Utah must establish an ACA compliant exchange, or the federal government will run an exchange in the state.
- ⦿ By November 16, the Governor must declare Utah's intent to establish an exchange by sending a letter to HHS.
- ⦿ If Utah establishes an exchange, it must meet certain functional criteria by January 1, 2013.
- ⦿ Utah must decide if it will expand Medicaid eligibility and accept the "new" Medicaid program.

# EXCHANGE OPTIONS

# Exchange Options

- **Option One**

Utah is not ready to commit to a state run ACA compliant exchange in 2014. Do NOT send a letter on November 16 declaring Utah's intent to establish an exchange, and do NOT certify in January 2013 that the state will be capable of running an exchange in 2014.

- **Option Two**

Work to establish and operate a federally compliant exchange in 2014, either as a state/federal partnership, or as a state based exchange. Send a letter of intent on November 16, and certify in January 2013 that the state will be capable of running an exchange in 2014.

# Results of Option One – No State Based ACA Exchange

# 2014 Federal Exchange

- The federal government will establish and run an individual and small employer exchange in Utah in 2014.
- Utah can apply to run an ACA compliant exchange beginning in 2015, or later.
- Federal exchange grant money is available for 10 different application periods that extend through December 2014.
- Efforts to establish an exchange after December 2014 will be without federal grants.

# State Regulations

- Utah may select the essential health benefits that will be used in the state and a federal exchange.
- Utah may run the re-insurance program that applies to the federal exchange and the state market to mitigate the effects of high risk individuals.
- Utah can regulate the role of navigators in the exchange.

# Grow Utah's Health Exchange

- ◎ Utah can continue to develop the defined contribution market offered in Utah's Health Exchange.
  - No premium subsidies
  - Promote consumerism and portability
  - Could provide a foundation for future ACA exchange development
  - Could remain a state agency or be converted to an independent entity
  - Could provide small employers an alternative to federal exchange

# Results of Option Two – Create a State based ACA Exchange

# Work to Establish An ACA Exchange in 2014

- ⦿ Enter the decision “forest” of operational and information technology decisions associated with establishing and running two exchanges.
- ⦿ Develop the exchange on our own or in partnership with the federal government.
- ⦿ Develop a state-based risk adjustment methodology, and obtain federal approval by fall 2013, or accept federal risk adjustment methodology in 2014.

# Deadlines for Option Two

- ⦿ Governor sends a letter of intent to HHS on November 16 declaring Utah's intent to establish an ACA compliant exchange and designating a representative from the state who can negotiate contracts with HHS.
- ⦿ Utah must have an exchange blueprint approved by HHS by January 1, 2013.
- ⦿ Utah's exchange must be self-sustaining by 2015.

# Deciding Between Options 1 and 2

- ⦿ Does Utah need a risk adjustment model specific to Utah, or is the federal model adequate?
- ⦿ Does Utah have the resources necessary to establish and operate an ACA compliant exchange by 2014?
- ⦿ Does the federal government have the resources to develop and run an exchange by 2014?
- ⦿ What are the potential costs and benefits of running an ACA compliant exchange for Utah?

# MEDICAID OPTIONS

# Medicaid Expansion Options

## ⦿ Option One:

- Utah may expand income eligibility ceiling to 138% FPL beginning 1/1/14 and receive 100% federal funding through 2016, with a phase-out to 90% through 2020.

## ⦿ Option Two:

- Utah may choose to continue the state's current Medicaid program.

# Medicaid Must-do's? (subject to uncertainty from SCOTUS decision)

- Eliminate asset test (except for long-term care)
- Expand coverage to foster care graduates through age 25
- Presumptive eligibility by hospitals
- Legal immigrants < five years may enroll
- Disproportionate share hospital payments decrease
- Pay primary care providers at Medicare rates for 2013, 2014 with 100% federal \$. Then what?

# Considerations for Medicaid Options Under the ACA

- The cost of Medicaid expansion in the “new” Medicaid program is initially funded by the federal government, but funding is reduced by 2020 when the state will be responsible for 10% of the cost.
- Without Medicaid expansion, the Supreme Court decision creates a group of individuals who will not be eligible for state Medicaid programs, are below 100% of the FPL, and will not be eligible for premium subsidies in the exchange. What about the “gap” people?

# Medicaid Considerations – cont.

- ⦿ What is the budget impact for the state when the federal subsidies decrease and the state must pay 10% of the cost of Medicaid expansion?
- ⦿ What is the cost to the state under the current Medicaid program if enrollment increases for individuals currently eligible but not enrolled?
- ⦿ Can Utah negotiate with HHS regarding Medicaid expansion – (take it or leave it?)

# Impact on Health Care Providers in the State

- ◎ Hospitals and other health care providers will experience significant reductions in reimbursements under the provisions of the ACA.
  - The intended trade-off for the reductions in reimbursements was that the previously uninsured would have insurance or Medicaid coverage.
  - The Medicaid and premium subsidy “gap” will cause financial consequences for providers.

# Will HHS or Congress Act?

- The individuals who fall into the ACA coverage gap are the same individuals who are currently not covered by Utah's Medicaid program.
- Will Congress or HHS address this gap in coverage and eligibility for premium subsidies?
- Will Congress address provisions of the ACA that were related to the Medicaid expansion, such as reductions in DSH payments for hospitals?

# How Can the Task Force Manage the Issues?

# Continue Work Groups

- The regulation of navigators
- Essential health benefits
- High-risk enrollees and a state-based reinsurance program
- State-based risk adjuster methodology
- Medicaid delivery models and mental health
- Health Care Compact

# Monitor Federal Deadlines

- ⦿ Deadline for state designation of essential health benefits
- ⦿ Deadline for state based re-insurance decision
- ⦿ November 16 letter from the Governor to HHS declaring Utah's intent regarding:
  - A state based exchange
  - A state/federal partnership exchange
  - A state based re-insurance program
  - A state based risk adjustment program

# Federal Grant Opportunities

- ◎ HHS announced 10 different grant opportunities for states, with distribution through December 2014.
  - Will the state submit grant applications?
  - What are the requirements the state must meet for the grant applications?
  - How does the Legislature want to monitor the grant applications and the use of grant funds?

# Questions?

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