

Healthcare Policies: Changing Landscapes



Sarah Freymann Fontenot, BSN, JD, CSP

Learning Collaborative Summit

Wednesday, May 23, 2018

Notice

Sarah Freymann Fontenot, J.D., the Regional Healthcare Partnerships 9, 10 and 18 present this seminar with the express understanding that:

- 1.no attorney-client relationship exists,
- 2.neither Ms. Fontenot nor the RHPs are engaged in providing legal advice, and
- 3.that the information is of a general character.

You should not rely on this information when dealing with personal legal matters; rather legal advice from retained legal counsel should be sought.

Agenda

- **Covering the poorest among us: *outlook for “uncovered lives” and basic primary care & prevention***
- **Containing Costs through Innovation: *Work Requirements? Alternative Health Insurance Vehicles?***
- **APMs, ACOs, Medicare Shared Savings Program: *Solutions?***
- **Leading in Uncertain Times: *Your Role***
- **Questions, Answers: *Discussion***

The ACA: A Multi-Layered Cake



1. You are on **Medicaid**
2. You are insured through your **employer** [>50 ees]
3. You are in the **exchange with a subsidy**
4. You are insured through the **exchange at full cost**
5. You have insurance **outside of exchange**
6. You are not covered [**penalty**]

The ACA Medicaid Plan

- Standardized State **Medicaid eligibility requirements** (which varied significantly on income, age, gender, the number of dependents, and other specific requirements).
- Increased **income eligibility levels for everyone in a state to 138% of the Federal Poverty Level** (about \$16,105 for an individual and \$32,913 for a family of four in 2015).
- Federal **funds to pay to pay 100% of the cost of those newly covered lives for 3 years** (2014 through 2016) reducing the federal share to **90% by 2020**.

Insurance Exchanges

●

**The cost of your insurance may not exceed
9.5% of your income**

●

National Federation of Independent Business v. Sebelius [2012]

Majority Opinion

1. Chief Justice John G. Roberts
2. Stephen G. Breyer
3. Elena Kagan
4. Ruth Bader Ginsburg [would have allowed it]
5. Sonia Sotomayor [would have allowed it]

Dissent [Rejected Expansion Entirely]

6. Antonin Scalia
7. Anthony Kennedy
8. Samuel A. Alito
9. Clarence Thomas

NYT [June 29, 2012]

Medicaid Expansion: NO!

2012

*National Federation of
Independent Business v.
Sebelius*



24 states said “NO!”

1. After 2016 (when the Federal share of the Expansion Cost goes from 100% to 90% by 2020) the costs are prohibitive,
2. Would be much worse if the Federal Government backed off their commitment down the road.

Medicaid Expansion: NO!

3. “Most importantly, opt-out states said that the **expansion presented untenable questions about federalism and the role of the Federal government generally** an important subject that has raised ire on both sides of the argument since at least the days of Alexander Hamilton.”

From “Hell No” to “Hello”: Medicaid Expansion in 2016

Fontenotes #14 (1/21/16)

Medicaid Expansion: YES!

[2016 figures]

1. **In “Expansion States” the number of uninsured has plummeted.** Before the ACA there were 14 states that had more than 1 in 5 adults without insurance now only Texas retains that dubious honor
2. **As insurance has increased, so has access to primary care.** The number of confirmed cases of diabetes has surged in expansion states meaning that people with the disease have been found. If you know who the diabetics are you can provide treatment avoiding all sorts of problems such as loss of sight, loss of limbs, and death. Obviously this is better for the people but it also (arguably) saves the state money as the end-stage care of these people usually falls in the category of charity care (which largely falls on the states)

Medicaid Expansion: YES!

[2016 figures]

- 3. The ability to bill Medicaid for Emergency Room intervention (care that was formerly provided without any reimbursement at all) has been an enormous boon for hospitals in expansion states.**
- In those states the number of Medicaid inpatients increased by 16.3% while patients without any compensation dropped by 36.9%.
 - As one example, the Cleveland Clinic saw its charity losses reduced by \$70 million in the first year Ohio expanded Medicaid.
 - The impact of expansion is also demonstrated by the number of hospitals at risk of closure: 8.5% of hospitals in expansion states were in financial crisis last Fall, as compared to 16.5% of hospitals in nonexpansion states.

Medicaid Expansion: YES!

[2016 figures]

4. Business leaders are also troubled by the economic disparities non expansion creates, particularly in the arena of taxes and lost federal revenue.

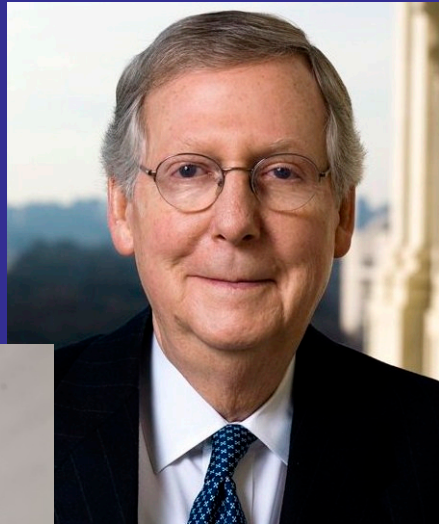
- A widely cited analysis in Texas argues that increasing Medicaid would actually lead to increased economic activity of \$3 billion in 10 years, with 300,000 new jobs each year.

A Parting Offer from Obama

“Federal funds to pay to pay 100% of the cost of those newly covered lives for 3 years (2014 through 2016) reducing the federal share to 90% by 2020.”

In his **2017 Budget** following his last **State of the Union Address**, President Obama offered what may be the ultimate carrot. **Any state that decides to convert to Medicaid expansion can get the same 3 years of Federal support at 100% for 3 years-** just like the original states did. The window that was due to close in 2016 has just been reopened for those states that expand- **whenever that decision is made**

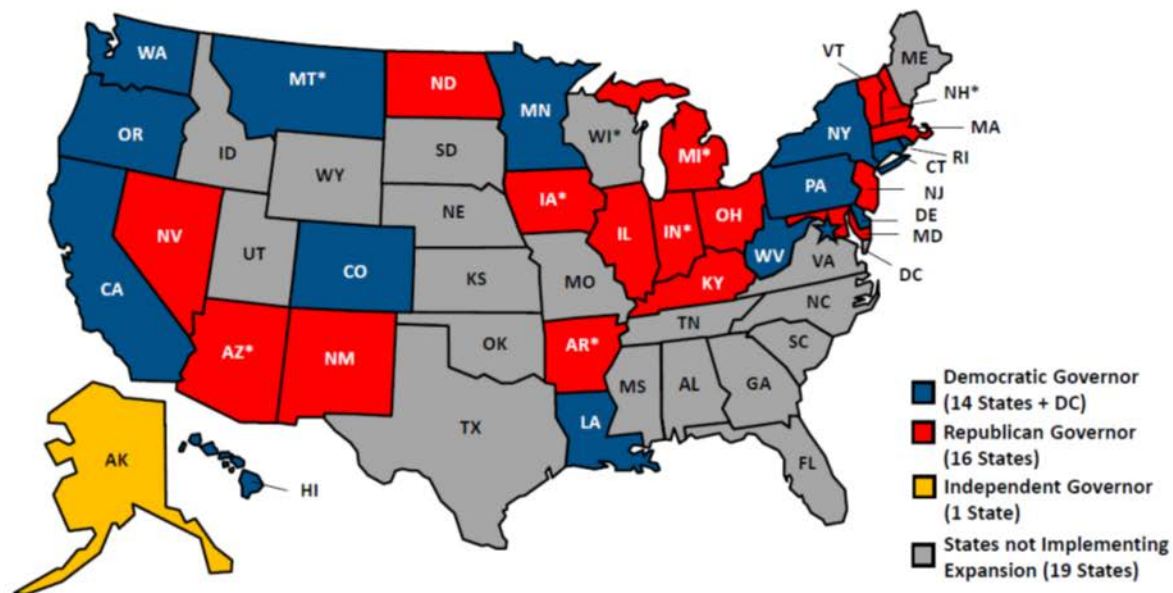
So What Has Happened Since?



What has been happening with Medicaid Expansion the entire time Congress and the President have been trying to kill the ACA?

Expansion in the Red & Blue

**32 STATES EXPANDED COVERAGE FOR ADULTS THROUGH THE ACA EXPANSION
(17 STATES WITH REPUBLICAN OR INDEPENDENT GOVERNORS)**



NOTES: Coverage under the Medicaid expansion became effective January 1, 2014 in all but seven expansion states: Michigan (4/1/2014), New Hampshire (8/15/2014), Pennsylvania (1/1/2015), Indiana (2/1/2015), Alaska (9/1/2015), Montana (1/1/2016), and Louisiana (7/1/2016). Seven states that will have Republican governors as of January 2017 originally implemented expansion under Democratic governors (AR, IL, KY, MA, MD, NH, VT), and one state has a Democratic governor but originally implemented expansion under a Republican governor (PA). *AR, AZ, IA, IN, MI, MT, and NH have approved Section 1115 expansion waivers.

Utah is State #34(ish)

Utah wants to expand Medicaid under the Affordable Care Act. Kind of. The state legislature has passed and Gov. Gary Herbert has signed a bill that would *partially* expand Medicaid through the ACA— up to **100%** of the federal poverty level (about \$20,000 for a family of three) **instead of the 133%** threshold prescribed in the health care law. **The Utah plan would also institute a work requirement.**

It's a big deal. Utah is one of the few states to move toward Medicaid expansion under the Trump administration, and the expansion would cover more than 70,000 people in the state.

Utah's quixotic Medicaid expansion plan, explained
Vox Apr 2, 2018

<https://www.vox.com/policy-and-politics/2018/4/2/17189878/utah-medicare-expansion-waiver-massachusetts-voxcare>

Why the Shift?



States Reconsidering Medicaid Expansion After Trump Administration Approves Work Requirements

Republican-led states are giving Medicaid expansion “another look **after the Trump administration said last month they can require those on the program to also hold down jobs**” ... with efforts in Congress to repeal and replace the ACA “stuck in neutral, **state Republicans from the Old Dominion to Kansas to Utah say his decision to allow work requirements makes expanding the program** – a key goal of the 2010 health law’s authors – more palatable.”

Washington Times (2/19/18)

Current “No” States (4/16/18)

1. Alabama
2. Florida
3. Georgia
4. Idaho
5. Kansas
6. Mississippi
7. Missouri
8. Nebraska
9. North Carolina

10. Oklahoma
11. South Carolina
12. South Dakota
13. Tennessee
14. **TEXAS**
15. Virginia
16. Wisconsin
17. Wyoming

These State Currently Have Activity

1. **Idaho-** Ballot initiative underway, Governor expresses concern for “some population” if not full expansion
2. **Kansas-** Senate reconsidering- public demonstrations play a role?
3. **Nebraska-** On Ballot
4. **North Carolina-** Republican led effort to Expand but in “no hurry”
5. **Tennessee-** Governor is working hard for it
6. **Virginia-** Large amount of activity with very strong support from Governor **-Next to flip?**

My Tally: April 2018

These States Remain Silent in The News

1. Florida
2. Georgia
3. Mississippi
4. Missouri
5. Oklahoma
6. South Carolina
7. South Dakota
8. TEXAS
9. Wisconsin
10. Wyoming



but keep in mind...

●
Medicaid was passed in **1965** but not fully implemented until the last holdout state (Arizona) got on board in **1982!**
●

Agenda

- Covering the poorest among us: *outlook for “uncovered lives” and basic primary care & prevention*
- **Containing Costs through Innovation: *Work Requirements? Alternative Health Insurance Vehicles?***
- APMs, ACOs, Medicare Shared Savings Program: *Solutions?*
- Leading in Uncertain Times: *Your Role*
- Questions, Answers: *Discussion*

Containing Costs through Innovation

•
**Medicaid Work
Requirements**
•

•
**Alternative Health
Insurance Vehicles**
•

Trump Administration Clears Way To Require Work For Some Medicaid Enrollees

...The announcement came in a 10-page memo with detailed directions about how states can reshape the federal-state health program for low-income people. The document says **who should be excluded** from the new work requirements- including **children and people being treated for opioid abuse**- and offers suggestions as to what counts as “work.” Besides employment, it can include **job training, volunteering or caring for a close relative**... Adding a work requirement to Medicaid would mark one of the biggest changes to the program since its inception in 1966.

Kaiser Health News [1/11/18]

About 1.7 million Medicaid beneficiaries could be impacted by work requirement proposals in 10 states

Three states- Indiana, Arkansas and Kentucky- have already had work requirements approved by the Trump administration. **Requests from the other seven states are still pending...** Most of the states are seeking waivers to impose work requirements on adults who gained coverage through ObamaCare's Medicaid expansion... The administration told state Medicaid directors in January it would support states seeking waivers to issue work requirements, or community engagement requirements. It said **those requirements would “promote better mental, physical, and emotional health” and help families “rise out of poverty and attain independence.”**

The Hill [4/16/18]

How Trump May End Up Expanding Medicaid, Whether He Means To Or Not

Republicans in Idaho, Kansas, North Carolina, Utah, Virginia, and Wyoming are launching fresh efforts to expand Medicaid now that the Trump Administration has approved work requirements... **moderate Republicans hope to win over their conservative colleagues by packaging the expansion with work requirements** or other limits on who is eligible for the program, under what circumstances and for how long [although] their chances of success vary widely depending on the state.”

Washington Post [1/28/18]

How Trump May End Up Expanding Medicaid, Whether He Means To Or Not

●
Even in Texas?
●



But At What Cost?



How? And At What Cost?

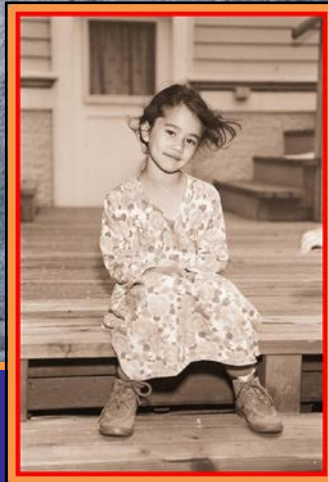
Mental Health Issues



Child Care Issues



What Jobs are Available?



Will Work Work?

•
**How many people on
Medicaid are already
working?**
•

•
**Will it survive a court
challenge?**
•

Containing Costs through Innovation

•
**Medicaid Work
Requirements**
•

•
**Alternative Health
Insurance Vehicles**
•

Association Health PLans

The Trump administration is turning to regulations as their last, best hope of chipping away at ObamaCare in 2018 ...

The administration on Thursday eased rules on **small businesses that band together to buy health insurance** through what are known as association health plans (AHPs) [which] would **allow associations to purchase cheaper health insurance that won't cover the ten “essential health benefits”** mandated under [the ACA]

The Hill [1/7/18]

Short Term Health Plans

Experts Worried About Impact Of Short-Term Health Plans On ACA Marketplaces

An estimated 500,000 to 1 million customers across the country have purchased short-term individual-market plans, which **do not have to comply with ACA market reform rules**. [these plans] are attractive to consumers because of lower premiums, and insurers which offer the plans charge less because they **don't have to sell plans to people with pre-existing conditions or cover such conditions after customers buy policies**.

Modern Healthcare [1/1318]

What Happens Next?

People can't afford insurance
People leave the insurance market



The risk corridor for the insurance industry shifts dramatically



Policy pricing increases across the market (including the private off-exchange market)

Agenda

- Covering the poorest among us: *outlook for “uncovered lives” and basic primary care & prevention*
- Containing Costs through Innovation: *Work Requirements? Alternative Health Insurance Vehicles?*
- **APMs, ACOs, Medicare Shared Savings Program: *Solutions?***
- Leading in Uncertain Times: *Your Role*
- Questions, Answers: *Discussion*

Alternative Payment Models



APMs



ACOs



**Medicare Shared
Savings Program**

Problem #1- RISK

Few Providers Ready To Accept Risk Under MACRA's Alternative Payment Models

“Hospitals, health systems and physician groups are currently figuring out which of the two possible reimbursement paths they will take: or accepting payment adjustments based on their performance under already existing alternative payment models.”

Health & Life Sciences Law Daily [8/15/16]

Example: Final Rule APM Option

Table 1: Requirements for APM Incentive Payments for Participation in Advanced APMs
(Clinicians must meet payment or patient requirements)

Performance Year	2017	2018	2019	2020	2021	2022 and later
Percentage of Medicare Payments through an Advanced APM	25%	25%	50%	50%	75%	75%
Percentage of Medicare Patients through an Advanced APM	20%	20%	35%	35%	50%	50%

Problem #2- Rural America

“CMS's proposal... helps most practices solve the dilemma of whether to participate in MIPS or attempt an exemption via an Advanced Alternative Payment Model (APM)... the list of what would qualify as an advanced APM is so narrow, that virtually **no physicians are going to be advanced APMs anytime soon.**”

3 Ways to Prep Physicians for MACRA's Unknowns
Healthleaders Media, May 5, 2016

Problem #2- Rural America

- Are there enough lives to make the math work in rural communities?
-



Agenda

- Covering the poorest among us: *outlook for “uncovered lives” and basic primary care & prevention*
- Containing Costs through Innovation: *Work Requirements? Alternative Health Insurance Vehicles?*
- APMs, ACOs, Medicare Shared Savings Program: *Solutions?*
- **Leading in Uncertain Times: *Your Role***
- Questions, Answers: *Discussion*

Leading in Uncertain Times: *Your Role*

How are **YOU** going to control **COST**?



How are **YOU** going to achieve **QUALITY**?



How are **YOU** going to increase **ACCESS**?



How are **YOU** going to support **INNOVATION**?

Agenda

- Covering the poorest among us: *outlook for “uncovered lives” and basic primary care & prevention*
- Containing Costs through Innovation: *Work Requirements? Alternative Health Insurance Vehicles?*
- APMs, ACOs, Medicare Shared Savings Program: *Solutions?*
- Leading in Uncertain Times: *Your Role*
- **Questions, Answers: *Discussion***

And Now



Thoughts?



Comments?



Questions?

Thank You!

Thank You for Your
Attention



Thank You for The
Work You Do

It has been my pleasure
-Sarah

