



# Florida's Medicaid suit against Obama an uphill battle

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It's going to be tough for Rick Scott to successfully argue the Obama administration is bullying him on Medicaid.

The administration is dangling a pot of funds used to cover the costs of the uninsured as bait for Florida and other states to accept Obamacare's Medicaid expansion — a move that has prompted the Republican governor to plot a lawsuit, insisting he's being coerced into accepting a major part of the Affordable Care Act that's supposed to be optional.

"It is appalling that President Obama would cut off federal health care dollars to Florida in an effort to force our state further into Obamacare," Scott said on April 16.

Opponents of the 2010 health care law already won part of one major court battle using a coercion argument. Three years ago, in *NFIB v. Sebelius*, a case challenging the law's constitutionality led by Florida, the Supreme Court agreed that the administration can't withhold all of a state's Medicaid funds if it refuses to expand the program. That led to nearly half the states opting out of it.

Yet that "bullying" argument probably won't work as well in this case, experts of both political stripes say.

For one thing, no one disputes that the administration has the authority over whether to renew the pot of uncompensated care funds, which ensure hospitals are paid for patients who lack health coverage but don't qualify for Medicaid.

States can apply for the funds, which are provided as a type of Medicaid "waiver," but the money runs out every few years. The administration is treating renewal as a tool to prod Florida and

other states toward expanding Medicaid. But even if states chose to expand, officials could still halt the uncompensated care dollars if they chose.

"It's a tough row to hoe, it's always difficult to sue the king and win," said Kip Piper, a health care consultant with Sellers Dorsey. "And you're suing over an issue that is administrative discretion, and federal judges historically defer to that discretion."

And the funding is a small share of Florida and other states' budgets — much less than the 10 percent threshold Chief Justice John Roberts referred to in his 2012 *NFIB* opinion. Roberts wrote that it's coercive for the federal government to deprive states of more than 10 percent of their budgets by withholding Medicaid dollars.

Even the libertarian Cato Institute's Michael Cannon, a vigorous opponent of the health care law, doesn't think the 2012 case helps Scott this time around.

"I don't think *NFIB* provides [Scott] what he needs to allege the government's coercion," Cannon said.

Sara Rosenbaum, a health policy professor at George Washington University, called Scott's blackmail allegations "nonsense." "No one's making Scott expand his program," she said.

With only a few days left in the legislative session, Florida senators are trying to convince House members and Scott to pass a version of Medicaid expansion, but it's looking less and less likely they'll succeed.

That will leave Scott and the administration in their showdown of sorts. The Florida attorney general hadn't yet filed a lawsuit as of Thursday, but is planning on doing so, a spokesman said. Administration officials haven't said for sure they'll cut off the uncompensated care funds, but indicated last summer they probably wouldn't grant a renewal.

While Scott will face challenges making his case in court, there are a few arguments that could help him, experts say.

Florida and other states collect the uncompensated care funds by applying for what's known as a Medicaid waiver. Waivers come in many different forms, but they're all temporary authorizations for a state to augment its program or run it a little differently.

Lots of Medicaid money runs through waivers — as much as a quarter or third of total spending — and the administration has a lot of control over them. Scott could argue broadly that the administration is exerting too much control over states by expanding waivers too much, Piper said.

Scott could also argue that the administration is motivated by political purposes in withholding the funds, which a court could find troublesome.

"The Obama administration could get into trouble," Piper said. "One way is if the courts looked at this and felt the administration is being arbitrary and capricious in its exercise of authority."