

## Is the Obama Administration Coercing States To Expand Medicaid -- Again?

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Last month, Florida Gov. Rick Scott (R) filed a lawsuit alleging that the federal government is illegally attempting to force states to expand their Medicaid programs by not renewing funding measures for uncompensated care programs.

The lawsuit comes after CMS [in a letter](#) to Florida officials suggested that the state's Low Income Pool (LIP) funding, which is a federal waiver program that helps boost payment rates to hospitals treating Medicaid beneficiaries, could be contingent on the state's decision to expand Medicaid. CMS in the letter said that expanding Medicaid would supply hospitals with more paying patients, create more jobs in Florida and provide the state with billions in additional federal funding.

The agency issued similar warnings to Kansas and Tennessee. Officials in Kansas and Texas [are backing](#) Florida's challenge.

### Considering the Legal Claims

In Florida's lawsuit, the state is once again arguing that the Obama administration is using coercion to achieve Medicaid expansion in the state. Florida used a similar argument three years ago in *NFIB v. Sebelius* over the Obama administration's plans to withhold Medicaid funding to states that opted against expansion. Ultimately, the [Supreme Court ruled](#) that it is coercive for the federal government to deprive states of more than 10% of their budgets by withholding Medicaid dollars.

However, Florida could have a harder time making its case this time around.

Sara Rosenbaum, a health policy professor at George Washington University, said the coercion argument "has no place whatsoever in this" case, noting that *NFIB v. Sebelius* was about withholding core Medicaid program funding. The LIP funding "is not core program funding; it is a little funding that the state received as an add-on."

Carol Weissert, a political scientist at Florida State University, also said she does not believe the coercion argument will hold in court. She wrote in an email, "Waivers are not coerced in any way, but rather are 'bargained' between the federal government and the state."

Michael Cannon, health policy studies director at the Cato Institute and a vocal opponent of the ACA, told the [Washington Examiner](#) that he also does not think the 2012 ruling will help Florida win this case.

However, Kip Piper, a health care consultant at Sellars Dorsey and a former director of Wisconsin's Medicaid program, told the *Examiner* that Florida could argue that the administration is using political arguments to withhold the funds. She said, "The Obama administration could get into trouble," particularly if "the courts looked at this and felt the administration is being arbitrary and capricious in exercise of authority."

### **The Need for Medicaid Expansion**

While the *NFIB v. Sebelius* ruling does not hold a lot of promise in Florida's latest case, it does provide some clarity as to why the Obama administration is working so hard to get states to expand their Medicaid programs.

The ruling allowed nearly half of states to refuse to expand their Medicaid programs, a move that blocked a population of low-income U.S. residents from gaining coverage under the ACA.

Since then, several studies have been released showing the various ways that Medicaid expansion -- or the lack of expansion in some states -- has affected states' [uninsured rates](#) and [hospital finances](#).

In a recent "[Road to Reform](#)" column, *California Healthline* Contributing Editor Anthony Wilson examined the arguments for and against expanded Medicaid coverage. He concluded that while "Medicaid might not be ideal coverage ... it's still coverage."

### **Is the Administration Being Coercive?**

To some, *NFIB v. Sebelius* is evidence that the Obama administration is not beyond using coercion to achieve the ACA's goals. However, the current issue over LIP funding and Medicaid expansion is not so black and white.

Charlene Frizzera, a senior adviser at Leavitt Partners, told *Kaiser Health News*, "No one would be shocked to hear that states don't need the [LIP] money because uncompensated care has dropped ... but saying you are taking away this money because you are not expanding is trickier."

In a [Forbes](#) article, Jonathan Ingram and Josh Archambault of the Foundation for Government Accountability were more direct in their denouncement of the Obama administration's move, accusing federal officials of trying to "blackmail states into expanding Medicaid."

However, Rosenbaum maintains the argument is moot. She said, "This is the favorite new thing now with states to claim anything the federal government says they need to do is coercion, and it's ridiculous."

Meanwhile, Weissert wrote that while the Obama administration did coerce states in the *NFIB v. Sebelius* case, there is no coercion in this case.

She noted that CMS, which on Thursday offered Florida a reduced LIP funding amount of \$1 billion, "capitulated on this one."

Federal officials "could have driven a hard bargain in Florida but gave up way too early," Weissert wrote. She added, "I think this means smart states (and most are smart) will have the upper hand in this and other Medicaid bargaining issues (LIP and expansion)."