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A Medicaid Expansion That Flew Beneath the Radar

By Katherine Restrepo – August 13th, 2013

Despite the fact that North Carolina has rejected expanding Medicaid to some citizens — fewer than 500,000 — the state has not rejected the federal health law's Medicaid expansion in its entirety. North Carolina has, in fact, expanded its broken entitlement program.

Under Obamacare, states have the option of extending Medicaid eligibility to *childless adults* living with incomes under 138 percent of the federal poverty level. With the initial passage of the law on March 23, 2010, this provision was mandatory.

If states failed to comply, the feds would take away existing Medicaid funding, resulting in significant state revenue losses averaging more than 10 percent. However, in 2012, the Supreme Court ruled in *NFIB v. Sebelius* that the requirement was coercive.

What remains largely ignored, however, is that the Supreme Court did not explicitly limit its ruling to Medicaid expansion providing benefits to childless adults. Rather, the ruling implies that other Medicaid expansionary provisions under the Affordable Care Act remain optional as well.

Nonetheless, Health and Human Services Secretary Kathleen Sebelius persistently threatens states (PDF) with taking away federal dollars if they fail to implement other expansion provisions.

A recent John Locke Foundation Health Care Update addressed some of North Carolina's budget items that amount to a hefty Medicaid spending increase. The conference report (PDF) confirms that some appropriated funds within the Division of Medical Assistance relate to requirements under the federal Affordable Care Act's vision of achieving universal coverage by expanding the welfare state.

For example, the Affordable Care Act now requires *children* ages 6-18 who live in households earning up to 138 percent of FPL to be covered under Medicaid, but this element of expansion falls under the Supreme Court's final "optional rule." Until now, North Carolina's Medicaid program has covered children in households earning up to 100 percent (PDF) of FPL.

Line Item 70 of the HHS budget addresses the fact that 51,000 children living under 133 percent of FPL who are enrolled in Health Choice, the state's Children's Health Insurance Program, will be transferred to Medicaid. This shift, the report explains, is "In accordance with the Affordable Care Act which requires they be covered under Medicaid instead of Health Choice." Costs will also increase, "As a result of these recipients being eligible for broader benefits under Medicaid than they had when covered under Health Choice." These benefits not offered through Health Choice (PDF) are long-term care services, non-ER medical transportation, and limited dental services.

Keep in mind that Health Choice is North Carolina's State Children's Health Insurance Program, but this government-sponsored program is NOT (PDF) an entitlement program. It is established and funded under the Social Security Act, covering children in families up to 200 percent of FPL who earn too much income or have too much in assets to qualify for full Medicaid benefits but who cannot afford private health insurance. Beneficiaries pay enrollment fees and co-pays for prescription drugs and medical services conditional on annual household income.

One may argue that this "shift" does not expand Medicaid, since these children receive benefits on either Medicaid or Health Choice. This may be true, but Health Choice has an enrollment cap. Therefore, the transfer of recipients onto Medicaid not only increases North Carolina's original Medicaid eligibility standards by 38 percent, but also creates more room for other children to gain coverage through Health Choice.

Yet again, Obamacare creates more perverse incentives, since more families will be able to gain government aid (dependent upon the taxpayer) rather than releasing themselves from the state and seeking private coverage that gives better-quality care.

It may seem unnecessary to address an increase in eligibility of 38 percent of the FPL, but this mandate under Obamacare fulfills the two-part test adopted by the Supreme Court to determine whether the conditions Congress places on an existing grant are unconstitutional. Michael Cannon, health policy expert at the Cato Institute, explains the test that determines whether states face a "gun to the head" of federal funding withdrawals from their Medicaid programs:

The first criterion is whether Congress places the condition on a 'significant' federal grant. The second is whether Congress conditions existing or 'old' federal grants on states' willingness to implement a new, independent program.

Aside from this case, North Carolina has taken the smart steps of refusing to implement a state-run health exchange or the Medicaid expansion provision for childless adults, and currently is taking incremental steps to reform our existing Medicaid program through competitive contracting among multiple managed care organizations. Although this biennium's budget comprises fiscally sound qualities, the HHS portion of the budget still has room to be reined in even further.