

# Medicaid decision looms for Va. in health care debate

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Nothing is more important to health care reform in Virginia than expansion of Medicaid.

With an estimated 1 million Virginians uninsured, the Patient Protection and Affordable Care Act would make up to 425,000 people in the state eligible for Medicaid health coverage beginning on Jan. 1, 2014.

As the U.S. Supreme Court nears a decision within two weeks on the constitutionality of the 2-year-old law, Virginia is preparing for an outcome that would leave most of the act intact, even if the "individual mandate," requiring that almost all Americans have insurance, is overturned.

"If all we get out of the Affordable Care Act is the Medicaid expansion, that wouldn't be a bad thing in terms of coverage for people," said Deborah A. Oswald, executive director of the Virginia Health Care Foundation.

The expansion would most benefit parents who aren't eligible now if they earn more than 24 percent of the federal poverty level, and childless adults, who don't qualify at all unless they are elderly or disabled.

"More than just about any other state, we will benefit from Medicaid expansion because our benefit levels are so low," said John McInerney, health policy director at the Commonwealth Institute for Fiscal Analysis.

But it's not a sure thing. In addition to striking down the entire law, the Supreme Court could rule that the required Medicaid expansion is coercive to Virginia and other states.

"If they do that, the whole thing falls apart," said Dr. Sheldon M. Retchin, vice president for health sciences at Virginia Commonwealth University and chief executive officer of the VCU Health System.

VCU, as the largest provider of uncompensated medical care in the state, has a vital stake in how the law is carried out, especially expansion of Medicaid and corresponding cuts in federal support for hospitals that provide indigent care.

Almost half the people VCU treats are uninsured or covered by Medicaid, which doesn't pay the full cost of their care without significant federal subsidy, Retchin said. "If the cuts were equally distributed, we'd be in big trouble."

On the other hand, he said, Medicaid expansion "will be a windfall for many, many hospitals. They'd be getting money they don't get now."

The net cost of the expansion to Virginia is estimated at up \$2.2 billion through 2022, even though the federal government will pay the full cost for three years and no less than 90 percent thereafter. The federal price tag for Medicaid expansion in Virginia is estimated as high as \$29.2 billion through 2022.

"I'm not sure where that money would come from," said House Speaker William J. Howell, R-Stafford, a powerful opponent of the law in the General Assembly.

Virginia officials also worry about the long-term federal funding commitment with increased pressure to reduce the U.S. budget deficit.

"Ultimately, implementation of (the act) will require significant federal funding for Medicaid and subsidies to purchase insurance," said Secretary of Health and Human Resources Bill Hazel. "Are the feds really going to fund that program long-term?"

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**In addition to** Medicaid, the Affordable Care Act depends on federal subsidies for individuals and tax credits for small businesses to help them buy insurance through health benefits exchanges in every state.

An estimated 100,000 Virginians would buy health insurance through an exchange in 2014, and state officials project the number will rise to as many as 300,000.

Creation of an exchange, either by the state or federal government, would not depend on survival of the individual mandate, health care providers and insurers say, but it would rely on subsidies and Medicaid expansion to work.

If the court strikes down only the individual mandate, "the subsidies are still there. ... You just don't have the penalties," Retchin said.

However, health insurance premiums "would go up significantly," said C. Burke King, president of Anthem Blue Cross Blue Shield in Virginia, the state's largest health insurer.

"Without the mandate, which is designed to ensure that healthy people stay in the insurance pool, that will create a big challenge," King said.

The loss of the mandate also could jeopardize the law's provisions to require insurers to issue policies to people with pre-existing medical conditions and restrict how they rate groups for risk. The guarantee of coverage for children with pre-existing conditions took effect almost two years ago.

But in many ways, the Affordable Care Act already is a fact of life in Virginia.

Almost 63,000 young adults in the state have been able to stay on their parents' health insurance policies to age 26, and some insurers say they won't push the age back to 21 even if the law is struck down.

More than 80,000 senior citizens in Virginia are receiving discounts on prescription drugs when they reach the so-called "doughnut hole" in coverage under the federal Medicare program, and almost 838,000 Virginians on Medicare received free preventive care last year.

Virginia insurers are investing in accountable care organizations, expanded use of electronic health records and other changes in how they traditionally have done business.

"We're not going to go back," said Doug Gray, executive director of the Virginia Association of Health Plans.

Virginians could receive millions of dollars in rebates from insurance companies that charged high premiums without spending at least 80 percent of the money on actual medical care.

The Kaiser Family Foundation estimates that Virginians will be owed more than \$24.1 million in rebates for small group policies alone, as well as almost \$9 million in the large group market and almost \$8 million for individual policies.

"This is first time that plans are required to meet a specific medical loss ratio so they don't pad their pockets with profits," said Jill A. Hanken, attorney at the Virginia Poverty Law Center.

With all of the speculation over what might happen in Virginia if the court upholds the law entirely or in part, advocates say it's clear what to expect if the law is struck down.

"We know what the world looks like for people without insurance," Oswald said. "We live in it now."

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**If the Supreme** Court upholds all or part of the Affordable Care Act, Gov. Bob McDonnell and state lawmakers would have to decide when, or whether, to act to create a state health benefits exchange.

The General Assembly adopted legislation last year that declares an intention to create a state exchange, rather than leave it to the federal government to operate the exchange in Virginia.

The law also created the Virginia Health Reform Initiative Advisory Council to report to McDonnell, who so far hasn't acted on its recommendations on how a state exchange should work.

With control of the White House and Congress hanging in the balance in a November election, the Republican governor and GOP legislative leaders want to wait if the court strikes down the individual mandate.

"I would wait as long as I could," said Howell, who with McDonnell blocked legislation proposed this year to create a state exchange.

In a conference call on Friday, the governor's staff and key legislators said they don't want to call a special session of the assembly this year to address the issue, according to a participant who asked not to be identified.

McDonnell spokesman Tucker Martin wouldn't comment on the conference call. "We will await the Supreme Court's decision prior to making any comments about any possible future actions," he said.

Sen. John Watkins, R-Powhatan, said it would be folly to wait in anticipation that Republican Mitt Romney defeats President Barack Obama, and that Republicans seize a filibuster-proof majority in the U.S. Senate.

"Those wanting to push it off until after the election are hoping against hope," Watkins said. "They're in denial."

But some conservative organizations and think tanks are calling for Virginia to refuse to create an exchange or help carry out the act even if the court upholds the law entirely.

"Not creating an exchange is still complying with the law," said Michael F. Cannon, director of health policy studies at the Cato Institute. "Not expanding Medicaid is still complying with the law. It's not cooperating."

That's not a view held in Virginia by many public officials, health insurers, consumer advocates or legal experts.

"You can protect the structure of your marketplace by making decisions at the state level," said Gray, whose association includes 11 health plans that are interested in competing in a state exchange to sell insurance to individuals and small businesses.

States have until Nov. 16 to tell the U.S. Department of Health and Human Services whether they want to operate their own exchanges. The letter has to be signed by the governor, with evidence of enabling authority and plans for governance of the exchange, which Virginia has yet to determine.

The deadline falls 10 days after the presidential election. "The state's going to have a week or two to figure out what it's going to do," said Timothy S. Jost, a law professor at Washington and Lee University.

The McDonnell administration continues to lay the foundation for a state exchange — from preparing to ask for a federal grant to pay for it to modernizing the state's Medicaid technology for determining people's eligibility and possibly operating the exchange, with the federal government paying 90 percent of the cost.

"There's no question they're doing the things they need to do," Gray said.

But insurers say state lawmakers underestimate the time necessary for them to prepare plans to offer on the exchange and get them approved by state regulators, and build the necessary technology to connect with the state exchange. Health plans must be ready to enroll customers by Oct. 1, 2013.

"We need to know the rules of the game as soon as possible," King said at Anthem.

Sen. Jeff McWaters, R-Virginia Beach, a former health plan executive who chairs a Senate subcommittee on health care reform, wants to buy time.

"The federal government is going to have to extend the deadlines," McWaters said. "Many states are not prepared."

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