

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: June 28, 2012
TO: Members of the Michigan Senate
FROM: Steve Angelotti, Associate Director
RE: Impact of the Supreme Court Decision on the Federal Health Reform Legislation

The United States Supreme Court ruled on Thursday, June 28, 2012, in the case of *National Federation of Independent Business et al. v Sebelius, Secretary of Health and Human Services, et al.* The ruling, for the most part, upheld the provisions of the Patient Protection and Affordable Care Act (referred to below as the "ACA"). The one provision that was not upheld was the fiscal penalty for states that do not expand Medicaid to all those under 133% of the Federal poverty level (FPL).

The Court ruled that the so-called individual mandate was not allowable under the U.S. Constitution's Commerce Clause; however, in effect, this portion of the legislation was upheld. The Court ruled that the penalties that must be paid by those who opt not to purchase health insurance are allowable as they can be construed as taxes and thus are permitted under Congress's constitutional authority to levy taxes.

Impact of the Ruling on Medicaid Expansion on the State of Michigan

There appears to be only one major impact on the State of Michigan. The Court held that the financial penalty that would be imposed on states for failing to expand the Medicaid program was excessive. Under the ACA, Medicaid will be expanded to cover all people under 133% of the FPL. In Michigan it is believed that this will lead to about 400,000 new individuals being covered, at a total cost of roughly \$2.0 billion Gross. The expansion will be 100% federally funded initially, with the match rate dropping to 90% by the year 2020 and beyond.

The ACA included provisions putting a state's entire Medicaid allotment, both for the current Medicaid program and the expansion population, at risk if the state did not opt to expand Medicaid. The Supreme Court held that such a penalty was excessive and that, "The threatened loss of over 10 percent of a State's overall budget is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion."

This portion of the ruling ties to past cases in which the Court held that the U.S. Department of Transportation could threaten to withhold a portion of funding to encourage states to enact certain laws, but not a significant portion or all funding. (In those cases, the issues at hand were raising the drinking age to 21 and lowering the maximum speed limit to 55 miles per hour.) Effectively speaking, a nudge or incentive to get the states to behave a certain way is allowable, but something that effectively gives a state a choice between compliance and fiscal chaos is not.

The Court held that, in the case of Medicaid, the penalty for noncompliance was excessive. In effect, the Federal government cannot threaten states' current Medicaid allotments for refusing to implement the Medicaid expansion.

It should be noted that the ACA did not take just a "stick" approach to the Medicaid expansion. In effect, there are incentives for the states to expand Medicaid. As noted in the Senate Fiscal Agency's (SFA's) April 2010 paper, "Fiscal Analysis of the Federal Health Reform Legislation" (<http://www.senate.michigan.gov/sfa/Publications/Issues/HealthReform/FedHealthReformLegislation.pdf>), the State would not face any costs from the expansion for the first three years and would face a maximum match rate of 10%.

On the other hand, the expansion would lead to some significant savings in the area of Community Mental Health (CMH) non-Medicaid services. Most of the over \$270.0 million State General Fund/General Purpose (GF/GP) spent on CMH non-Medicaid is used for services to people who would be eligible for Medicaid under the expansion. In the SFA paper, it was estimated that at least half of that funding would be converted from 100% GF/GP to 100% Federal. It is now the SFA's belief that the amount that could be converted would be at least \$200.0 million. Thus, while there would be long-term GF/GP costs for the expansion, there would be savings that would more than offset any costs from the first day.

As such, it is unlikely that the expansion would lead to any GF/GP costs for the State in the first few years; instead, there likely would be savings of at least \$200.0 million GF/GP until the match requirement started to take effect in 2017.

Therefore, the decision on whether to comply with the Medicaid expansion will be more of a policy issue than a fiscal issue. The fiscal impact of the expansion would not be an impediment to compliance.

Health Care Exchange

The other issue, which is also much more of a policy than a fiscal issue, is whether the State will opt to create the health care exchange reflected in Senate Bill 693. Action on the legislation has been delayed due to the impending Supreme Court ruling. The State does not have to create its own exchange. Advocates have argued that letting the Federal government create Michigan's exchange will take away flexibility from the State. Opponents have expressed concern about the exchange concept. This issue will certainly receive significant attention in the coming weeks.

Conclusion

The Supreme Court's ruling, while largely upholding the ACA, will allow states flexibility in terms of the Medicaid expansion. The decision on whether to proceed with the expansion will largely be a policy decision rather than a fiscal one.

Obviously, there are numerous nuances to any decision on a matter so complex, as well as the ACA legislation itself. Please feel free to contact me if you have any questions.

/kjh

c: Ellen Jeffries, Director