Implications of the Supreme Court’s ACA Medicaid Decision

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Congress implemented the Medicaid Act in 1965, acting pursuant to its Spending Clause authority to "provide for the...general Welfare." Over time, the Act has been amended more than 50 times. Most recently, as part of the Patient Protection and Affordable Care Act (ACA), Congress required participating states to extend Medicaid eligibility to childless, non-disabled, and non-elderly adults with incomes below roughly 133% of the federal poverty level (referred to as childless adults).

Within hours of President Obama signing the ACA into law, four lawsuits were filed challenging the constitutionality of the ACA, including a case in Florida that eventually made its way to the Supreme Court as National Federal of Independent Business v. Sebelius (NFIB). As part of this case, officials from 26 states argued that Congress was improperly coercing them into participating in the Medicaid expansion.

On June 28, 2012, the Court announced NFIB. The case upheld a controversial part of the law, known as the "individual mandate," that requires individuals to have health insurance coverage or pay a penalty. However, “for the first time ever” the Supreme Court accepted the states’ undue coercion argument. This article summarizes the NFIB Medicaid decision and discusses its potential implications.

NFIB Summarized

NFIB offers a confusing group of Medicaid opinions, with no one opinion reflecting a majority of the Court. To assess NFIB’s impact, it is necessary to decide which opinion carries the most weight. According to Marks v. United States, “When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” Here, that is the opinion authored by Chief Justice Roberts.

Chief Justice Roberts does not question Congress’s authority to attach appropriate conditions to federal spending programs because “that is the means by which Congress ensures that the funds are spent according to its view of the ‘general Welfare.’” Thus, if they do not want to accept the conditions, states are expected to “adopt the simple expedient of not yielding…. The States are separate and independent sovereigns. Sometimes they have to act like it.”

According to the Chief Justice, however, “when such conditions take the form of threats to terminate other significant independent grants,” courts must then determine whether that pressure is so coercive as to cross the line to compulsion. The Chief Justice focuses on South Dakota v. Dole, where the state argued that a federal requirement to raise the drinking age to 21 or risk losing 5% of federal highway funding was impermissibly coercive. As the Chief Justice pointed out, the drinking age condition in Dole “was not a restriction on how the highway funds — set aside for specific highway improvement and maintenance of efforts — were to be used.” Because Congress was pressuring the state to accept the policy change by using threats to terminate other significant independent grants, the Dole court asked whether the financial inducement offered by Congress had passed the point where pressure turns to compulsion. As the threat of losing 5% of highway funds was a “relatively mild encouragement” to the states, the Court held that it had not. What is

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important here is that the Chief Justice clearly sees the threat to “other significant independent grants” as sparking the coercion analysis. And, he accepts that the threat of losing 5% of one category of funds is not a significant financial inducement.

Chief Justice Robert’s *NFIB* opinion is clearly result-oriented and problematic. Yet, the opinion saves the Medicaid expansion and, indeed, the entire ACA. Moreover, while setting no bright lines for when undue coercion occurs, the opinion sets a high bar for a complaining state wishing to show coercion.

Turning to the ACA, the Chief Justice quickly identified the requisite “other significant independent grant.” He found the ACA Medicaid expansion to be a new program: “The original [Medicaid] program was designed to cover medical services for four particular categories of the needy: the disabled, the blind, the elderly, and needy families with dependent children.” Roberts noted that previous Medicaid amendments and expansions concerned only these populations. By contrast, he said, the ACA amendment “transformed” Medicaid from a program serving designated population groups to “a program to meet the health care needs of the entire nonelderly population with income below 133 percent of the federal poverty level.”

Also important, Chief Justice Roberts found the Medicaid expansion to violate the *Pennhurst* rule — the requirement that federal conditions be clearly set forth so that the states can voluntarily and knowingly accept the terms of the Spending Clause “contract.” According to the Chief Justice, the states could not have anticipated that the expansion would be a part of the Medicaid program when they originally agreed to participate in it.

In addition to finding the Medicaid expansion to be a separate, new program unanticipated by the states, Chief Justice Roberts found that Congress was using an inappropriate financial inducement: Congress was attempting to induce participation in the expansion by threatening states with the authority of the Secretary of HHS to terminate all existing federal Medicaid funding. Noting the significant amount of federal funding at stake — 20% of the average state’s total Medicaid budget and 10% of the average state’s overall budget — Chief Justice Roberts concluded that Congress had engaged in “economic dragooning” by placing a “gun to the head” of the states that left them “with no real option but to acquiesce in the Medicaid expansion.”

Chief Justice Roberts concluded by finding “no need to fix a line” for when persuasion slips into coercion, concluding instead that whatever that line may be, the ACA Medicaid expansion crossed it.

The next question was how to craft a remedy. The Chief Justice had found a constitutional violation because the Medicaid Act, 42 U.S.C. § 1396c, authorized the Secretary of HHS to terminate all federal funding to the existing program if the state refused to make the new program expansion. Chief Justice Roberts concluded that the constitutional violation is “fully remedied” by prohibiting the Secretary of HHS from terminating the existing federal Medicaid funding of a state that does not implement the expansion. Four other justices agreed with this severability analysis, thus providing a 5-member majority.

**Implications for Medicaid**

Chief Justice Robert’s *NFIB* opinion is clearly result-oriented and problematic. Yet, the opinion saves the Medicaid expansion and, indeed, the entire ACA. Moreover, while setting no bright lines for when undue coercion occurs, the opinion sets a high bar for a complaining state wishing to show coercion.

In the typical case, states are expected to act like independent sovereigns and reject federal conditions they do not like. According to the *NFIB* plurality, however, an act of Congress could cross the line into undue coercion when the following four circumstances are found to exist: (1) Congress enacts a new spending program; (2) Congress seeks to induce state participation in the new program by threatening to terminate all federal funding to an existing program; (3) the federal funding to the existing program is significant (less than one half of one percent of the state’s total budget is not enough but federal funding that is 10% of the state’s total budget may be); and (4) the requirements of the new program are not related to the old program and, thus, were not known to and could not have been anticipated by the state at the time it entered the existing program.

At this early stage, application of the Chief Justice’s opinion leads to a few important conclusions for the existing Medicaid program and the ACA amendments to it. First, the Court did not strike the ACA provisions...
that extend Medicaid coverage to childless adults. States can still implement the expansion and will receive generous federal funding if they do, specifically 100% federal funding through 2016 to be gradually reduced to 90% federal funding in 2020 and each year thereafter. However, the Secretary cannot terminate funding to states that do not implement the expansion.

Second, NFIB does not affect the existing Medicaid program or limit the Secretary’s enforcement authority over the existing Medicaid program. Nor does NFIB provide much ground for a state to challenge any aspect of the existing Medicaid program as unduly coercive. The Chief Justice clearly separated the ACA’s effort to expand coverage to childless adults from past congressional efforts to expand Medicaid which he found were related to the four population groups covered by the Medicaid program as understood by the states.

Third, NFIB only concerns the Medicaid expansion provisions of the ACA. It does not affect any other Medicaid requirements contained in the ACA, and all states participating in Medicaid must implement these ACA requirements or risk losing their existing Medicaid funding. These provisions include requirements for states to temporarily increase payments to Medicaid-participating primary care providers, extend eligibility to young adults leaving the foster care system, and maintain eligibility as it stood on March 23, 2010 until “the State has an exchange approved by the Secretary.”

Conclusion

NFIB should have little or no effect on provisions of the Medicaid Act, other than the Medicaid expansion. In the coming years, courts and Congress will have to decide the reach of NFIB. Barring additional shifts in the composition of the Supreme Court, Chief Justice Robert’s opinion in NFIB should set a high bar for those seeking to limit Congress’s authority to use federal funding conditions to provide for the general welfare and the Secretary of HHS’s authority to enforce the Medicaid Act against a non-compliant state.

References

4. Id., at 2630 (2012) (Ginsburg, J., dissenting) (emphasis is original).
5. 430 U.S. 188, 193 (1977) (citation and internal quotation omitted).
6. 132 S. Ct. at 2604.
7. Id., at 2603.
8. Id., at 2604.
9. Id. (citing Dole, 483 U.S. 203 (1987)).
10. 132 S. Ct. at 2604.
11. Id. (citing Dole, 483 U.S. at 211).
12. Id., at 2605-06 (citing 42 U.S.C. § 1396a(a)(10)).
13. Id.
15. Id.
16. Id., at 2604-05 (citing 42 U.S.C. § 1396c); see also id., at 2604 (noting that states have developed “intricate statutory and regulatory regimes” over many decades to implement the existing Medicaid program).
17. Id., at 2606.
18. Id., at 2607 (citing 42 U.S.C. § 1303). Explicitly, the decision did not “affect the continued application of § 1396c to the existing Medicaid program.”
19. For a detailed criticism of the opinion, see 132 S. Ct. at 2628-41 (Ginsburg, J., dissenting).
21. See 42 U.S.C. § 1396a(a)(13)(C) (primary care rate parity); id. at § 1396a(a)(10)(A)(i)(IX) (former foster coverage) (eff. Jan. 1, 2014); Id., at § 1396a(gg)(1) (maintenance of effort (MOE) requirement for recipients who are not children). The Governor of Maine’s challenge the MOE requirement was summarily denied by the First Circuit. See Mayhew v. Sebelius, No. 12-2059 (1st Cir. filed Sept. 13, 2012).