

July 2, 2012 letter - Affordable Care Act

July 02, 2012

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The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Secretary Sebelius:

On behalf of the National Governors Association (NGA), I request that the U.S. Department of Health and Human Services (HHS) provide timely guidance to clarify the options available to governors following the recent Supreme Court decision in *National Federation of Independent Businesses, et al. v Sebelius*. Our nation's governors are now grappling with new questions related to the Medicaid expansion, and clear guidance from HHS would help to inform decisions around what is best for each state.

The decision invalidates the penalty that would be imposed on states who failed to expand Medicaid as called for by the law. This decision means that the Medicaid expansion as written in the Affordable Care Act is now optional for states. As governors consider their options, clarity around several initial questions is essential for moving forward:

1. Will states that expand Medicaid coverage up to a level below 133 percent of the federal poverty limit (FPL), for example up to 100 percent FPL, still receive the enhanced federal medical assistance percentage (FMAP) available for "newly covered" populations?
2. Will states be allowed to phase-in Medicaid coverage up to 133 percent of FPL in years after 2014 and still receive the enhanced FMAP?
3. If a state opts not to pursue Medicaid expansion as written in the ACA, what other Medicaid provisions of ACA would apply to their states program?
4. What options and federal assistance are available for states that decide not to pursue Medicaid expansion as written in the ACA?
5. If a state expanded coverage through a waiver prior to enactment of the ACA, but then chooses not to expand coverage further, are they still eligible for the 75%-90% enhanced FMAP for the previously expanded populations?

NGA's Annual Meeting begins on July 13. The issue of Medicaid expansion will be an important point of discussion at that meeting, and formal guidance from HHS will assist governors as they deliberate next steps.

Thank you for your consideration of our request. We look forward to continued dialogue.

Sincerely,

Dan Crippen