



PRACTICE GROUP

email alert

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Florida Legislative Update March 2010

By Rupa S. Lloyd*

Although the full impact will not be known until much further down the road, with the passage of the landmark healthcare reform bill, signed into law by President Barack Obama on March 23, 2010, it is quickly becoming apparent that national and state level reform are inextricably intertwined. This is particularly true with Medicaid, a healthcare program for the poor, funded by both federal and state governments.

Who Will Foot the Bill?

On the same day that the national healthcare reform bill was signed into law, Florida and twelve other states (Alabama, Colorado, Idaho, Louisiana, Michigan, Nebraska, Pennsylvania, South Carolina, South Dakota, Texas, Utah, and Washington) filed a lawsuit against the U.S. Department of Health and Human Services, U.S. Department of Treasury, and the U.S. Department of Labor over the constitutionality of the legislation. This lawsuit focuses on the burdens imposed by: (1) increased Medicaid costs that allegedly infringe on the sovereignty of the states by imposing onerous new operating rules for Medicaid but not fully reimbursing the states for the costs, and (2) a mandate requiring individuals to buy health insurance that allegedly exceeds the powers of the United States under Article I of the Constitution and also violates the Tenth Amendment to the Constitution.¹

Traditionally, through Medicaid, states provided healthcare coverage for the poor who were also disabled, elderly, pregnant, or a child. The new federal law expands Medicaid to all of the poor, setting the limit at people who make less than 133% of the federal poverty level. Based on current criteria, that means a single person who makes \$14,404 or less annually, or a family of four that has an annual income of less than \$29,327, are now eligible. The result is a federal minimum floor which requires states to cover all of its poor, including childless adults, who will make up a good portion of the expansion enrollees in Medicaid who were not previously covered.

Florida Attorney General Bill McCollum, in a press conference on March 22, 2010, estimated that Florida will have to spend an additional \$1.6 billion for Medicaid and hire 1,000 new workers to accommodate the new requirements. It appears, however that McCollum's numbers may have been based on the Florida Agency for Health Care Administration's earlier calculations, based on an older version of the legislation.² Newer reports suggest an increased cost in the range of between \$149 million in 2014, and \$1.1 billion in 2019.³ No matter which numbers turn out to be more reliable, it is evident that Florida's already over-burdened Medicaid program desperately needs to find a way to fund considerable additional costs to meet newly mandated federal requirements.

Loss of Vital Preventative Care Programs?

Thus far the reaction in the Florida Legislature to the national healthcare reform bill has been to find ways to curb costs in the state's Medicaid program run by the Florida Agency for Health Care Administration, and to look for efficiencies in the Florida Department of Health. Florida House Republican leaders announced a measure this legislative session which, among other things: (1) seeks to focus the department on seven main areas of responsibility, including communicable diseases, public-health emergencies, vital statistics, and regulation of healthcare professions;⁴ and (2) by an act of the House Committee on March 26, also seeks to move regulation of medical professionals from the Department of Health to the Department of Business and Professional Regulation.⁵ One of the primary concerns related to the proposed changes is that critical disease prevention programs may be lost—a bit of a paradox with the concept that national healthcare reform will ultimately result in savings by encouraging people to get preventative care, thereby mitigating against the onset of more expensive conditions.

Florida Medicaid Reform—Savings Inherent in Moving to a Managed Care/PSN Model?

The key elements of Florida Medicaid Reform program are:⁶

- Outreach efforts;
- Choice counseling;
- Delivery system: coordinated systems of care (health maintenance organizations (HMOs) and provider service networks (PSNs));
- New options/choice: customized plans, enhanced benefits, opt-out;
- Financing: premium-based, risk-adjusted premium;
- Comprehensive and catastrophic component; and
- Low-income pool.

The focus for curbing costs in the Medicaid program this legislative session remains on transitioning from a fee-for-services to a managed-care framework. The Florida Senate is advancing a proposal that would more than double the number of Medicaid patients in the Florida Medicaid Reform program by expanding the plan passed in 2005 from Broward County and the Jacksonville region to nineteen additional

counties, including metro Orlando. The effect will be to shift Medicaid patients from their current fee-for-services doctors into HMOs or doctor and hospital networks (PSNs). The concern with that shift is that some services and specialties could be lost. It is rumored that the Florida House is developing an even broader plan, potentially sweeping the entire state into a system of doctors' networks, hospitals, and managed care companies.⁷ While on paper and in theory a shift to HMOs/PSNs looks promising as a means to saving millions of dollars, the biggest hurdle may be finding such organizations that are up to the challenge and willing to take on Medicaid Reform patients.⁸

Last, but certainly not least, Florida continues to look at ways to curb costs by minimizing fraud and abuse within the Medicaid program.⁹

**We would like to thank Rupa S. Lloyd, JD, LHRM (University of Florida Health Science Center, Gainesville, FL) for providing this email alert.*

¹ See [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-83TKWB/\\$file/HealthCareReformLawsuit.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-83TKWB/$file/HealthCareReformLawsuit.pdf) for a full copy of the lawsuit.

² AHCA report, Roberta K. Bradford, Deputy Secretary for Medicaid (January 14, 2010), [Overview of National Health Care Reform Proposals](#), presented to the Senate Health and Human Service Appropriations Committee.

³ See PolitiFact.com Truth-o-meter (March 23, 2010), [McColum Cites Top Estimate for Medicaid Expansion](#); see also, Carol Gentry (March 23, 2010), [Cost Depends on Assumptions](#).

⁴ See Jim Saunders (March 26, 2010), [Changes In Store For DOH](#).

⁵ *Id.*

⁶ AHCA report, Roberta K. Bradford, Deputy Secretary for Medicaid (March 5, 2010), [Florida Medicaid Reform](#), presented to the House Select Council on Strategic and Economic Planning.

⁷ Aaron Deslatte, Orlando Sentinel (March 21, 2010), [Florida lawmakers prepare colossal Medicaid change](#).

⁸ AHCA Report, Thomas W. Arnold, Secretary (February 17, 2010), [Managed Care in Florida Medicaid](#), presented to the Senate Ways & Means Committee.

⁹ AHCA report, Roberta K. Bradford, Deputy Secretary for Medicaid (March 5, 2010), [Fraud and Abuse Prevention in Florida Medicaid Managed Care Organizations](#), presented to the House Select Council on Strategic and Economic Planning.

The Healthcare Reform Educational Task Force is a joint endeavor of the Healthcare Liability and Litigation; Hospitals and Health Systems; In-House Counsel; Life Sciences; Medical Staff, Credentialing, and Peer Review; Payors, Plans, and Managed Care; Physician Organizations; Regulation, Accreditation, and Payment; and Teaching Hospitals and Academic Medical Centers Practice Groups.

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