

Legislature brief / March 9, 2015

## **Fight against Arizona's Medicaid expansion moves from the Legislature to the courts**

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The Patient Protection and Affordable Care Act provided states the option to expand Medicaid coverage, which Arizona did with Governor Jan Brewer's signature in June 2013. Despite clashing with members of her own Republican party, the then-governor pushed the bill through the Legislature to take advantage of federal incentives to increase health care coverage for the poor.

Although successful in its passage, the state's Medicaid restoration law remains at risk. That's because 36 GOP legislators opposed to the Medicaid eligibility expansion sued, and the issue is now in the courts.

Under the state's new Medicaid law, Arizona adults earning up to 133 percent of the Federal Poverty Level (FPL) – \$15,521 annually for an individual in 2014 – became eligible for coverage. The expansion also lifted the previous freeze on childless adults earning up to 100 percent FPL, an action known as the Proposition 204 population since that qualification was based on the ballot measure that originally provided such coverage. Arizona's ability to implement this change was approved by the Federal Centers for Medicare and Medicaid Services (CMS).

As part of providing expanded coverage, the Federal government provided additional funding. Specifically, for those who fall into the 100-133 percent FPL population, Federal dollars provide for 100 percent of their coverage. The Proposition 204 population receives a higher match rate of approximately 85.5 percent in FY15 and 89 percent in FY16<sup>i</sup> (traditionally the Federal government provides approximately two dollars to every one dollar the state spends). According to the Joint Legislative Budget Committee's (JLBC) *Monthly Fiscal Highlights* in January 2015, there were nearly 280,000 Proposition 204 adults covered by Arizona Health Care Cost Containment System (AHCCCS) and almost 36,400 adults with incomes between 100 percent and 133 percent FPL covered.<sup>ii</sup>

### **Meeting the State Match**

While the Federal government currently picks up the entire tab for individuals in the 100-133 percent population, the state must provide the portion of the match for the Proposition 204 adults.

Additionally, over time, the match for 100-133 percent population will reduce, requiring the state to pick up 10 percent of costs by 2020. To meet this current and future obligation for acute care, the

Legislature passed a hospital assessment.<sup>iiiiiv</sup> Hospitals pay the assessment. However, as they treat patients now covered by Medicaid, they receive reimbursement for those services.

To those in favor of expansion, the hospital assessment is just that, an assessment. For those opposed to expansion, the assessment is characterized as a tax. Arizona constitutional law requires tax increases pass by a two-thirds vote. Only a simple majority is needed to reduce revenue.

Thirty-six of Arizona's 90 legislators sued<sup>v</sup>, claiming the hospital assessment that provides the state match is a tax. Then-Governor Brewer opted to defend the expansion; current Governor Doug Ducey has yet to declare whether he will continue to defend the lawsuit or withdraw state opposition. As 2014 came to a close, the Arizona Supreme Court ruled that the lawmakers had standing to sue. As a result, the case was sent back to Maricopa County Superior Court.

The key legal question – Is the assessment a tax? – will be settled in court. However, what is often lost in the singular-focused discussion on “tax or not?” is the substantial policy implications to more than 300,000 of Arizona's most vulnerable and to a state budget focused on cuts.

### **Human and Fiscal Costs**

There are a number of scenarios that could play out based on the court's ultimate decision. If the assessment were determined to be unconstitutional, Arizona could opt to continue to cover those adults and pay the full cost. This is almost certainly not the avenue lawmakers would take. There could also be varying degrees of impact based on the state's current agreement with CMS.

If those 36 of 90 lawmakers were to prevail, it is entirely possible more than 300,000 Arizonans would lose the most basic of safety-net coverage. And, while those adults would no longer have acute care coverage, this does not mean they would not end up with health issues. However, without coverage, many of those previously covered adults would receive their care at emergency rooms, waiting until what could have been a preventable or easily treatable medical issue progresses into a serious health concern.

This influx of uncovered individuals could also put extreme stress on the state's health system. Rural providers in particular could struggle to survive financially. This could have long-reaching care provision and economic impacts.

The cost to Arizona would extend beyond the human impact. JLBC estimates the state could lose up to \$1.8 billion in Federal funds in FY15 and more than \$2.5 billion in FY16.<sup>vi</sup> This loss would come at a critical time for the state, with the Governor's Office estimating a FY15 deficit of nearly \$160 million and an FY16 deficit in excess of \$533 million.

### **The Two-Thirds Hindrance**

The potential impact of rolling back the expansion highlights another policy concern that impacts every component of Arizona state budgeting: the two-thirds requirement to increase revenue. Arizona's political history demonstrates an aversion by lawmakers to explore revenue solutions along with reductions when the state faces economic challenge. Governor Ducey's budget is no exception.

However, tax cuts implemented between 1993 and 2002 were estimated to have created a \$2.9 billion impact in 2011, when the state first stared down the impacts of the Great Recession.<sup>vii</sup>

Even when wise policy dictates examining revenue sources, and even if lawmakers were politically brave enough to pursue such an option, they are ultimately hobbled by a requirement that any increase requires a two-thirds approval of the Legislature – a nearly impossible feat, which is its intent. In contrast, to drastically cut critical state services only a simple majority is required.

As a result, Arizona is one of the most frequent users of citizen initiatives and referendums as voters use the ballot box to not only pass direct legislation but also to fund public programs that the Legislature will not. That’s how the initial expanded coverage levels for Medicaid came about in 2000 and 2002 In fact, the only meaningful, albeit temporary, revenue solution explored since the start of the Great Recession has been a voter-passed (and Governor Brewer championed) 1-cent sales tax increase.

Arizona’s Medicaid expansion was a policy choice that has far-reaching human and economic impact. Eliminating the coverage for hundreds of thousands of Arizonans could cost to the state billions of Federal dollars at a time when Arizona already is in dire straits financially. But the continued opposition to the expansion is not focused on impact, policy or vision as much as it is on unwavering political ideology.

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<sup>i</sup> JLBC. FY 2015 Baseline Book. January 2015. pg. 38

<sup>ii</sup> JLBC. Monthly Fiscal Highlights. January 2015.

<sup>iii</sup> There are costs associated with mental health care that are covered by the General Fund.

<sup>iv</sup> For more information on hospital assessments, visit <http://sod208.fulton.asu.edu/publications-reports/special-reports/azs-fiscal-crisis-ahcccs-bed-tax-an-option-for-new-revenue>.

<sup>v</sup> Duda, Jeremy. Principles vs. practicalities: Ducey’s Medicaid dilemma. *Arizona Capitol Times*. December 8, 2014.

<sup>vi</sup> JLBC. FY 2015 Baseline Book. January 2015. pg. 39

<sup>vii</sup> Murray, Matthew, et. al. *Structurally Unbalanced: Cyclical and Structural Deficits in Arizona*. Brookings Mountain West. Morrison Institute. January, 2011.

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