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Supreme Court Ruling on the Affordable Care Act (ACA) Recap

- The Supreme Court (SCOTUS) on June 28 ruled to uphold the ACA, by a vote of 5-4.
- **SCOTUS said the requirement** that most Americans carry health insurance by 04/15/15, **is a tax, and therefore, constitutional under Congress' ability to levy taxes.**
- **SCOTUS ruled Congress cannot use it spending power to force or "coerce" states to expand Medicaid coverage. It is now an option to expand Medicaid under the ACA without the threat of taking funds away from the current Medicaid program. But this ruling has created significant uncertainty.**

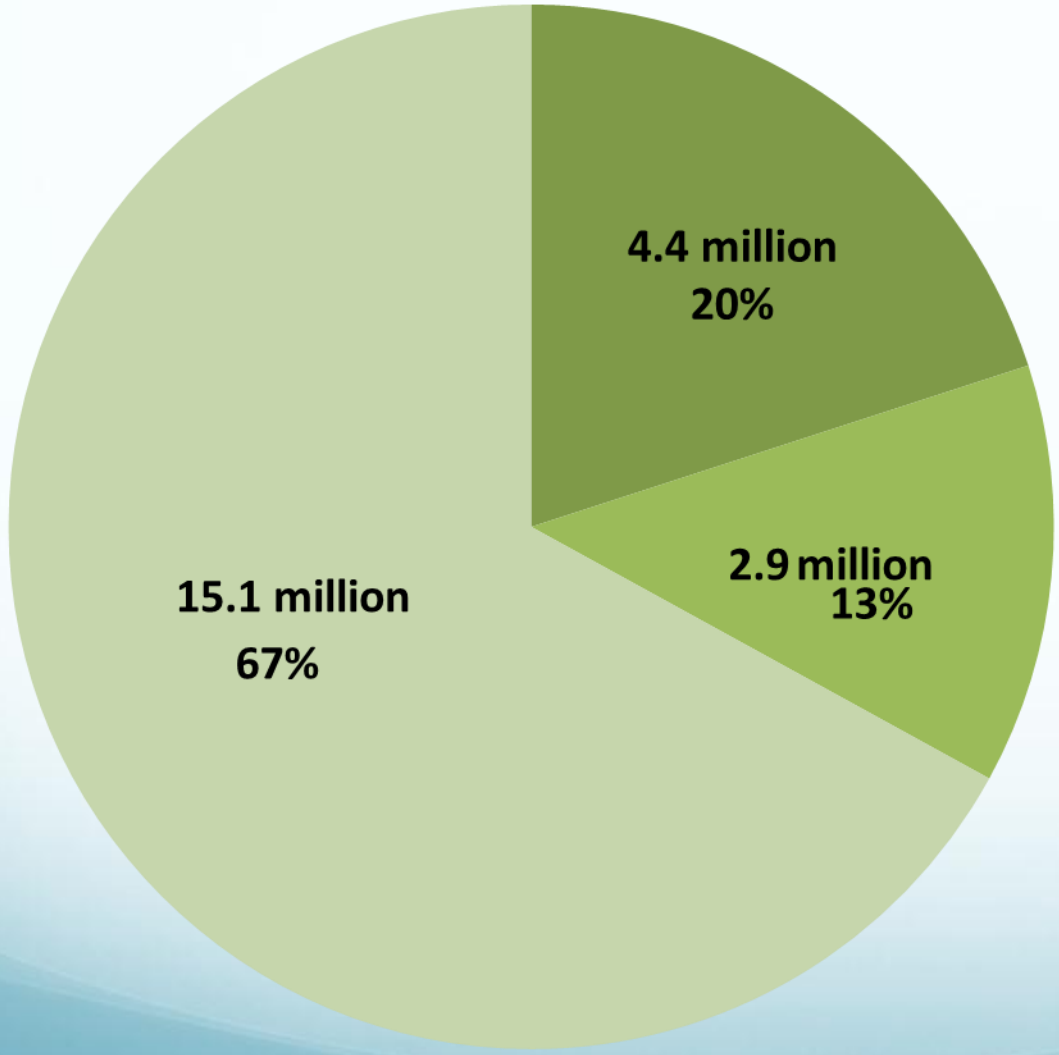
What to Expect by 2014 on Expanding Coverage (If, a big if, the ACA Still Exists in Current Form) on the Private Health Insurance Side

- Health insurers will be required to price (community-rating) and sell policies to everyone (guaranteed issue) regardless of health status.
- Millions will receive federal subsidies to help them afford insurance that is purchased independently. Subsidies will be available to people earning 133% to 400% of the FPL ($14,856 to $44,680 in 2012).
- Nearly all Americans will be required to have coverage with some notable exemptions, including for people whose only coverage options exceed 8% of their income.
- If you do not have coverage and can afford it, you will be required to pay a tax (penalty) of $95 in 2015; $325 in 2016; $695 in 2017. Only 1-2% of Americans are expected to pay the tax.
- Companies that employ 50 or more workers and do not provide health insurance benefits, or that offer coverage their employees cannot afford, may be fined.

The SCOTUS Medicaid Ruling and What It Means

- Under the ACA, Medicaid could still be substantially expanded – or not? A family making up to 133% of the FPL ($30,000 in annual income for a family of 4) will be eligible for Medicaid benefits.
- ACA essentially eliminated all the separate "income thresholds" and "categories" under the new Medicaid expansion.
- Many conservative governors – there are 29 Republican Governors – have been vehemently opposed to the Medicaid expansion effort and the possibility of the federal government forcing even more Medicaid spending on them at a time their current Medicaid programs have become a major burden on their state budgets.
- Some states are now spending nearly a quarter of their budget on providing Medicaid benefits.

22 Million Uninsured with Incomes Below 138% of the FPL Could Be Eligible for Medicaid Under the ACA if All States Participate



- Adults Currently Eligible for Medicaid
- Children Currently Eligible for Medicaid/CHIP
- Adults not currently eligible for Medicaid, but could be under the ACA

Source: Urban Institute tabulations of the 2010 American Community Survey (ACS)

SCOTUS Medicaid Ruling A Real Shocker

- Governors who said they wanted no part of Medicaid expansion in their states essentially imposed upon them from Washington, have the ability to opt out of it without a penalty. Officials in Florida, Texas, Iowa, Louisiana, South Carolina, Nebraska, are already saying they will not take new Medicaid expansion $$ beginning in 2014.

- Aside ideological rejection of mandates generally, the governors have fears that: 1) Expansion would have a "camel's nose under the tent" and "woodwork" effect, 2) Encourage enrollment by people who fall into traditional Medicaid eligibility categories and for whom there is no enhanced federal funding; and 3) Impact on the health system of millions of newly-insured poor people in search of care.

- Whether or not their state receives Medicaid expansion funding is not entirely up to Governors. This process places governors and their legislatures in a difficult political and economic predicament.

- **HISTORICAL FACT #1:** Several states postponed participating in Medicaid after the law passed in 1965 but all participated soon.

- **HISTORICAL FACT #2:** Not every state took part when SCHIP was launched in 1998. But within two years all states were on board.

Medicaid Ruling and Catch 22's

- Sending $$ back to Washington may sound substantially better in theory than it works in practice. But there will be huge political fights over whether to take the new Medicaid $$ in states where the uninsured rate is high.

- There could be political backlash if they decline Medicaid expansion funds because billions of dollars are at stake especially during the tough economic times that most states are still experiencing.

- The federal gov't will pick up the entire cost of the Medicaid expansion in the first 3 years. While the federal contribution will decline after that, it will fall only a little, so most states are never responsible for more than 1/10th of the cost of the Medicaid expansion population. **That is a pretty good deal!**

- **Especially that new Medicaid $$ means more revenues to local providers and communities. In other words, the program creates jobs and sustains incomes.**

Medicaid Ruling & Catch 22's; State Officials Meet Providers and Biz

- State officials who refuse Medicaid funding are going to actively hear from lobbyists representing hospitals (and medical societies and other major healthcare providers) who have taken huge payment cuts and have seen declining revenues for treating uninsured patients due to changes in DSH payments (including public psychiatric hospitals).
- Hospitals have been promised they were going to be reimbursed for treating newly-insured patients, and uncompensated care costs would decrease.
- The new Medicaid $$ are the hospitals' best chance to recoup funding for charity care/bad debt, particularly at a time when they are adjusting to payment cuts ($14 billion over the 10-year initial ACA implementation window).
- In many cities, hospitals and hospital systems are the top employers. New Medicaid $$ will help them stay that way and expand their operations to accommodate new patients.
- Businesses that provide health coverage report their premiums are 10% higher each year due to picking up costs of uninsured patients known as "cost shifting." Firms have been told that they should see a slowing in the rate of increase in their premiums.

The Medicaid Ruling and State Leverage

You have two sets of calculus: the fiscal calculus and the political calculus.

- UNDER THE **FISCAL** CALCULUS, bypassing expansion not only means leaving "money on the table," – it also means the states would have to pay the price tag for leaving millions uninsured.

The structure of the law would lead to an unusual situation in states that refuse to expand Medicaid: Middle-income residents would be eligible for federal subsidies to buy health insurance, but lower-income residents would not get help. That could very troublesome for many policy-makers. Some states don't provide Medicaid coverage all the way up to 100% of poverty currently, leaving several populations in the gap between where they do cover individuals and 100% of the FPL.

- UNDER THE **POLITICAL** CALCULUS, providers will align with the loyal opposition, if they do get their way with the GOP.

That's why we believe that states will come to the table. But digging in their heels may actually strengthen their bargaining position negotiations.

State Leverage: Harmonizing the Fiscal and Political Calculus

- States can benefit from increased federal $$ and make changes to their existing programs they believe will bring down costs. These include market-driven reforms which might give them a way to harmonize the “fiscal and and political calculus.”

- They can say to their critics on the right that they only took “Obamacare” $$ to make their Medicaid programs more market-driven. While some governors hope of getting HHS to remove all strings to federal Medicaid $$ may be ambitious, there are other options that are more realistic for governors in dealing with the administration and future ones.

- They could expand a pilot program begun in Florida, to allow beneficiaries to choose between competing private health care plans instead of enrolling in Medicaid. Also, ask for the authority to let Medicaid beneficiaries set up HSAs and charge them copayments.

- HHS may be satisfied if they only agree to cover people with incomes under 100% of the FPL, instead of 133% as ACA requires. And governors will have an incentive to shift Medicaid populations onto the exchanges – the state has to pay 10% of any Medicaid extension in 2017 but not the cost of the federal subsidies in exchanges.

What Does All of This Mean for SBHAs and the BH Community?

- The rule of thumb, based on projections (pretty conservative), has been that about 33% of all newly-insured people under the ACA Medicaid expansion have behavioral health conditions. About one-half of that group could have serious mental illnesses. Many have postponed care.

- The SCOTUS ruling recognizes that BH is pivotal to overall healthcare. Ensures that states will continue to move forward on HIE's, and integrated mental health/physical healthcare initiatives. MH/SA services are part of the EHB package at parity with other services. People with BH disorders have faced stingy annual and lifetime caps on coverage, higher deductibles or simply no coverage at all. SBHAs need to make sure clients know their coverage options and benefits.

- One of the act's pillars is to forbid the exclusion of people with pre-existing illness from medical coverage. By definition, a vast majority of adult Americans with a mental illness have a pre-existing disorder. It is now essential for SBHAs to encourage states to expand their Medicaid programs for uninsured persons, while providing access to treatment for mental and behavioral health and substance use disorders, as well as chronic health conditions.

- In 2014 the "maintenance of effort" rules expire for Medicaid, meaning that states could actually make their plans stingier. Stay on top of this now and down the road.

- SBHAs need to work with state officials and regulators on Medicaid expansion. Be at the table … constantly. Access to appropriate services, health and quality of life outcomes, and mortality will continue to be issues for people who are poor and have a mental illness and chronic conditions in states that resist Medicaid expansion.

What to Look Out for in the Near-Term

- Refusing a good deal by states that would help their poorest, most vulnerable residents – many with behavioral health conditions – could alienate many independent voters & provider & corporate interests in this election cycle.

- Hospitals and businesses will work with Governors and Legislatures in key states "to take the money and run" – especially the first 3 years. In states where Medicaid expansion is not on the Governor's agenda, hospitals will continue to be confronted by the needs of the uninsured in large numbers. Uncompensated care will continue to be an issue.

- Important to keep a close watch over the Medicaid waiver process, through which states can ask CMS for more flexibility or time to meet federal standards. Medicaid ruling by SCOTUS will likely increase their leverage.

- Some of the states that had agreed to expand Medicaid may implement changes slower than planned. Some will accelerate implementation.

- Many of the states that have fought Medicaid expansion will continue to resist Medicaid expansion until the outcomes of the election are known in November. AND BEYOND -- Eventually all states will likely choose to participate in the Medicaid expansion if the Democrats can fend off ACA repeal efforts. But it may take some time and significant pressure by several stakeholders.

The Advocacy and Lobbying Path Forward

- Statewide behavioral health advocacy groups and associations and medical interests that lobby hard for expansion and protection from uncompensated care.
- Hospital associations that lobby even harder for the same protections.
- Insurers and managed care organizations that eventually position themselves and lobby to manage the benefit dollars of a Medicaid expansion population. They recognize the “scale of the bounty” that makes up the federal investment in Medicaid expansion and have every reason to want to manage those funds and the core/expanded benefits.
- Chambers of commerce will *eventually* recognize that millions and billions of federal dollars probably ought to flow into their states. As Medicaid expands so do healthcare sector jobs, lab services, imaging, transportation, food services, property tax revenues and many other economic indicators. Will Governors and state legislators will not be able to resist the cash infusion for long?
- Depending on the state, civil rights, human rights and other public citizen groups that lobby at the grass-roots level for Medicaid expansion may become more energized and organized during primaries and elections. State legislators, congress-people and governors will be called into question come election time. As reforms become implemented in neighboring states, unpopular in-state positions may well wear thin on the public.
- Advocacy groups like NAMI and Mental Health America who descend on reticent states to raise awareness of their cause in the public and media domains.

Next ACA Legal Battles:
Some States Interpret Ruling to Cut Current Medicaid Eligibility Now

- Since 2009, states have been prohibited from reducing Medicaid eligibility or increasing cost-sharing requirements for enrollees.
- Cash-strapped states have seized on a section of the SCOTUS ruling to pare their current Medicaid programs, saying the decision lifts the ACA's ban on such cuts.
- HHS is examining the ruling in this regard. Could lead to more court battles. Many experts believe that the SCOTUS Medicaid ruling did not give a green light to change eligibility rules under the current Medicaid program.

Next ACA Legal Battles: Health Insurance Exchanges

- At issue here is whether the tax credits (or subsidies) that will be available to Americans to buy coverage in the health insurance exchanges that are set up by the **federal government**.
- Critics say ACA allows subsidies who obtain coverage through only ***"state-run"*** exchanges. Employers may jump into the fray.
- Huge implications as CBO is estimating that 23 million uninsured Americans will gain coverage through the exchanges and all but 5 million will qualify for subsidies averaging $6,000 a year per person.
- Experts say that Congress may have made an error in drafting the section but their intent was clear: Subsidies should be available to all regardless of sponsorship. A reg has been issued on this matter.

Between a Rock and Hard Place: Gov. Romney and the ACA

- Promoted ACA-like law in Massachusetts in 2006.
- Talking Point – "Good for Massachusetts but not the rest of the nation".
- Governor Romney has said the individual mandate requirement is a tax – a penalty – a tax penalty – a tax incentive – a free-rider surcharge, or a ??
- Political risks for Gov. Romney as he defends record in Massachusetts. Can he have it both ways?
- If there is to be a final verdict on the ACA, it will have to come at the ballot box in November. Governor Romney, the Republican presidential nominee, and the Republican leadership in Congress, say they want to repeal the ACA on "Day One" of a Romney administration. The Dems support implementation. **A clear choice for voters.**

Where Do We Go From Here? ACA HIE Implementation Hurdles

- The Obama Administration is on a hot seat of its own now that the SCOTUS has ruled. The biggest part of the ACA is scheduled to take effect on January 1, 2014 when people will be able to buy guarantee issue health insurance in state health insurance exchange (HIEs).
- But the reality is that most states are not likely to be ready. Only 13 states have had their legislatures and governors authorize the construction of an insurance exchange. And if the states and the federal government “build them – will families and small business come”?
- Under the ACA, if a state is not ready, the federal gov’t must build and operate the insurance exchange for them. The Obama administration has repeatedly said they will be ready in every state where they need to build and operate the new exchanges.
- The Obama Administration is going to be under substantial pressure to be forthcoming with their plans and their progress to date.
- HHS announced availability of 10 new scheduled opportunities, lasting though October 2014, for states to apply for funding to establish state-based insurance exchanges and state partnership exchanges, to cooperate with federally facilitated exchanges.

NASMHPD/NASADAD Webinar Series on Eligibility and Enrollment

- **July 12:** Best Practices for Mental Health and State Substance Use Leadership

  Key takeaways: Engage, Educate and Evaluate.

- **Webinar 3--August 2:** Network Development, Provider Network Enrollment, and Newly Eligible Needs Assessments

Parity and Essential Health Benefits

- July 12 meeting with HHS Officials
- Parity regulations will be issued “soon”.
- Supportive of parity provisions in the ACA.
- Parity will affect 35 million additional Americans who currently have health coverage but no MH, benefits or they have benefits but not at parity.
- CMS will be developing a streamlined enrollment application for all newly-eligible consumers – using focus groups.

Are We Going to Fall Off "The Fiscal Cliff"?

Tax Extenders?

- Bush tax cuts expire on January 1. If not extended, every worker and every family will face significantly higher taxes.
- The temporary fix to the alternative minimum tax (AMT) expires at year-end. If it is not extended for 2013, it will likely hit higher-income families hard.
- The 2% payroll tax holiday is set to expire at year-end -- meant to be temporary boost to the economy during recession.
- The temporary fix to the Medicare physician sustainable growth rate (SGR) formula expires at year-end. Without a fix, the docs are up for about a 30% cut in their Medicare fees on January 1.
- Is Congress going to kick the can down the road? Uncertainty is affecting employer decisions, markets.

Are We Going to Fall Off "The Fiscal Cliff"?

The "Sequester" Eliminated?

- CBPP estimates that cuts could be as high as 9% for non-defense discretionary spending. Medicare/Medicaid benefits cannot be touched under Sequestration.

- Does that mean reducing the MHBG by $46 million and what will the impact be on SBHAs? Or PRNS projects?

- Key strategy to oppose sequester, working with BH groups and the GOP leadership on legislation modifying/ending the sequester process.

- House approved sweeping legislation that would cut $300 billion from the deficit over the 10-year window but it would hit key health programs (300,000 people could lose CHIP coverage). Damned if you do – damned if you don't!

Senate Appropriations Committee Action: Labor/HHS FY2013 Funding

- **SAMHSA's** overall FY 2013 budget was approved at $3.560 billion; comparable to their FY 2012 funding.
- **Mental Health Block Grant (MHBG)**: $479 million for the MHBG, a $20 million increase over the FY 2012 funding level.
- **Children's Mental Health Services:** $117 million. Comparable to FY 2012 level; $30 million above the President's request.
- **PRNS Seclusion and Restraint: $2.44 million; at current level; and 50 percent increase over the President's proposed budget.**
- **CSAT**'s overall FY 2013 budget was approved at $2.19 billion for substance abuse treatment programs, including PRNS and the substance abuse prevention and treatment block grant to the States. Added $20 million to SAPT Block Grant; appropriation at $1.820 billion.

Level of SMHA Budget Reductions

FY2009 to FY2013 Total $4.6 Billion in Cuts

Year	Average	Median	Minimum	Maximum	Total
FY 2009 (39 states)	$36,849,116	$13,226,000	$0	$554,003,000	$1,216,020,843
FY 2010 (38 States)	$29,123,575	$12,300,000	$0	$213,591,000	$1,019,325,136
FY 2011 (36 states)	$35,294,953	$11,633,953	0	$132,000,000	$1,270,618,291
FY 2012 (31 states)	$28,074,541	$9,040,000	$0	$242,500,000	$842,236,221
FY 2013 (15 states)	$17,709,032	$13,700,000		$82,000,000	$247,926,447

Preliminary Results based on 41 SMHAs Reporting Winter 2011-2012

The "Dynamic" & Overall BH Funding Picture

- SAMHSA has positioned the MH and SUD Block Grants such that the grants provide funding for those services not covered by health care reforms. This includes treatment not covered by reforms like Medicaid expansion. In effect, we presume the Block Grant will look very much like a *"patch-work quilt"* nationwide until and unless Medicaid expansion and Health Insurance Exchanges are implemented more consistently in all states. That prospect seems to be at least a year away in as many as 25 states.

- Some states will comply with the ruling by developing insurance exchanges themselves while others will watch HHS build one for them. The portion of the population between 133% and 400% of FPL will be able to apply for subsidies to purchase insurance through exchangs. The poorest of the poor (below 133% of FPL) will remain uninsured unless they otherwise qualify for Medicaid or CHIP. The result may include migration of the poor from one state to another in search of Medicaid eligibility. The implication for behavioral health providers and consumers is that an estimated 50% of the uninsured population in their state will become insured.

- Health plans and payers of all stripes will increasingly engage managed behavioral healthcare and other forms of managed care. Self-insured employers, in-state health plans participating in exchanges, Medicaid and categorical funding will increasingly be privatized and managed – a trend that began more than 20 years ago.

- Regardless of Medicaid expansion, plans and payers of various kinds will engage health and medical home models in accountable and coordinated care models. These models are popular and gaining traction in Medicare as well as in commercially insured markets.

- The rate of consolidation, joint ventures and network-based business models will continue to grow in order to secure market share and indemnify providers as much as possible from payment reforms & shrinking margins.