NAMD's SCOTUS questions

Submitted: July 3, 2012

Scope of Expansion, Timelines, and FMAP

- Can CMS confirm that individuals with income between 100-133% of the FPL will be eligible for cost sharing subsidies and tax credits to purchase coverage through the Exchange?
- Can states expand eligibility to 100%FPL or other levels less than 133% for the optional adult group? If so, how does this impact the FMAP? That is, will states be eligible for the enhanced federal funding per the current schedule?
- Will income disregards impact the MAGI/poverty level determination for eligibility purposes, effectively making the income levels for the optional eligibility expansions 105%/138%?
- Can states phase-in their expansion to the optional adult group beyond 2014? If so, how does this impact states' ability to receive the enhanced FMAP for the optional adult group?
- Will states have the option to expand to the optional adult group after 2014? If so, how does this impact states' ability to receive the enhanced FMAP for the optional adult group?
- Will states that <u>previously</u> expanded Medicaid eligibility be eligible for enhanced FFP even if they decide <u>not</u> to proceed with the Medicaid expansion to the optional adult group?
- How will CMS define "newly eligible" individuals for states that have already expanded some form of Medicaid coverage to the optional adult population prior to the implementation of the ACA? How will CMS define benchmark coverage as it relates to determining the number of "newly eligibles"? Will these states qualify for the full increase in enhanced federal funding? Will they qualify for expansion state funding?
- If a state chooses <u>not</u> to expand Medicaid to the optional adult category, can a state use Medicaid funding to assist individuals in this group and other Medicaid eligible individuals in purchasing health insurance through the Exchange? If so, would states be eligible to receive the enhanced FMAP according to the statute? Could they also use Medicaid funds to provide wrap around services? What is the approval process for this approach?

Process

- Must states proactively submit a SPA for approval of the expansion? Alternatively, must states submit a SPA indicating they are choosing <u>not</u> to expand to the optional adult group?
    - In either scenario, will CMS develop a template?
    - If so, when does CMS expect to make these resources and processes available?
    - What is the expected timeline for approval in either situation?
- Are there deadlines for the SPA submissions?
- What flexibility will CMS afford states given that legislative action is required in many states prior to moving forward with the optional expansion to the adult group? For example, will CMS' timelines and decisions related to the expansion timelines reflect that some states have biennial legislative sessions and/or that the legislature may not make decisions about expansion for the optional adult category until well into calendar year 2013?

- What is the contingency plan if legislators do not act in time to meet any deadlines/timelines that CMS may establish for the optional expansion?
- Will CMS work with states to incorporate expansions to the optional adult group in waiver programs, including under Section 1115 waiver authority? What is the process for doing so?
- How will CMS ensure transparency and accountability around timelines for approval processes both for current and prospective waiver and SPA submissions related to the expansion?

Funding

- If a state has already expended money to upgrade their eligibility systems at a 90/10 match rate and the state subsequently chooses not to expand Medicaid to the optional adult group, is the state liable for returning these funds?
- What, if any, impact is there on future 90/10 funding if a state choosing not to expand? For early expansion states?
- Is the 90/10 funding tied to the Exchange design and implementation, regardless of whether a state expands Medicaid eligibility to the optional adult group?
- Can Medicaid funding be used to support the Navigator program even if the state does not choose to expand Medicaid to the optional adult eligibility group?

Subpopulation issues

- Is the expansion of Medicaid to children enrolled in foster care optional?
- Is the expansion of Medicaid for children from 100-133% of the FPL optional?
- Is there any change to the CMS' guidance regarding the collapsing of eligibility categories?

Related ACA requirements

- Prior to 2014, are states still subject to the MOE requirements related to eligibility levels, methods, and procedures? What, if any, penalty is there for non-compliance?
- Will states still be required to convert their income counting methodology to MAGI for purposes of determining eligibility regardless of whether they expand to the optional adult group?
- In states that do not expand eligibility to the optional Medicaid group, will the DSH program funding still be reduced according to the schedule stipulated in the ACA? In developing the DSH reduction methodology, will CMS consider whether a state takes up – in its entirety or partially – the eligibility expansion to the optional adult group?
- What is CMS' timeline for issuing guidance on alternative benefit packages for the optional adult category?
- What is CMS' timeline for releasing the final rule regarding the temporary enhanced federal funding for primary care reimbursement rates?
- Does CMS plan to issue guidance related to how states notify individuals about the application of the penalty for not purchasing/enrolling in health coverage?
- What is the timeline for CMS issuance of guidance on the Basic Health Plan program?