Affordable Care Act implementation
one year post-decision:
Medicaid expansion, preventive services, and public health implications

Wednesday, June 26, 2013
1:00 – 2:00 p.m. EDT

Sponsored by:

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Logistics

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• Continuing education credit: see information in chat box on the side.

• Please use the “chat” function to submit any questions for the Q&A at the end of the webinar. We will answer as many questions as we can, including questions that were submitted ahead of time.

• Thanks in advance for completing our quick evaluation at the end of the webinar!
Presenters

**Corey Davis, MSPH, JD**
Staff Attorney, National Health Law Program

Corey joined NHeLP in September 2010 as a Staff Attorney in the North Carolina office. Prior to joining NHeLP, Corey served as Employment Rights Attorney at Equality Advocates Pennsylvania, where he represented lesbian, gay, bisexual and transgender (LGBT) individuals and provided education, outreach and strategic support to the LGBT community. Before joining Equality Advocates, Corey was a New Voices fellow at Prevention Point Philadelphia, where he oversaw a street-based legal clinic sited at the city’s only syringe exchange program. He is the recipient of the International AIDS Society’s Young Investigator Award and has published in the lay and academic press. Corey received his B.S. from the Indiana University of Pennsylvania, his M.S.P.H. from the University of North Carolina at Chapel Hill, and his J.D. from Temple University.

**Dipti Singh, JD**
Staff Attorney, National Health Law Program

Dipti Singh joined NHeLP from the Center for Reproductive Rights (CRR), where she served as a legal fellow in the U.S. Legal Program. At CRR, Ms. Singh was a member of litigation teams that defended women’s rights to information about and access to comprehensive reproductive health care services. Her legal experience includes working as an associate at Williams & Connolly LLP and clerking for the Honorable Christina A. Snyder of the U.S. District Court for the Central District of California. Ms. Singh received her J.D. from University of California Berkeley School of Law, Order of the Coif, and a B.A., summa cum laude, in political science and psychology from the University of California, Irvine. Ms. Singh is conversational in Hindi and works out of NHeLP’s LA office.
Affordable Care Act Implementation
One Year After the U.S. Supreme Court’s Decision

Corey Davis, JD, MSPH
Dipti Singh, JD

June 26, 2013
ACA in a Nutshell

- Minimum essential coverage requirement
- Private market reforms
- Health insurance exchanges/marketplaces
- Medicaid expansion
- Health system reform – focus on public health, prevention, and evidence-based care
Major Private Market Reforms

• Most insurers cannot deny or cancel coverage for children because of pre-existing conditions, cancel coverage, or impose lifetime caps on coverage.
• Must permit parents to cover children up to age 26, spend at least 80% of premiums on services, and cover certain preventive services for free.
• After 2014, most insurers cannot charge higher rates based on health status, pre-existing conditions, or gender; guaranteed issue and renewal.
Exchanges in a Nutshell

• Marketplaces to coordinate eligibility and enrollment
• No-wrong-door access, multiple ways to apply
• Subsidies for individuals below 400% FPL
• Enrollees can choose between plans
• All plans must meet minimum standards
Exchange Coverage

All Exchange plans must provide:

• Essential Health Benefits
  • 10 categories, such as prescription drugs and maternity services
• Preventive services without cost-sharing
• Wellness services and chronic disease management
• Essential community providers, where available
• Mental health parity
Monthly Premiums on the Exchange

* Based on second cheapest silver plan at $500/month per person.
SCOTUS Recap

Two ACA provisions at issue:

• **Minimum essential coverage** (a.k.a. individual mandate): Requires individuals to carry health insurance meeting certain requirements or pay a penalty

• **Medicaid Expansion**: Extends Medicaid coverage to individuals with incomes below 138% of federal poverty level
SCOTUS Decision

• Minimum essential coverage: Upheld. Not permissible under Commerce Clause, but valid exercise of Congress’ power to lay and collect taxes

• Medicaid Expansion: Upheld, kind of. Expansion is OK, but potential penalty for not expanding is impermissibly coercive

• All other provisions upheld
Medicaid in 2014

- Many more people will qualify
  - Everyone age 19-64 and not pregnant with income up to 138% FPL
  - Must meet Medicaid immigration status requirements
  - No limit to an individual’s savings/assets
  - (Must not qualify under existing category)
- Medicaid must cover certain minimum benefits
- Federal government pays 100% of costs for newly eligible individuals for 2014-2016, slowly declining to 90% - then remaining steady
Vital Importance of Expansion

Coverage for childless adults, by income level

- Exchange
- Exchange w/ subsidies
- Medicaid
- Exchange w/ subsidies
- No coverage

Eligibility threshold (FPL)

0% 100% 200% 300% 400% 500% 600%

ACA

No Medicaid Expansion
Expansion Status

Affordable Care Act Implementation One Year Post-Decision
Many, Many Prevention and Public Health Provisions – All upheld

- Maternal, infant and early childhood home visiting programs (§ 2951)
- Creates National Prevention, Health Promotion, and Public Health Council (§ 4001)
- Creates Prevention and Public Health Fund (§ 4002)
- Reauthorization and funding of USPSTF (§ 4003)
- Increases and mandates Medicare coverage of preventive services (§§ 4103-4105)
- Expanded Medicaid coverage for preventive services (§ 4107)
- Reasonable break time for nursing mothers (§ 4207)
- Establishes national diabetes prevention program (§ 10501)
Highlighting Three..

- Section 9007 requires non-profit hospitals to conduct **Community Health Needs Assessments** every three years. Many health departments must conduct similar assessments. This is a great collaboration opportunity!
- **Community Health Center Fund:** $11 billion over 5 years for operation, expansion and construction of health centers – includes $1.5 billion for National Health Service Corps
- **Prevention and Public Health Fund:** First mandatory federal funding for public health. Originally provided $15 billion over FY10-19, then $2 billion per year (more on this in a bit)
The Incredible Shrinking Fund

To date, Prevention and Public Health Fund has provided $2.25 billion for prevention and public health activities including:

- Community Transformation Grants
- National Public Health Improvement Initiative
- Clinical prevention initiatives

But the Fund is under continuous assault

- ACA appropriated $18.75 billion for period FY2010-FY2022
- In Feb. 2012, Fund was cut by $6.25 billion from FY2013-21
- Funding cut again in early 2013
  - Sequestration cut $51 billion
  - $450 million being diverted to Exchange implementation
ACA Moves Forward: Services

- Essential Health Benefits, including
  - Outpatient services (preventive and wellness; rehab; chronic disease management; prescription drugs)
  - Emergency services
  - Hospital
  - Maternal and newborn care
  - Pediatric (oral and vision)
  - Mental health, substance abuse, and behavioral health
The ACA requires most new health plans and health insurance issuers to cover certain preventive services without cost-sharing:

- Services with “A” or “B” rating from the U.S. Preventive Services Taskforce;
- CDC recommended immunizations;
- Preventive services for infants, children, and adolescents; and
- Women’s services, as provided in guidelines supported by the Health Resources and Services Administration (the Women’s Health Amendment)
Women’s Preventive Services: Required Health Plan Coverage Guidelines

- Well-woman visits
- Screening for gestational diabetes
- Screening for HPV
- Counseling for STDS
- Counseling and screening for HIV
- Contraceptive methods and counseling (with refusal clause)
- Breastfeeding support, supplies, and counseling
- Screening and counseling for interpersonal violence
Preventive Services: Challenges and Opportunities

• Well-woman visit
  • Can be more than one
  • Opportunities to define broadly
  • Prenatal care

• Contraceptive coverage = all FDA-approved methods
  • Medical Management
  • “As prescribed”
  • Religious exemptions and accommodations
Section 2713 of PHSA

• **WHO** is covered?
  • Anyone enrolled in:
    • Commercial plans in the group and individual markets (including most student health plans)
    • Self-insured employer plans
    • Qualified health plans in the Exchanges
    • Medicaid benchmark plans via the Medicaid Expansion
Section 2713 of PHSA

• **Who is NOT covered?**
  • Anyone enrolled in:
    • Grandfathered plans (pre- March 23, 2010)
    • Self-funded student health plans
    • *Some religious institutions* (for contraception rule only)
Contraception Coverage Rule

• Some non-profit religious institutions exempt
  • Churches, houses of worship

• Non-exempt, but “accommodated” entities do not have to cover contraception
  • Non-profit, oppose coverage of contraception, hold out as religious

• **BUT**, employees of non-exempted, non-profit religiously-affiliated “accommodated” employers and universities **will** receive contraceptive coverage without cost-sharing

• August 1, 2013 regulatory safe harbor expires
Lawsuits Surrounding Contraceptive Coverage Rule

• **(32) For-profit challenges**
  - Cases before the 3rd, 6th, 7th, 8th, 10th, and D.C. circuits and district courts
  - (3) courts of appeals denied requests to temporarily block the rule and (3) have granted requests to temporarily block the rule, as applied to plaintiffs in those cases

• **(30) Non-profit challenges**
  - (18) dismissed
  - Cases before the D.C. circuit and (9) district courts
  - Most cases on hold until federal rule-making is complete
Contraceptive Coverage Rule: For-Profit Lawsuits

- Challengers claim violations of the First Amendment and the Religious Freedom Restoration Act of 1993 (RFRA)
- RFRA says that the Government shall not “substantially burden a person's exercise of religion” unless the burden is:
  - “(1) is in furtherance of a compelling governmental interest; and
  - (2) is the least restrictive means of furthering that compelling governmental interest”
- NHeLP and over 70 other individuals and groups have filed friend-of-the court briefs supporting the rule
Other ACA Lawsuits

• **Subsidies**: challenges to tax credits for people who purchase insurance from health exchanges operated by the federal government
  - *Halbig v. Sebelius* (D.C. District Court)
  - *Pruitt v. Sebelius* (Eastern District of Oklahoma)
Other ACA Lawsuits

• Religious freedom
  • *Liberty Univ. v. Geithner* (Fourth Circuit)

• Origination Clause
  • *Sissel v. HHS* (D.C. District Court),
  • *Ass’n of Am. Physicians & Surgeons v. Sebelius* (D.C. Circuit)

• Substantive Due Process and preemption
  • *Coons v. Geithner* (Ninth Circuit)
Discussion Questions

• In states that expand, will health departments that provide clinical services see fewer clients, since those clients will now be able to access other providers?
  • Or...Will those departments see *more* clients, as people gain coverage and look to known, trusted entities?
  • Are health departments that provide clinical services permitted to and capable of properly billing Medicaid and private insurance?

• What responsibilities and opportunities are there for health departments to connect clients with appropriate coverage?

• What are the potential roles of health departments in new healthcare delivery systems?
Final Thoughts

The fight is not over.

- Many of the ACA’s provisions are being put into place through regulations being written now
- States are also making implementation decisions that will affect millions of people
- Health disparities, access issues, and public health problems will continue to exist

It’s vitally important that public health’s voice be heard!
THANK YOU

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Questions
Now what?

1. Join NHeLP for a Twitter Townhall on the anniversary of the ACA decision
   – **When:** Friday, June 28th, 12-1 PM eastern
   – **How:** track @NHeLP_org and join the conversation by using hashtag #NHeLPanswers

2. Stay tuned for upcoming APHA webinars and resources on health reform

3. Check out the re-launched [www.healthcare.gov](http://www.healthcare.gov) for updated Marketplace information and consumer resources
For more information

• APHA’s health reform webpages: www.apha.org/advocacy/health+reform

• APHA’s Supreme Court decision page: www.apha.org/advocacy/Health+Reform/court_cases/

• APHA’s issue briefs, fact sheets, and webinars: www.apha.org/advocacy/reports

• APHA’s list of other useful health reform sites and resources: www.apha.org/advocacy/Health+Reform/links/

• National Health Law Program’s health reform webpages: http://www.healthlaw.org/index.php?option=com_content&view=article&id=456&Itemid=212


• Network for Public Health Law’s health reform webpages: http://www.networkforphl.org/public_health_law_topics/health_reform/