

Maine's Medicaid State Plan Amendment Remarks of Attorney General Schneider

Press Conference

Maine Department of Health and Human Services

August 1, 2012

Thank you, Commissioner Mayhew. Good afternoon, everyone.

As the Commissioner explained, our State Legislature has had the difficult job of balancing the needs of the people of Maine in a time of economic downturn and reduced revenues.

Making that task even harder, Maine legislators have a constitutional duty to present a balanced budget and cannot simply take on debt to cover their spending or increase taxes to levels that the people of Maine cannot bear.

A portion of the cuts needed for a balanced budget for state fiscal year 2013 included changes in levels of Medicaid eligibility to the three categories mentioned by Commissioner Mayhew.

Maine's Medicaid program has been one of the most generous in the country for some time, and the proposed decreases still placed Maine well above federal minimum Medicaid eligibility requirements.

However, Medicaid is a jointly funded state and federal program. To participate, states must comply with federal criteria, such as who receives care and what services are provided at what cost, or risk the loss of federal funding.

In 2009 Congress created an entirely voluntary program in response to the economic downturn by enacting the American Recovery and Reinvestment Act or ARRA. Under ARRA, a state could voluntarily obtain enhanced federal Medicaid matching funds for 27 months between October 1, 2008 and December 31, 2010 in return for maintaining the Medicaid eligibility standards in effect in that state on July 1, 2008 until the end date of December 31, 2010.

Maine voluntarily participated in this program, expecting that this maintenance of effort requirement would end, the enhanced federal Medicaid matching funds

would no longer be available and Medicaid eligibility standards could be adjusted by the State as needed.

Maine also voluntarily participated in an extension of this enhanced federal Medicaid matching funds by agreeing to maintain eligibility standards through June 30, 2011.

The Affordable Care Act, as part of its expansion of Medicaid, contained a maintenance of effort mandate that froze states' Medicaid eligibility standards as of March 23, 2010 – the date the ACA became law – but did not continue the extended funding incentives of the voluntary program, which ended on June 30, 2011.

The Affordable Care Act maintenance of effort requirement was essentially a retroactive expansion of Maine's Medicaid program made unilaterally by the federal government.

An agreed-upon, voluntary program became a mandatory one forcing Maine to extend voluntarily-accepted requirements until 2014 for adults and 2019 for children who previously were not required by agreement to be covered past 2011.

The federal government did this while eliminating the very incentives of more federal Medicaid money that persuaded Maine to agree to time-limited maintenance of effort provisions in the first place.

This situation remained unresolved until the recent landmark healthcare ruling.

On June 28th, the Supreme Court ruled that the Affordable Care Act was unconstitutional insofar as it conditioned the receipt of federal Medicaid funding for prior programs upon the State's compliance with the new Medicaid expansion.

The maintenance of effort provision is part and parcel of the Medicaid expansion that was struck down.

The maintenance of effort provision also violates fundamental constitutional principles by imposing a post-acceptance, retroactive condition that gives Maine no choice and turns a voluntary program into a mandatory one.

The Supreme Court explained that Congress' use of the Spending Clause with the states is in the nature of a contract that requires a knowing and voluntary acceptance of the terms.

The preexisting contract was Maine's agreement to freeze its eligibility standards until June 30, 2011. The Affordable Care Act changed that contract by extending the eligibility standards for years beyond that date.

In using the maintenance of effort provision to force states to implement a mandatory Medicaid expansion, the federal government exceeded its power.

This unilateral, post-acceptance ultimatum cannot stand.

Therefore, we have asked the United States Department of Health and Human Services for an immediate approval of our State Plan Amendment.

Thank you. Commissioner Mayhew and I will now take your questions.