Outlook For States Expanding Medicaid To Young Immigrants

Law360, (April 15, 2019)

Rosanna Carvacho

In recent weeks, the states of California, Washington, Connecticut and New York City have proposed expanding Medicaid eligibility for unauthorized young adults. Given Medicaid's combination of state and federal funding, House and Senate Republicans have raised concerns that these states may inappropriately use federal funds to subsidize their state programs as a way to offset the cost of expanding and providing health benefits to unauthorized immigrants.

Federal responses should focus on the use of congressional and federal regulatory oversight, which could potentially influence how states run their Medicaid programs.

California Proposal and Background

Araceli Gutierrez

California Democratic Gov. Gavin Newsom's proposal to expand Medi-Cal (California's Medicaid) eligibility would, if enacted, make California the first U.S. state to provide full-scope health benefits to low-income unauthorized young adults up to age 26 beginning July 1, 2019.

In recent years, California has sought the same type of expanded Medi-Cal eligibility numerous times, though none of these attempts have made it through the legislature. Former Democratic Gov. Jerry Brown blocked a similar attempt to include funding for the expansion in the 2018-2019 budget. Newsom's budget proposal,[1] released on Jan. 10, however, includes $260 million for the expansion in California that would cover roughly 138,000 individuals.

Emily Felder

While California provides Medi-Cal coverage to unauthorized children, the proposal would use state funds to extend that coverage to low-income young adults, regardless of immigration status, by raising the age threshold from 19 to 26 years of age.

Federal funds provided to states come with various restrictions on how these dollars can be spent. There are also limits on the federal government's ability to interfere with a state's expenditure of its own funds. Under federal law, there is a five-year waiting period for authorized immigrants before they become eligible for Medicaid and the Children's Health Insurance Program benefits.

States, under certain circumstances, are permitted to waive this waiting period for children and pregnant women, resulting in varied coverage among states. California waives this waiting period and is one of only six states, in addition to Washington, D.C., that already provides Medicare/Medi-Cal coverage for children regardless of their immigration status.

Washington State Proposal and Background

Currently, all children and families in Washington state with annual incomes of $26,000 or below are eligible for Apple Health (Washington's Medicaid) insurance until they turn 19, at which point they can transition to coverage through their parents' plans until they turn 26. This does not apply to unauthorized young adults as they are ineligible for Medicaid.

Earlier this year, state Rep. Nicole Macri. D-Wash., introduced a House bill that spurred a subsequent Senate companion bill (HB 1697 and SB 5814). The bills aim to extend eligibility for Apple Health to all low-income young adults, regardless of immigration status. The bills outline that coverage shall be provided to individuals that: (1) are between the ages of 19 and 26; (2) have income that is at or below 133% of the federal poverty level; (3) are not incarcerated; and (4) are not eligible for categorically needy medical assistance, as defined in the Social Security Title XIX state plan. The estimated cost of the program is between $20 million and $30 million per year.

Connecticut State Proposal and Background

On March 21, 2019, the Connecticut state Senate's Human Services Committee approved a bill (SB 1053) that would expand state-sponsored health coverage to thousands of youth up to age 19, regardless of their immigration status. The bill would make unauthorized children and young adults eligible for the HUSKY A (Connecticut's Medicaid) and HUSKY B (Connecticut's CHIP) insurance programs.

It is estimated that as many as 17,000 individuals would qualify under the bill. Cost projections for the proposal are expected later this spring. The bill is now headed to the Connecticut state House of Representatives and could be referred to the Appropriations Committee once a cost estimate is developed. However, the bill may not be voted on as a stand-alone bill given the state's current budget challenges, expected to run $3.7 billion dollars in deficit over the upcoming two years unless adjusted.

New York City Proposal and Background

Today, roughly 600,000 New York City residents, about half of whom are unauthorized immigrants, are without insurance. On Jan. 8, 2019, New York City Mayor Bill de Blasio announced a program called NYC Care that would provide coverage to all New York City residents, regardless of ability to pay or immigration status.

The impetus for this plan stems from a hospital funding crisis in the city. In 2017, the city budget office reported that public hospitals were facing a $6 billion shortfall through 2020. NYC Care is anticipated to launch in the summer of 2019 and will roll out geographically, beginning in the Bronx. It will be fully available to all New York City residents in 2021.

The program will cost at least $100 million annually when it is fully scaled. All services will be provided on a sliding-cost scale, to include NYC Health + Hospitals' physicians, pharmacies, and mental health and substance abuse services. In addition, the city will increase its effort to boost enrollment in MetroPlus, the city's public option.

Congressional Responses

Senate

On Jan. 15, 2019, Sen. Bill Cassidy, R-La., introduced S. 131; The Protect Medicaid Act,[2] which would oversee the separation of federal and state funds. Specifically, the bill would amend the Social Security Act to prohibit using federal Medicaid funds for the administrative costs of providing health benefits to individuals who are unauthorized immigrants.

The bill would also require a report from the U.S. Department of Health and Human Services' Office of Inspector General to include: (1) an explanation of how states separate funding for unauthorized Medicaid recipients versus all other participants; (2) a description of the procedures states employ to ensure they are in compliance with federal law; and (3) a description of states' methods of financing Medicaid programs that provide health benefits to unauthorized immigrants. Bill cosponsors include Sens. John Barrasso, R-Wyo., Marsha Blackburn, R-Tenn., Joni Ernst, R-Iowa, Cindy Hyde-Smith, R-Miss., Jim Inhofe, R-Okla., John Neely Kennedy, R-La., Mike Lee, R-Utah, David Perdue, R-Ga., and Roger Wicker, R-Miss.

House of Representatives

On Jan. 23, 2019, House Oversight Committee Ranking Member Jim Jordan, R-Ohio, and House Freedom Caucus Co-Chair Mark Meadows, R-N.C., sent a letter[3] to the Centers for Medicare & Medicaid Services to examine potential "program integrity" problems with how certain Medicaid managed care plans are run. The letter highlights a recent state audit by California's Department of Health Care Services, or DHCS, that found that the department made nearly $4 billion in "questionable" Medi-Cal payments between 2014 and 2017.

Among the requests outlined in the letter, Jordan and Meadows asked that CMS identify recent steps taken by the agency to strengthen program integrity in Medicaid managed care, including a description and account of the steps CMS has taken or plans to take to improve its oversight over California's Medicaid program.

Current Outlook

Even if S. 131 were to pass the Senate, the bill is unlikely to gain traction in the Democratic-controlled House. It is anticipated that additional federal Medicaid oversight efforts may surface from Republican members in the upcoming months to discourage states from enacting similar expansion proposals. It is more likely that additional federal attention will come from CMS through its oversight and audit role with respect to federal matching dollars.

CMS requires that state Medicaid programs account for how dollars are spent. Congress' attention to Medicaid program integrity, particularly surrounding coverage for unauthorized immigrants, will raise the profile of these program integrity concerns. As a result, it is likely that CMS will pay heightened attention to the separation of funds to ensure that federal Medicaid dollars are only spent for beneficiaries who qualify for federal Medicaid dollars.

If enacted, California's proposed expansion of Medi-Cal eligibility may face enrollment difficulties given the broad and recent changes in federal immigration policy and the current political climate in D.C. on immigration issues. With the recent departures of several top

political appointees at the U.S. Department of Homeland Security, it is expected that the administration could well opt to take a more aggressive stance on immigration.

The Trump administration's "public charge" proposed rule is believed to have led to heightened enrollment fears among otherwise eligible immigrants. Should that rule be finalized without many changes, it is anticipated to drive down enrollment by millions of people in Medicaid and the Children's Health Insurance Program.

Rosanna Carvacho is a shareholder, Araceli Gutierrez is a policy adviser and Emily Felder is a senior policy adviser and counsel at Brownstein Hyatt Farber Schreck LLP.

[1] http://www.ebudget.ca.gov/budget/2019-20/#/Home

[2] https://www.congress.gov/bill/116th-congress/senate-bill/131/titles?q=%7B%22search%22%3A%5B%22S131%22%5D%7D&r=1&s=1

[3] https://republicans-oversight.house.gov/wp-content/uploads/2019/01/2019-01-23-JDJ-MM-to-Verma-HHS-re-Medicaid-MCOs-due-2-6.pdf