The Supreme Court Ruling on the Affordable Care Act

Implications for Colorado

Table of Contents

3 Introduction

4 Five Questions Facing Colorado

6 Background

7 Implications for Colorado's Insurance Market

11 The ACA in Colorado: Grants Awarded To Date

12 Conclusion

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Introduction

The U.S. Supreme Court's decision to uphold the Affordable Care Act (ACA), and especially the individual mandate provision, stands to affect Colorado's health care system—and hundreds of thousands of the state's residents—on a variety of fronts.

CHI estimates that about a half-million uninsured Coloradans will gain health insurance by 2016.

These newly-insured Coloradans – those who will become eligible under an expanded Medicaid program, middle-income individuals and families who will qualify for government subsidies to purchase insurance, and employees of small and some larger businesses who aren't currently offered coverage – will most likely have significant implications for Colorado's insurance market as well as how health care is delivered in the state.

The Supreme Court ruling created more certainty for the Colorado Health Benefit Exchange (COHBE). Authorized by state law but funded initially through the ACA, COHBE is scheduled to open a new marketplace designed to provide affordable insurance by October 2013. A good portion of the newly-insured will most likely buy their coverage through COHBE.

Finally, tens of millions of dollars in ACA-related grants will continue to flow to Colorado organizations, funding their efforts to improve the health care system. Many programs in Colorado are testing models to make health care more efficient, less expensive and better able to provide good health outcomes. CHI expects this forward-looking work to continue.

While hundreds of papers have been—and will be—written on the implications of this historic decision, this issue brief focuses on the implications for Colorado.

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With its ruling, the Supreme Court provided some important answers. But CHI anticipates that Colorado's policymakers, leaders and citizens will need to answer a number of other questions in order to implement the law, including:

1 *Will Colorado choose to participate in the Medicaid expansions outlined in the ACA?*

The Supreme Court both validated and constrained the proposed Medicaid expansion. The court ruled that states that choose not to participate in the ACA's Medicaid expansion will no longer lose all of the federal match for their Medicaid programs. While the financial incentives are significant—the federal government will pick up the vast majority of the expansion's costs—some states may decline to participate for ideological or financial reasons.

Through previous legislation, the Colorado Health Care Affordability Act (HB 09-1293), Colorado's legislature signaled that it supported Medicaid expansions for Coloradans with incomes up to 100 percent of FPL. However, financing for this expansion remains a challenge, and it is expected that once ACA funding becomes available in 2014, Colorado will implement the expansion to adults with incomes between 101-133 percent of FPL. This doesn't mean, however, that these expansions are obligatory.

It should be noted that Colorado can always change previous decisions through legislation and future sessions. A Republican-led General Assembly, should that result in November, may choose to do just that.

2 *Will the Colorado Health Benefit Exchange be open by October 2013?*

The ruling means that substantial federal funding is still available to build the physical and technological infrastructure necessary for COHBE. Since Colorado passed legislation (SB 11-200) establishing COHBE, the question isn't *if* the exchange will be built but rather *when* it will be completed. The deadlines outlined in the ACA are ambitious, and the challenges involved in building complex eligibility systems are great. Whether COHBE will be ready to open its "virtual" doors by October 2013 remains to be seen.

Recent reports from COHBE indicate that Colorado is one of a few states on-time and on-budget. Leaders are optimistic about meeting the 2013 deadline.

3 *What will be included in Colorado's definition of essential health benefits?*

The Supreme Court's decision upholds the essential health benefits provision of the ACA. Essential health benefits are the minimum set of health services that must be included in most health insurance plans starting in 2014. All small group and individual health insurance plans sold on and off the exchange will be required to cover the essential health benefits. In 2016, these products could cover up to one million Coloradans.

While there are outstanding questions regarding the decision-making process, it clearly will require a delicate balancing act between comprehensiveness and affordability. If Colorado's benefit package is too expansive, Coloradans may decide they can't afford them and that it makes more financial sense to pay a relatively small tax penalty rather than purchase insurance. If Colorado's definition is too narrow, consumers may be required to pay more out-of-pocket for health care than they would otherwise. To ensure that health

unlawful, the motivation to purchase coverage may be lower.

Because the original law required states to provide Medicaid coverage to individuals up to 133 percent of the FPL, federal subsidies to purchase private coverage are not available below this level. If Colorado chooses not to implement the Medicaid expansion, some low-income adults would qualify neither for Medicaid nor federal subsidies.

plans have sufficient time to prepare for 2014, a decision must be made by the third quarter of 2012.

Planning is under way in Colorado to decide on the essential health benefits package. COHBE, the Colorado Department of Insurance, and the Governor's office are coordinating.

4 *Will the tax penalties be sufficient to encourage currently uninsured Coloradans to purchase coverage?*

The individual mandate was upheld under Congress' ability to levy taxes. Beginning in 2014, most Coloradans who do not have health insurance coverage will be required to purchase it or pay a tax penalty. CHI, using analysis from the 2011 Colorado Health Access Survey (CHAS), estimates that 405,000 Coloradans have been uninsured for three months or longer and are ineligible for public health insurance—the group of individuals who would be required to purchase coverage or pay a tax. However, because choosing not to purchase health insurance is no longer considered

5 *Constitutional issues aside, does the ACA survive ongoing battles over implementation?*

The high court's decision settled the constitutionality of the ACA, but hurdles remain. While the ruling may be perceived as a victory for the Obama administration, the outcome of the November elections will significantly impact how—and if—parts of the law are implemented. Elections at the federal and state levels may continue the health reform path outlined in the ACA, or health reform could be defunded, derailed or replaced entirely. At immediate issue will be financing challenges, given the expected tense nature of federal budget talks in early 2013.

Background

In late March 2012, the Supreme Court heard oral arguments on the constitutionality of the ACA. The hearings dealt with four questions:

1. Should most Americans be required to purchase health insurance? This component, known as the individual mandate, is a cornerstone of the ACA.
2. If not, can other parts of the ACA stand without the individual mandate? This refers to *severability*—or if one part could be severed from the rest without harmful effects.
3. Is the individual mandate a tax, and if so, can its constitutionality be questioned before the tax is collected? This question is rooted in the Anti-Injunction Act, an 1867 law that states that no tax can be constitutionally challenged until someone has to pay it.
4. Are the Medicaid expansions in the ACA too onerous for states? The ACA expanded Medicaid coverage to all individuals with incomes at or below 133 percent of the Federal Poverty Level (FPL).

The two cases under consideration by the Supreme Court were the *National Federation of Independent Business v. Sebelius* and *Florida v. United States Department of Health and Human Services*. Both questioned the constitutionality of the individual mandate. In the latter, Colorado joined 25 states to question the constitutionality of the Medicaid expansions.

The Ruling: A Quick Rundown

By a vote of 5-4, the Supreme Court upheld the constitutionality of the Affordable Care Act. Chief Justice John Roberts joined Justices Stephen Breyer, Ruth Bader Ginsburg, Elena Kagan and Sonia Sotomayor in deciding that the penalty for not having health insurance is considered a tax and, thus, was within Congressional authority.

The justices were also divided regarding the constitutionality of a proposed Medicaid expansion in the law. Overall, a majority ruled the proposed Medicaid expansions constitutional. However, the decision opens the door for some states to opt out of the expansion. It allows states that refuse to participate in the expansion to continue receiving federal funds to support their current Medicaid plans. The ACA had originally required states to implement the Medicaid expansions or risk losing all funds for their entire Medicaid program.

Implications for Colorado's Insurance Market

What it means: *While most Coloradans will continue to get health insurance through their employer, uninsured Coloradans will have more options for health coverage.*

With so much attention focused on the national debate, it's easy to lose sight of the choices Colorado can make—and has made—in the implementation of health reform. In 2006, the General Assembly created the Blue Ribbon Commission for Health Care Reform, a bipartisan group of community leaders charged with identifying strategies to increase the number of Coloradans with health insurance while lowering overall costs.

After reviewing a number of proposals, the 208 Commission, as it is known, laid out a roadmap for Colorado health reform in early 2008. Some provisions—such as a mandate that all Coloradans purchase a basic health insurance plan—have not been acted upon by the legislature. Others, such as the creation of a "connector" or exchange to help individuals and small employers purchase insurance, have been enacted into law.

Since the ACA's passage in 2010, the state has implemented a number of initiatives aimed at reducing costs and improving quality. This "Colorado flavor of reform" is rooted in bipartisan solutions to tough health problems. Legislation such as SB11-200, which formed COHBE, and HB12-1281, which called for creative solutions in the Medicaid program, demonstrates that a politically-divided legislature can come to agreement on health care initiatives.

The primary goal of the ACA is to increase the number of Americans who have access to—and purchase—affordable health insurance. The majority of Coloradans (approximately 60%[i]) receive coverage through their employer. In 2016, most of these Coloradans are expected to continue to receive coverage through their employer.

The Uninsured, the Individual Mandate and COHBE

For the uninsured, the ACA aims to make big changes in their ability to buy health insurance. It does that through a number of mechanisms, such as expanding Medicaid coverage to low-income individuals, providing subsidies to middle-class Americans and prohibiting insurers from denying coverage due to pre-existing conditions.

Because the Supreme Court upheld the individual mandate, one of the central tenets of the law, most Coloradans will be required to purchase private health insurance starting in 2014 or face a tax penalty. The tax penalty for not having health insurance will be phased in over three years, starting with $95 per person in 2014 and increasing to $695 in 2016. Exemptions will be granted for low-income individuals, undocumented immigrants, those with religious objections and individuals for whom affordable coverage is not available.

A number of provisions in the ACA aim to make the purchase of health insurance easier and more affordable. A health insurance exchange is an entity that provides a transparent marketplace and consumer education to assist individuals in gaining access to health insurance, premium assistance tax credits and cost-sharing

support. COHBE is expected to be in operation by October 2013. In addition, federal subsidies will be available to individuals with incomes up to 400 percent of the federal poverty level.[ii]

CHI estimates that about 510,000 Coloradans will gain insurance by 2016 because of the ACA. With an estimated 30,000 Coloradans who currently have insurance losing it for a variety of reasons, the bottom line projection for the number of Coloradans who will gain an insurance card is about 480,000.

Approximately 405,000 Coloradans may be directly impacted by the mandate.[iii] These Coloradans are uninsured for three months or more and won't qualify for public health insurance, so they will need to obtain insurance or pay a tax penalty starting in 2014.

Predicting exactly how many people will enroll in the exchange is a difficult task due to a number of variables. Despite these challenges, Dr. Jonathan Gruber of MIT last year completed a series of projections for COHBE. His model predicts that if the ACA were fully implemented as passed, the number of uninsured Coloradans would drop by more than half to fewer than 400,000 Coloradans (see Table 1).

Table 1. Projected ACA Effect on Insurance Coverage Types, Colorado, 2016

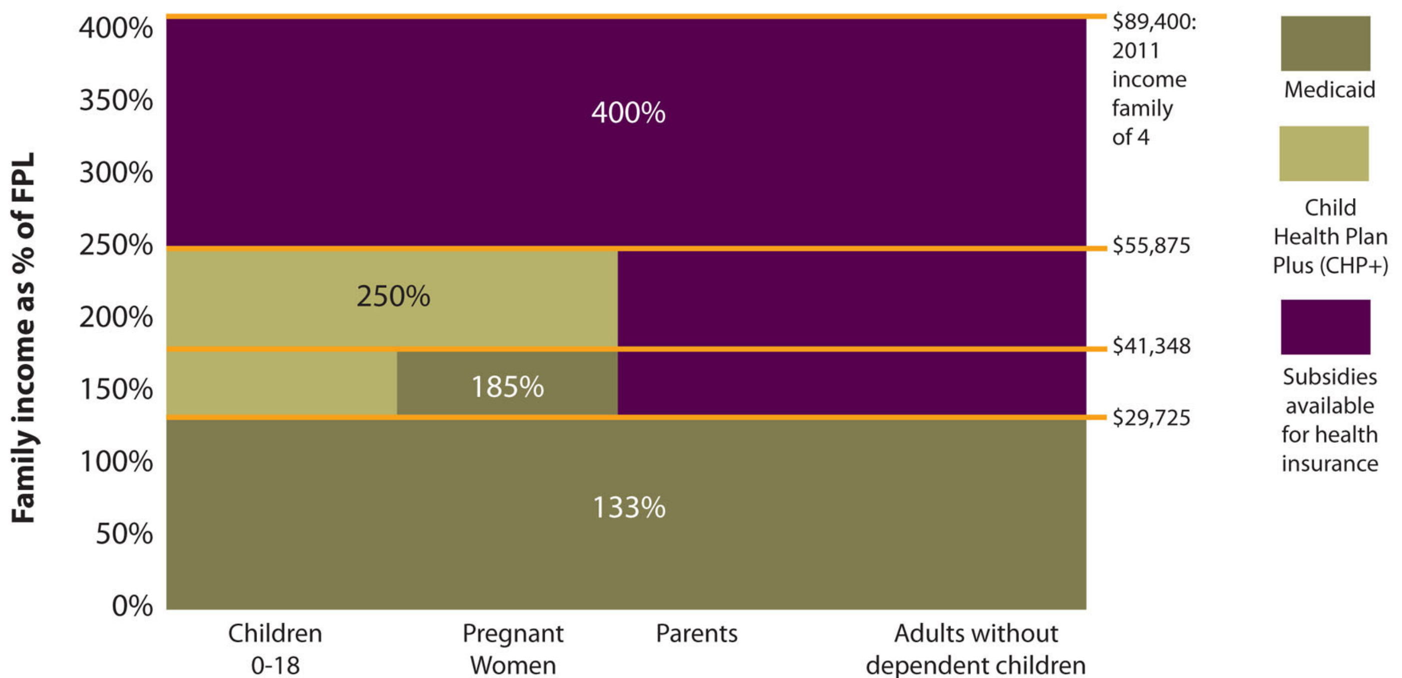
	No Reform	With Reform	Reform Impact
ESI	2,710,000	2,710,000	0
• Small Firm ESI (1-50 employees)	300,000	340,000	40,000
• Other ESI	2,410,000	2,370,000	-40,000
Unreformed Individual Market	360,000	70,000	-290,000
Reformed Individual Market	—	620,000	620,000
Public Insurance	600,000	750,000	150,000
Uninsured	870,000	390,000	-480,000
Total	**4,540,000**	**4,540,000**	

SOURCE: Dr. Jonathan Gruber's estimates for the Colorado Health Benefit Exchange

Public Health Insurance Expansion

In addition to the private insurance market reforms, another major component of the ACA is the Medicaid expansion to all Americans below 133 percent of the FPL. Because Colorado's Medicaid/CHP+ eligibility is more generous for children than the minimum coverage levels outlined in the ACA, only adults would be impacted by the ACA expansions. Graph 1 summarizes eligibility standards in Colorado following the full implementation of the ACA, assuming Colorado chooses to participate fully in the expansions.

Graph 1. Eligibility Standards in Colorado After State and Federal Health Reforms



Notes: Federal health reform does not make changes to Medicaid eligibility for elders and people with disabilities. CICP will likely continue to serve individuals who do not qualify for Medicaid or CHP+ or are uninsured or underinsured.

Private Health Insurance Reforms

Dr. Gruber also modeled the impact of the Affordable Care Act on the cost of individual health insurance premiums. Without the ACA, average annual premiums for a single plan in 2016 were projected to be $5,570 in Colorado. If the ACA is implemented as passed, the average premium on the individual market is expected to rise to $6,610—but the average Coloradan would pay about $4,060 due to federal subsidies, according to Dr. Gruber's model. The average single premium in Colorado under an employer plan in 2010 was $4,630, according to the Colorado Division of Insurance.

Actuarial value is a term used to describe the proportion of medical expenses that an insurance carrier is expected to cover. This analysis projects that carriers will cover approximately 68 percent of the medical expenses associated with an average plan sold in Colorado's individual market in 2016. This is up from 61 percent with no changes to the market.

In addition, it is expected that other changes impacting the individual market will continue to be implemented on the schedule outlined in the ACA. Beginning in 2014, insurers won't be able to deny adults coverage due to pre-existing conditions or impose annual limits on services received. They will be required to spend at least 80-85 percent of premium dollars on health care services, rather than administration or profits. Health plans will also need to provide consumers with an easy-to-understand summary of benefits and coverage for health insurance. This will be similar to a "nutrition facts" label for packaged food products. All plans will be required to cover a comprehensive set of services such as preventive care, hospital visits, and mental health care. These are known as essential health benefits and will be decided by each state by 2013 for plans beginning in 2014.

The ACA in Colorado: Grants Awarded To Date

Millions of dollars in ACA-related grants have been awarded in Colorado, according to the U.S. Department of Human Services. They include:

- Nearly $19 million for COHBE. This includes a $1 million planning grant and a $17.9 million Level 1 establishment grant. COHBE plans to continue applying for available federal dollars as necessitated by their implementation timeline.
- More than $46.5 million for Colorado's Community Health Centers. These grants fund the expansion and renovation of existing facilities, as well as the building of new ones.
- $17.2 million in grants from the federal Prevention and Public Health Fund.
- The Center for Medicare and Medicaid Services has awarded eight highly-competitive Innovation grants to Colorado. These grants include $1.7 million to the Upper San Juan Health Service District in Southwest Colorado, $19.8 million to Denver Health and $1.4 million to Southeast Mental Health Services in Prowers County. These grants aim to improve care and reduce costs for people enrolled in Medicaid, Medicare and CHP+. In particular, they target high-cost populations and underserved communities.
- Other grants awarded include $3.5 million for school-based health centers, $210,000 to support outreach to eligible Medicare beneficiaries about their benefits, $500,000 to support the National Health Service Corps, $492,000 to support Aging and Disability Resource Centers, and $7.9 million for Maternal, Infant, and Early Childhood Home Visiting Programs.

CHI anticipates that these awards will continue at agreed-upon funding levels. Financial appropriations may be challenged by national elections and other federal budget issues.

Conclusion

The legal challenge may be over, but the implementation battles remain.

Elections – from presidential and congressional to the state level – will most likely determine how the law is implemented beginning in 2014. Switching from a Democratic administration to a Republican administration could impact the law almost as much as a Supreme Court ruling striking it down would have. Especially crucial will be whether funding is allocated to pay for the provisions in the law.

Even more basic, will Coloradans find that health insurance really does become affordable? Will they be persuaded to buy health insurance rather than pay the penalty, or will they decide it makes more financial sense to pay the tax penalty?

How will those decisions affect the operation of Colorado's new health insurance marketplace and its ongoing viability?

Will Colorado be ready to care for a half million or so newly insured, with all of the implications those numbers hold for the state's health care workforce and its capacity to provide care, especially in currently underserved areas of the state?

The answers to these questions – and hundreds of others – will become clearer as Colorado heads toward 2014, when the majority of the ACA is slated for implementation. CHI will continue to inform policy and advance the health of all Coloradans by monitoring these important questions.

[i] Source: CHI analysis of the 2011 Colorado Health Access Survey

[ii] In 2012, 400% of the federal poverty line is $44,680 for an individual and $92,200 for a family of four.

[iii] Source: CHI analysis of the 2011 Colorado Health Access Survey. This figure includes Coloradans who were uninsured for more than three months at the time of the survey (in mid 2011) and are expected to be ineligible for Medicaid or the Child Health Plan Plus (CHP+) due to income.

CHI is a trusted source of independent and objective health information, data and analysis for the state's health care leaders. CHI, celebrating its tenth anniversary in 2012, is funded today by the Caring for Colorado Foundation, Rose Community Foundation, The Colorado Trust and the Colorado Health Foundation.

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