

SCOTUS and PPACA

By Stanley W. Stead, MD, MBA



On June 28, the Supreme Court of the United States (SCOTUS) released its ruling on the Patient Protection and Affordable Care Act (PPACA). SCOTUS ruled that Congress can levy tax penalties on individuals who have no health insurance, delivering a victory to the Obama administration. In regard to the “uninsured mandate,” Chief Justice John Roberts wrote in his health care ruling: “The mandate is not a legal command to buy insurance.” He further insisted: “It makes going without insurance just another thing the government taxes, like buying gasoline or earning income.” It sounds like a mandate to me. But what has changed?

Part of the SCOTUS ruling prevented the federal government from withholding all Medicaid funds to states that fail to comply with the expansion of Medicaid, permitting them to withhold only new Medicaid funding from noncompliant states. Under PPACA, the Obama administration expects some of the 54 million uninsured to get their health care coverage from Medicaid. This movement to Medicaid marks a national transition that will change the nature of health care delivery and costs. One third of all people not eligible for Medicare will now be on Medicaid. Nationally, the Kaiser Family Foundation expects new Medicaid enrollments to exceed 15.9 million,¹ while the Congressional Budget Office (CBO) sees up to 32 million new enrollees.

California has been, by far, the largest state to opt into the early Medicaid expansion. It has 7.1 million uninsured residents, more than any other state.² With the federal government funding 93.7 percent of Medicaid, California sees this expansion as a huge economic lift, and has become an aggressive supporter of PPACA. Medicaid expansion has begun in earnest in California with the signing of about 400,000 new Medicaid enrollees to date; the state is seeking a total of 500,000 by the end of the year. In 2014, the federal government will cover *the entire cost* of newly eligible Medicaid enrollees. That is when California adds an additional 1.5 million new enrollees, with a state impact of only an additional 3.4 percent in budgetary cost.¹

Clearly, Medicaid enrollment is important to hospital administrators. It determines how they get paid. Enrollment may also be important to different sets of taxpayers. Federal taxpayers will pay more and California taxpayers pay less. Unfortunately PPACA does not make health care affordable; it merely shifts the costs of care and kicks them down the road for future politicians to address. This March the CBO estimated that PPACA would cost \$1.76 trillion — nearly twice the amount originally projected.

SCOTUS and PPACA (cont'd)

So the message is clear: Federal dollars will pay states that comply with PPACA to put their uninsured into Medicaid programs. From where does the money come? TAXES. Expect all of us to pay more, regardless of the mandate. Remember, in 2011, only 54 percent of Americans paid income taxes, and that percentage is far less in California.³

My economic modeling for anesthesiology indicates the shift from uninsured to Medicaid will result in a 9.3 percent increase in case volume, *if the capacity is available*. Will the uninsured receive more health care? They may receive less, because of difficulties in seeing a doctor. PPACA, following the Massachusetts precedent, did nothing to increase the supply side of the market to meet the increased demand. This may result in the insured attempting to outbid people paying Medicaid rates for doctor services and hospital beds. Will there be a shortage of surgical capacity? This will raise costs to the insured.

And will the uninsured seek to change their insurance status (i.e., enroll in Medicaid)? Logic would say yes, but actual practice seems to differ. In California hospitals, staff make herculean efforts to enroll patients in public programs, yet they fail more than half the time. Even when patients are admitted, the failure-to-enroll rate is shockingly high. Under EMTALA statute, emergent and urgent care is delivered. Patients with no financial resources have nothing to lose by refusing to enroll in Medicaid. It is easier not to fill out enrollment forms and engage with federal and state bureaucracies.

But aside from the administrative, accounting and financial issues, is there any social reason we should care? People reveal their preferences through their actions. Many patients are indifferent to being enrolled in a public program or being uninsured, simply because there are no consequences either way. The individual mandate with a tax penalty will not induce those who have nothing to lose and who do not pay taxes.

Will the newly insured have better health care outcomes? I hope so, but remain unconvinced. A 2006 Rand Corporation study published in the *New England Journal of Medicine* found that the type of insurance, or lack of it, does not reflect the quality of care they receive.⁴ Disturbingly, a study reported in *Lancet* found that both uninsured and Medicaid-insured patients had higher risks of presenting with advanced-stage cancers at diagnosis.⁵ These studies call into question the value of Medicaid insurance in affecting health care outcomes. Perhaps the problem is not uninsured vs. Medicaid-insured, but rather a population that eschews health care.

Which brings us back to the SCOTUS decision. The individual mandate is a tax. If the states won't pay for increased Medicaid enrollments, the federal government will pay. It should be clear to all that the insured will pay more,

the taxpayers will pay more, and the bureaucracies will expand. Nothing has changed. Our challenge as physicians remains to find opportunities to care for all our patients in need, in a high-quality and cost-effective manner.

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