



Mississippi Health Insurance Exchange Advisory Board

Mississippi Insurance Department

Commissioner Mike Chaney

April 11, 2012

Starkville, Mississippi

PPACA and the Supreme Court: Review of Oral Arguments

Background

- The Case: *Department of Health and Human Services v. Florida*
 - Florida
 - 11th Circuit
 - US Supreme Court
- The Questions:
 - Will the issues be decided now or later?
 - Is the Individual Mandate Constitutional?
 - If the Individual Mandate is unconstitutional, can the rest of PPACA stand?
 - Is the Medicaid expansion Constitutional?
- The Court composition: 5 Republican appointees, 4 Democratic appointees

The Court

Democratic Appointees



Kagan



Ginsburg

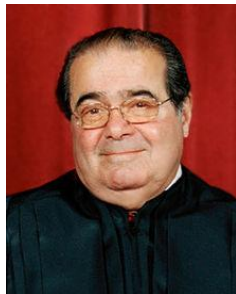


Sotomayor

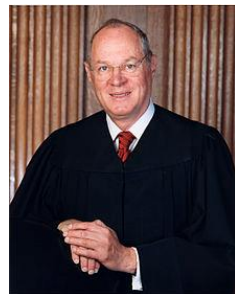


Breyer

Republican Appointees



Scalia



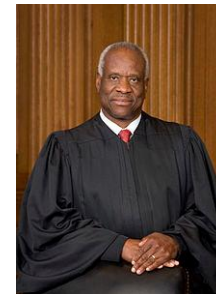
Kennedy



Roberts



Alito



Thomas

Now or Later?

- Does the Anti-Injunction Act prevent decision on these issues now?
- Probably not.
 - Neither the feds nor the challengers argued for the Act's application
 - The justices seemed similarly disenchanted with the AIA's applicability (i.e., it can be waived and/or the penalty is not a tax)

The Mandate – In or Out?

- Question – Is the Mandate Constitutional?
 - Regulation vs. Requiring Commerce
 - Healthcare vs. Broccoli
- Questioning was revealing...
- Consensus:
 - Alito, Scalia and Thomas WILL vote no.
 - Ginsburg, Breyer, Sotomayor and Kagan WILL vote yes.
 - Roberts will probably vote no.
 - Big Question -- Kennedy

What About the Rest?

- IF the Mandate falls, what do we do with the rest of PPACA?
- Generally speaking, the justices are uncomfortable with deciding what stays
 - Is there a clear line to be drawn?
 - 2,700 pages is a lot to sort through
- Though there is some agreement about community rating and guaranteed issue

Medicaid Expansion

- Is the expansion “coercive” to the States?
- Florida District Court AND Eleventh Circuit Court of Appeals
- The conservatives were clearly sympathetic to the states’ argument, but cautious
- Likely outcome: Medicaid Expansion stands (unless the whole thing gets unraveled).

What Happens Now?

- Arguments – March 26-28
- Straw Poll by Justices – March 30
- Lobbying amongst Justices – March 31....
- Decision – late June (June 28?)

Overview of Essential Health Benefits

Essential Health Benefits

- When: Effective 2014
- Where: Inside and outside the Exchange
- Who: Individual and small group markets
- What: Comprehensive package of items and services equal to the scope of benefits provided under a “typical” employer plan

Plans Required to Cover EHB

- Non-grandfathered plans
 - Individual and small group markets
 - Inside and outside of the exchange
- Medicaid benchmark and bench-mark equivalent
- Basic Health Programs

EHB Benefit Categories

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance abuse disorder services, including behavioral health treatment
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Laboratory services
- Preventive and wellness services and chronic disease management
- Pediatric services, including oral and vision care

Typical Employer Plan

- Benefits to be offered within each category are not defined
- Scope of EHB shall equal the scope of benefits provided under a typical employer plan
 - Reflect balance among the 10 categories
 - Account for diverse health needs
 - Ensure discrimination from coverage decisions, cost sharing or reimbursement rates is not incentivized
 - Ensure compliance with the MHPAEA
 - Balance comprehensiveness and affordability

A Decision for States

- HHS bulletin issued 12/16/2011
- Proposed flexibility; allows states to set the “benchmark” plan
 - Will serve as a reference plan
 - Will be selected from existing plans
 - Will reflect both the scope of services and any limits offered by a “typical employer plan” in the state

Benchmark Plan

- States are permitted to select a single benchmark to serve as the standard QHP
- This plan will serve as the state's EHB benchmark for 2014 and 2015
 - Creates transition period for states to coordinate their benefit mandates with the EHB
- In 2016, HHS will reassess the benchmark process based on evaluation and feedback

Benchmark Options

- One of the three largest small group insurance products in the state's small group market
- One of the three largest state employee health plans by enrollment
- One of the three largest national Federal Employee Health Benefits Plan ("FEHBP") plan options by enrollment
- The largest insured commercial non-Medicaid HMO plan operating in the state
- Federal Default = largest small group plan by enrollment

Small Group Insurance Products

- Blue Cross Blue Shield of Mississippi's Network Blue (ID#11721MS002)
- UnitedHealthcare Insurance Company's Choice Plus (ID#98805MS001)
- UnitedHealthcare of Mississippi's Choice Plus (ID#97560MS002)

National FEHBP Plans

- Blue Cross Blue Shield (Standard Option)
- Blue Cross Blue Shield (Basic Option)
- Government Employees Health Association (Standard Option)

Covering Costs

- States are required to cover the costs of state-mandated benefits that are in excess of the EHB
 - If the selected benchmark covers state mandates, the mandates become part of the EHB package
 - The state would not be responsible for excess costs
 - However, the methodology used in 2016 may exclude some state benefit mandates

Supplementing Categories

- A state may need to supplement the benchmark plan to cover all 10 categories
- Most common non-covered services include habilitative services, pediatric oral, or vision services
- HHS intends to propose supplementing missing categories using the benefits from other benchmark options

Habilitative Services Supplements

- Offered in parity with rehabilitative services
 - A plan covering services such as PT, OT, and ST for rehabilitation must also cover those services in similar scope, amount, and duration for habilitation
- Transitional approach: Plans decide on which services to cover and reports to HHS
 - HHS evaluates those services and further defines habilitative services in the future

Pediatric Oral Supplements

- The Federal Employees Dental and Vision Insurance Program (FEDVIP) dental plan with the largest national enrollment
- The State's CHIP program
- *Transitional approach: Plans decide on which services to cover and reports to HHS*
- HHS suggests the EHB not include non-medically necessary orthodontic benefits

Pediatric Vision Supplements

- The Federal Employees Dental and Vision Insurance Program (FEDVIP) dental plan with the largest national enrollment
- *Transitional approach: Plans decide on which services to cover and reports to HHS*

Mental Health

- MHPAEA parity now extends to the individual and small group markets in the context of the EHB
 - The financial requirements or treatment limitations for mental health and substance use disorder benefits can be no more restrictive than those for medical and surgical benefits

Substantially Equal

- HHS intends to require that a health plan offer benefits that are “substantially equal” to the benefits of the benchmark plan
 - Plans are provided with some flexibility to adjust benefits, including both services and limits
 - HHS is considering substitutions within and across the 10 categories (must be actuarially equivalent)
 - Pharmacy: Plans must cover the categories and classes set forth in the benchmark, but may choose specific drugs that are covered

EHB: Health Plans Summary Document

Health Plan Comparisons

Mental Health and Substance Use Disorder Services, including behavioral health treatment

Treatments and Services	Plan A	Plan B	Plan C	Plan D	Plan E	Plan F	Plan G
Requires prior authorization for full or any benefits	●	●	●	●	●	●	●
<i>Facility Services</i>							
Inpatient Services	●	●	●	●	●	●	●
Partial Hospitalization Services	●	●	●	●	●	●	●
Outpatient/Office Services	●	●	●	●	●	●	●
Emergency Room Services	●				●		
Services in Residential Treatment Centers	●				●	●	●
<i>Other Services</i>							
Treatment for smoking/tobacco cessation	●		●	●	●		
Marriage, sex, family, behavioral, educational, or other counseling					●		

Key Elements

- Plans are blinded
- HHS will continue to issue regulations on EHB requirements
- Some health plan documents were limited in details

Health Plan Comparisons

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Inpatient Services	●	●	●	●	●	●	●
Partial Hospitalization Services	●	●	●	●	●	●	●
Outpatient/Office Services	●	●	●	●	●	●	●
Emergency Room Services	●				●		
Services in Residential Treatment Centers	●				●	●	●
<i>Other Services</i>							
Treatment for smoking/tobacco cessation	●		●	●	●		
Marriage, sex, family, behavioral, educational, or other counseling					●		

Plan Details

Plan B	<p>No inpatient benefits will be provided without prior authorization</p> <p>General:</p> <ul style="list-style-type: none">• Inpatient• Partial Hospitalization• Outpatient/Physician Office• Tobacco Cessation (medications only, no programs) <p><u>NOT COVERED:</u></p> <ul style="list-style-type: none">• <i>Marital, sex, family, educational, or other counseling services</i>• <i>Admittance into a mental institution or sanatorium, except where enforcement of the exclusion is prohibited by law.</i>
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Initial Findings, Recommendations, Questions, and Comments from Subcommittees

Presenter: Cheryl Smith

Initial Observations (Part 1)

- Different methodologies employed for assessment and selection
 - Rating, weighting, adding, etc.
 - Selection plus comments
- Preliminary assessments indicate two plans most favorable
 - At least two groups have final decisions
- Plan information presents challenges
 - Too much/too little info

Initial Observations (Part 2)

- Groups are conscious of Mississippi's unique health needs
 - Agreement that EHB tailored to the state's core health issues (e.g. obesity, heart disease, infant mortality, etc.)
- Price remains a key factor in the final decision
 - Plan's potential cost (determined by the quantity/quality of services) would govern most Subcommittees' final decision.

Moving Forward with EHB

Summary

- Resist the urge to overthink
- Only responding to the “A” questions on EHB Primer
- Not selecting on basis of price but should try to keep affordability in mind
- Several selection methodologies are viable and acceptable
 - Ranking
 - Rating
 - Discussion and comment

Proposed Topic Assignments and Initial Reporting Schedule

Subcommittee	Possible Topics Assignments			
Educated Health Care Consumers	EHB	Outreach & Education	Exchange Market Reg.	Financial Sustainability
Experience in Enrollment	EHB	Outreach & Education	Program Integration	Employer Participation
Hard to Reach Populations	EHB	Outreach & Education	Program Integration	Financial Sustainability
Health Care Providers	EHB	Outreach & Education	Program Integration	Financial Sustainability
Health Insurance Agents & Brokers	EHB	Outreach & Education	Exchange Market Reg.	Employer Participation
Health Insurance Issuers	EHB	Outreach & Education	Exchange Market Reg.	Employer Participation
Large Employers	EHB	Outreach & Education	Exchange Market Reg.	Employer Participation
Public Health Experts	EHB	Outreach & Education	Program Integration	Financial Sustainability
Small Business and Self-Employed Individuals	EHB	Outreach & Education	Exchange Market Reg.	Employer Participation
State Government Agencies & Divisions	EHB	Outreach & Education	Program Integration	Financial Sustainability

EAB Meeting Process and Deadlines

Month 1	Introduce Topic
Month 2	Present Initial Findings
Month 3	Present Final Recommendations
Month 4	Adopt Recommendations

Ongoing Assignments and Reporting

- April 11 Initial Findings: EHB
- May 9 Final Recommendations: EHB
Introduce Topic: Outreach & Education
- June 13 EAB Adopts Recommendations: EHB
Initial Findings: Outreach & Education
- July 11 Final Recommendations: Outreach & Education
Introduce Topics: Financial Sustainability &
Employer Participation



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