

Supreme Disaster

Last year's high-court decision seemed like a victory for "Obamacare." It hasn't turned out that way. **By Margot Sanger-Katz**

When the Supreme Court decided the big health care case last June, its ruling was seen as a huge win for President Obama. His administration had fended off a challenge that would have dismantled the entire reform effort; it lost on only a small issue to which few people had paid much heed. But a year later, it's increasingly clear that the minor loss is punching a major hole in the law's primary ambition—expanding health insurance coverage to most of the 49 million Americans who lack it.

Medicaid, the federal-state health insurance for the poor and disabled, was a cornerstone of the law's strategy. An expansion of the program that would open eligibility to every American earning an income near or below the poverty line was designed to enroll some 17 million people—about half of the law's coverage gains. But the Court ruled that Washington couldn't force the states to expand their programs, and politicians in most states, disdainful of Medicaid's rules and opposed to all things "Obamacare," have simply said no. That means some 25 states, and some 7 million people, will lose out on access to coverage, leaving low-income residents with no opportunity to obtain affordable insurance in the new regime. "It's bad," says Caroline Pearson of the consultancy Avalere Health. As recently as February, she had predicted as few as five state holdouts by year's end; her current forecast is much more pessimistic.

Health and Human Services Secretary Kathleen Sebelius is putting on a brave face. "Given the climate around this law, given the number of states that were actually in litigation, and the election, the number of Republican governors who stepped up and said, 'We really want to do this,' I find to be very encouraging," she tells *National Journal*. Nevertheless, it's a long way from the administration's original plan.

Twenty-six states brought the case asserting their right not to expand Medicaid. Although they won that right, administration officials, health industry leaders, and journalists concluded after the Supreme Court decision that they'd eventually go along. The feds promise to pay 100 percent of expansion costs for three years, and then an amount that would never go below 90 percent; this was seen as too good a deal to

turn down. Governors had grandstanded against the 2009 economic-stimulus money too, but nearly all had signed on. What state leader would want to turn down a huge infusion of federal cash?

Republican governors soon began querying HHS. Would the department let them use federal funding to expand Medicaid only partway? HHS held off answering them for months, and then, after the presidential election, told them the decision was all or nothing. The administration was sending a message: The law cannot be bargained over or repealed, so the choice is in or out.

As predicted, Republican governors started flipping. First Gov. Brian Sandoval of Nevada endorsed a full expansion. Then came the governors of New Mexico, Arizona, Ohio, Michigan. Even Rick Scott, the Florida governor elected on an anti-Obamacare platform, said expanding Medicaid was the right thing to do. Chris Christie followed suit in New Jersey, as did others. But endorsements haven't always led to expansions. The Florida Legislature did not share the governor's conversion, and Scott quickly backed down. At press time, both Ohio and Arizona's Legislatures continue to debate expansion.

Other governors who were considered obvious gets—such as Pennsylvania's Tom Corbett and Tennessee's Bill Haslam—declined expansion. Some of the poorest states with the most to gain have left piles of federal cash on the table. Medicaid was such a toxic issue in Mississippi that the Legislature adjourned without even reauthorizing the state's *current* program. While governors know they'll be judged on the health of the state economy, many legislators care more about ideological purity, and few Republican lawmakers are interested in the political risk associated with voting for anything branded with the president's name. Brian Haille, a former health aide to Haslam, says he doesn't expect any Medicaid enthusiasm in Tennessee until after the Republican primary filing deadline next year. "You've got lawmakers who are ducking and covering and do not want to vote on anything related to Obamacare before then," he said.

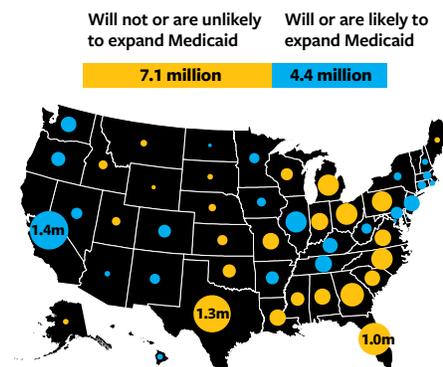
There may still be some stragglers. Kentucky Democratic Gov. Steve Beshear announced in May his state would move forward (he doesn't need legislative approval). Republican Gov. Terry Branstad in Iowa, an early skeptic about Medicaid, just reached an agreement with his Legislature to expand. But to do so, he needed to rebrand the program as something else. The plan, which still needs federal approval, will move some poor residents into private insurance markets and other into a state-run program that covers different benefits and pays doctors differently from the state's existing Medicaid program. "It isn't Medicaid expansion," insists Michael Bousset, a policy adviser to Branstad, although he notes that it will use the federal funds. Utah Gov. Gary Herbert tells *NJ* he won't be making a Medicaid decision until at least September.

But given the logistical and administrative hurdles associated with expansion, even if politicians change their minds and convene special legislative sessions, few additional states will be able to expand by January. That means many low-income Americans will be left uninsured next year, despite the promise of health care reform. While middle-income people will have access to subsidized private insurance, the poorest adults in those states that don't expand will get nothing. The Supreme Court dealt Obamacare a major blow after all. ■

Limited Expansion

About 11.5 million uninsured Americans under the poverty line are newly eligible for Medicaid under the Affordable Care Act, but most of them live in states that have decided not to expand their Medicaid programs or are leaning that way.

Newly eligible Medicaid population by state position on Medicaid expansion



NOTE: Shown are those newly eligible with incomes under 100 percent of the federal poverty level.

Sources: Avalere Health; Urban Institute