

## A brief history of Medicaid expansion efforts in Virginia 2012 -2017

### 2012

June 28, 2012: the U.S. Supreme Court issued its decision in the case challenging the Affordable Care Act (ACA).

- The Court upheld the constitutionality of the ACA's individual mandate, which requires most people to maintain a minimum level of health insurance coverage beginning in 2014.
- A majority of the Court also found the ACA's Medicaid expansion unconstitutionally coercive of states, while a different majority of the Court held that this issue was fully remedied by limiting the Health and Human Services (HHS) Secretary's enforcement authority.
- The ruling left the ACA's Medicaid expansion intact in the law, but the practical effect of the Court's decision makes the Medicaid expansion optional for states. (Kaiser Family Foundation, <http://kff.org/health-reform/issue-brief/a-guide-to-the-supreme-courts-decision/>)

August 8, 2012: the [Commonwealth Institute](#) issued a report, "Saving Money, Saving Lives." Its findings conclude:

- Previously uninsured people who gained coverage for three years saw a 48 percent decrease in health care costs per year versus people who had it for only one year.
- People with Medicaid coverage are 25 percent less likely to have an unpaid medical bill and 40 percent less likely to borrow money or fail to pay other bills because of medical debt.
- Three states that expanded Medicaid eligibility between 2000 and 2005 had a significant reduction in death rates than three neighboring states that did not expand eligibility.

October 2, 2012: Democrats and Republicans Differ on Medicaid Fix (NPR.org)

- Medicaid critics say while programs like that may be useful, the program overall is still way too expensive.
- "For many states it's the biggest item in their budget. They're all struggling to figure out what to do," said Grace Marie Turner. She's a conservative health policy analyst and was a member of the [Bush Administration's Medicaid Commission in 2005](#). Turner says one of the biggest problems is the amount of micromanaging of Medicaid that comes from Washington.
- "You wind up with all of this red tape and bureaucracy and it's costly and in my opinion we wind up with a program that provides the worst care to the most vulnerable people," she said.
- Candidate Romney says he would solve the problem basically by ending Medicaid's status as a shared federal-state program. He would [instead turn the money back to the states](#) in the form of block grants and let them craft their own programs.

- But he'd also make his Medicaid plan a money-saver, by capping what the federal government provides at the cost-of-living plus one percent.
- Conservatives insist states can run their programs more efficiently without cutting people or services. Liberals are far more skeptical.

## **2013**

### **April**

The [Medicaid Innovation and Reform Commission](#) is created in Virginia. Its purposes are to:

- Review, recommend and approve innovation and reform proposals affecting the Virginia Medicaid and Family Access to Medical Insurance Security (FAMIS) programs,
- Review the development of reform proposals;
- Review progress in obtaining federal approval for reforms such as benefit design, service delivery, payment reform, and quality and cost containment outcomes; and
- Review implementation of reform measures.

MIRC members consist of House members opposed to Medicaid expansion and Senators in support of Medicaid. Consequently, the members are at loggerheads from the outset of the Commission.

### **November**

Terry McAuliffe is elected Governor, having run on a platform to expand Medicaid.

### **December**

Governor McDonnell presents his budget bill to the General Assembly without Medicaid expansion.

## **2014**

### **January – March**

The General Assembly adjourns in March without a budget bill passed. The Senate consists of 40 members, 23 of whom support expansion of Medicaid. These include three Republicans.

### **June**

Senator Phil Puckett (Democrat) resigns his Senate seat, effectively turning majority control of the Senate to the Republicans. Without a majority in the Senate, a budget bill is passed that does not contain Medicaid expansion.

### **September**

Governor McAuliffe introduces a 10 point plan that expands Medicaid coverage to special populations. His plan does not require General Assembly approval. It includes:

- Covering 20,000 uninsured Virginians with serious mental illness for outpatient treatment.
- Improving the coordination of care for 13,000 adults and children already covered by Medicaid who have serious mental illness by creating health homes.
- Signing up more Virginians for the Federal Marketplace, Medicaid, and FAMIS (the children's health plan) by using federal funds for increased outreach.
- Providing dental benefits to 45,000 pregnant women in Medicaid and FAMIS.
- Launching a new website to inform Virginians of their coverage options and helping them enroll.
- Accelerating access to care for veterans by increasing collaboration with the Veterans Administration.
- Working to reduce the number of drug-related deaths in Virginia.
- Pursuing Federal grants to bring in new funding for health care.

## 2015

### January

Prior to the start of the 2015 General Assembly session, Governor McAuliffe introduced the Governor's Access Plan (GAP). GAP is designed to integrate primary and behavioral health services and care coordination for Virginia's uninsured with serious mental illness (SMI). Other key benefits include diagnostic and laboratory services, as well as coverage for prescriptions. This benefit provides access to care and treatment to many Virginians with serious mental illness. GAP is designed as a response to Medicaid expansion that was within the Governor's executive ability to authorize. At its inception, the Governor estimated that 20,000 Virginians would be eligible. To date, approximately 5,000 individuals have been enrolled. The low numbers are thought to be due to the stringent eligibility requirements (less than 60% of the federal poverty level) combined with a diagnosis of serious mental illness (schizophrenia, clinical depression, or bipolar disorder).

### The 2015 General Assembly session, January – February

The General Assembly failed to pass any bills or budget language authorizing expansion of Medicaid or any other means to close the coverage gap for the roughly 400,000 uninsured Virginians earning less than 133% of the Federal Poverty Level. From a political perspective, the Democrats in the Senate lost their majority in voting on budget matters, meaning that the Governor had no leverage to move forward on Medicaid expansion beyond the GAP program.

### March – September

With all 140 seats in the General Assembly up for election in November 2015 and with the loss of Eric Cantor to Tea Party favorite David Brat in 2014 for the 7<sup>th</sup> Congressional District, Medicaid expansion discussion in the political discourse remains muted.

One state senate race watched carefully in June was the primary race in Virginia's 24<sup>th</sup> District (Staunton, Waynesboro, Harrisonburg region). Senator Emmett Hanger was opposed by more

conservative, anti-Medicaid expansion candidates. He won his primary handily, which may give some relief to other Republican incumbents in conservative districts, meaning that it may be possible to win election and hold moderate positions.

Behind the scenes during this election season, efforts are being made by members of the Healthcare for All Virginians coalition to target a small number of legislators up for re-election who are in pivotal leadership positions. Once the November elections are over, all stakeholders will reassess the potential for expanding Medicaid. If the Democrats take over the Senate, Governor McAuliffe will have more bargaining power as he introduces his biennial budget bill in December. Meanwhile the opponents of Medicaid expansion continue to stress that the Medicaid system is broken and cannot be expanded until significant reforms are completed and that small businesses stand to lose economically if Medicaid is expanded.

### **September – December**

The General Assembly elections of November 2015 did little to change the balance of power in Richmond. The Democrats picked up one seat in the House of Delegates, and that increase removed a 2/3 majority held by the Republicans. That became important inasmuch as the Republicans lost a veto-proof majority. The Senate stayed in the hands of the Republicans with a majority of 21-19. More unclear in the Senate was the replacement of two moderate Republicans—Walter Stosch and John Watkins—with Republicans who ran on no-Medicaid-expansion platforms.

In December, Governor Terry McAuliffe introduced his one and only biennial budget bill for which he had authorship in his one four-year term. He inserted a subsection that could have been interpreted as giving him executive authority to expand Medicaid.

## **2016**

### **The 2016 General Assembly session, January – March**

The short version of Medicaid expansion in the 2016 General Assembly session is that it didn't occur. As expected, the General Assembly stripped language in the budget bill that would have given the Governor executive authority to expand Medicaid. The General Assembly did expand the GAP program to those earning 80% of below of the Federal Poverty Level (less than \$9,504 for one individual). [The Commonwealth Institute](#) estimates that an additional 3,600 Virginians who suffer from serious mental illness will be able to get outpatient mental health treatment, including medication, and minimal primary care preventive services. The GAP program does not include inpatient care. Also not eligible for the GAP program are people with substance use disorder unless they have a co-occurring serious mental illness (depression, bipolar disease, or schizophrenia).

One other health policy debate occurred in the 2016 session that is most likely inextricably entwined with Medicaid expansion. This relates to initiatives to remove the [Certificate of Public Need](#) (COPN) process. The COPN program requires owners and sponsors of certain medical care facilities to secure a COPN from the Commissioner of the Virginia Department of Health prior to initiating such projects. No

COPN is issued unless the Commissioner has determined that a public need exists. For example, if a group of physicians wishes to build an MRI facility in Bath County, the group would need to convince the Commissioner that the service is needed in Bath and that residents have to travel far distances in order to obtain an MRI elsewhere.

Once a COPN is issued, the owners of the facility must designate a certain proportion of their proceeds or services to those who otherwise cannot afford the service. This latter requirement is important, because one of the arguments against removal of the COPN process is that, if unregulated, entrepreneurs will build facilities that will drain away the revenues from facilities that already exist, such as hospitals, whose overhead expenses are far more than independent smaller facilities.

Why is this debate intertwined with the Medicaid expansion debate? In order to answer the question, one must look at the dollars. Hospitals are already under pressure with their requirement to provide care for anyone who comes to the door of the emergency rooms, under the provisions of the Emergency Medical Treatment and Labor Act ([EMTALA](#)). Consequently, hospitals provide care for many uninsured individuals, and without Medicaid expansion, hospitals' revenues are negatively affected by providing uncompensated care. That is especially true because the federal government is cutting back on Medicaid Disproportionate Share Hospital Payment ([DSH](#)), with the provision that all states will expand Medicaid.

Therefore, if COPN were to be repealed, hospitals will suffer a double-whammy, losing out to competition from smaller, less expensive and more efficient health care centers while also losing DSH funding from the federal government. On the other hand, if Medicaid were to be expanded, hospitals may be more likely to support the repeal of COPN, something that the anti-regulators and free-market people are supporting.

The debate on COPN and Medicaid expansion will spill over into the 2017 General Assembly session.

When asked why Medicaid expansion was not included in the policy discussions in the 2016 General Assembly session, opponents to expansion offer the same general reasons that they have offered since the Affordable Care Act was enacted. This, despite the fact that Virginia is now one of 19 states that have not expanded Medicaid.

#### **April – August**

Eyes are on the national presidential race. At the time of this writing (August), little attention is being paid to health care. The Republican candidate, Donald Trump, has indicated that he will support a “repeal and replace” strategy of the Affordable Care Act. The Democratic candidate, Hillary Clinton, supports “tweaking” the ACA. If the Democrats win in November and especially in Virginia, there may be some pressure for the Republicans in the General Assembly to figure a way to expand Medicaid and save face at the same time. The answer may lie in a compromise on COPN. Or it may reflect a reality that Virginia revenues are falling under estimates and the state needs money. Or the reason may lie in something else. So we will need to stay tuned.

## **November-December**

In November, Donald Trump is elected the 45<sup>th</sup> President of the United States, having run, in part, on a platform to “repeal and replace” the Affordable Care Act. Mr. Trump had also indicated that he would not touch Medicare or Medicaid because of the health care these programs provide to U.S. citizens.

In December, Governor McAuliffe introduced his budget amendments to the General Assembly for their consideration in the Session beginning in January 2017. The Governor’s amendments did not include an immediate expansion of Medicaid. However, he did include language that allow him to do so if efforts to repeal the Affordable Care Act left a Medicaid expansion option open to the states that have not expanded Medicaid. This action alone would have saved Virginia \$213 million by using available federal funds to expand Medicaid in early 2017.

## **2017**

### **January – February**

The 46 days from January 11<sup>th</sup> – February 25<sup>th</sup> marked the General Assembly session in which legislators grappled with budget issues that included a refusal to expand Medicaid. This action was not unexpected, given the uncertainty with which the U.S. Congress would deal with the impending promised repeal and replacement of the Affordable Care Act. More on that below.

In the session, the General Assembly approved three program expansions that bring needed relief to two populations. The Governor’s GAP program was expanded to include eligible individuals earning less than 100% of the Federal Poverty Level (this expands eligibility from 80% FPL). Eligible individuals are those with serious mental illness, and the program continues to cover medications and other outpatient wrap-around services.

In addition, the General Assembly gave final approval to the [Medicaid ARTS program](#) (Addiction Recovery and Treatment Services) to Medicaid recipients with substance use disorder. The program includes inpatient detoxification, residential treatment, partial hospitalization, intensive outpatient programs, opioid treatment, case management, peer recovery supports, and crisis intervention services. Eligible individuals include those who are already eligible for Medicaid (individuals meeting income criteria below the age of 19 and pregnant women for up to 60 days postpartum). It does not include childless adults between the ages of 19 and 65.

The third program that was expanded in the 2017 General Assembly session was an infusion of an additional \$5 million for supportive housing targeted to serving those suffering from serious mental illness. The additional funds more than double the \$4.27 million that was already in the budget for fiscal year 2017-2018. Supportive housing combines housing with case management services designed to keep people in housing and receiving services and out of homelessness.

### **March – September**

The focus shifts away from Virginia while Congress dealt with efforts to repeal and replace the Affordable Care Act. In May, the House of Representatives narrowly approved legislation to repeal and replace the ACA. The bill then went to the Senate for deliberation. A succinct [timeline](#) of the repeal and replacement saga details the journey toward failure of the bills. Our concern is with the approaches taken toward Medicaid expansion specifically and Medicaid in general.

Both the House and Senate versions had to pass Congress using the process known as Reconciliation. That means that any provision of the bills had to relate to the congressional authority to tax and spend as part of the budget process. Reconciliation bills pass by simple majority in both Houses as opposed to requiring a 60% threshold in the Senate for ordinary bills. As of this writing in early September, the Senate Parliamentarian has stated that the Reconciliation process will cease September 30. Therefore, it is unlikely that a full Repeal and Replace will take place this year.

As part of Reconciliation, both House and Senate bills would have slashed Medicaid spending through either converting the Medicaid entitlement program (the federal government and state government share the cost of providing care to Medicaid recipients based on the charges for the care—to the extent that Medicaid pays for each service) to a **block grant** or a **per capita cap** program.

A [block grant](#) program for Medicaid would provide each state with a fixed amount of federal grant funds based on the state and federal Medicaid spending in that state. The grant would grow slightly each year to account for inflation. Republicans have stated that block granting Medicaid would save the federal government billions of dollars. States would have to make up the difference caused by reimbursement cuts, or states would have to limit the types of care offered to Medicaid recipients.

The [per capita cap](#) program would allocate to states payments during the year based on their estimated number of Medicaid beneficiaries and on the per capita cost of serving various groups, such as children, adults, people with disabilities, and the elderly. A per capita cap approach allows for federal funding to increase when enrollment in the state's Medicaid program rises during the year. But the rise in reimbursement might be tagged to general inflationary levels or to medical inflationary levels (typically higher). Since medical inflation is higher than general inflation, a policy tied to general inflation would typically lead to a federal decrease in Medicaid spending over time.

In addition to these spending or cost-savings schemes offered in the House and Senate ACA repeal bills, the states that expanded Medicaid would be required to phase out their expansion over several years. This would affect the [31 states](#) that have expanded Medicaid.

So essentially Medicaid expansion remains as an option because of the failure to repeal and replace the ACA. However, the Trump administration is hostile to the ACA and has threatened to cut funds used to recruit people into signing up for health care insurance in the marketplace. In addition, the administration has threatened to withhold federal funds to insurers who provide healthcare insurance to individuals and families who receive subsidies for the purchase of health insurance on the exchanges. The net effect of these two initiatives could lead to a decrease in the numbers of individuals signing up for health care insurance. Additionally, the threats have led to destabilization of the health insurance

market. The net effect has been to raise the cost of healthcare insurance as well as decrease the numbers of carriers providing insurance on the exchanges.

Is it possible that Virginia will expand Medicaid in this environment in the 2018 General Assembly session? Governor McAuliffe has indicated that he will seek expansion in the budget bill he brings before the General Assembly in December 2017. Some Republican leaders have already signaled that this request will be a non-starter. Therefore, it is likely that there will be no Medicaid expansion passed in 2018 in Virginia.