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Public Assistance HB 990

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SOCIAL SERVICES

Public Assistance: Amend Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, Relating to Medical Assistance Generally, so as to Prohibit the Expansion of Medicaid Eligibility through an Increase in the Income Threshold without Prior Legislative Approval; to Provide for Legislative Findings; to Provide for Related Matters; to Repeal Conflicting Laws; and for Other Purposes

CODE SECTION:	O.C.G.A. § 49-4-142.2 (new)
BILL NUMBER:	HB 990
ACT NUMBER:	534
GEORGIA LAWS:	2014 Ga. Laws 293
SUMMARY:	The Act prohibits the Governor from expanding Medicaid eligibility through an increase in the income threshold without first obtaining the General Assembly's approval. The Act provides that this prohibition does not extend to any increase in the income threshold that results from a cost-of-living increase in the federal poverty level.
EFFECTIVE DATE:	July 1, 2014

History

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (ACA) into law.[1] Congress enacted the ACA in an effort to increase the number of Americans protected and covered by health insurance and decrease health care's overall cost.[2] Two provisions of the ACA proved especially controversial and resulted in litigation: (1) an individual minimum health insurance

1. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119-1025 (2010); Sheryl Gay Stolberg & Robert Pear, *Obama Signs Health Care Overhaul Bill, With a Flourish*, N.Y. TIMES (Mar. 23, 2010), http://www.nytimes.com/2010/03/24/health/policy/24health.html?_r=0.
2. Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2580 (2012).

coverage requirement—an individual mandate;[3] and (2) a provision that offered states expanded federal Medicaid funding but required them "to expand their [state] Medicaid programs by 2014 to cover *all* individuals under the age of 65 with incomes below 133 percent of the federal poverty line . . ." or face losing their existing Medicaid funding.[4] Twenty-six states, including Georgia, brought action against the Department of Health and Human Services, the Secretary of the Treasury, and the Department of Labor, challenging the constitutionality of these two ACA provisions.[5]

The United States Supreme Court declared the Act's individual mandate a permissible "tax" and not a penalty, in spite of its purpose of influencing individual citizen conduct such that health insurance coverage increases.[6] In June 2012, while the Court upheld most provisions of the ACA, it rejected the law's provision that sought to penalize states failing to comply with the expanded Medicaid eligibility requirements.[7] The Court held that conditioning existing federal funding on a state's participation in Medicaid expansion violated the Spending Clause because it failed to offer states a genuine choice.[8] Following the Court's decision, states, including

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3. 42 U.S.C. § 1396a (2010).

4. *Sebelius*, 132 S. Ct. at 2601. States failing to comply with the conditions attached to expanded federal Medicaid funding faced a significant and potentially state-budget-impacting penalty. The language of the penalty was as follows:

> If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this [subchapter], finds . . . that in the administration of the plan there is a failure to comply substantially with any such provision[,] the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply.

42 U.S.C. § 1396c (2010).

5. *See* Fla. *ex rel.* Bondi v. U.S. Dept. of Health & Hum. Servs., 780 F. Supp. 2d 1256 (N.D. Fla. 2011). Thirteen states originally filed suit in the Northern District of Florida. Complaint, Fla. *ex rel.* Bondi v. U.S. Dept. of Health & Hum. Servs., 780 F. Supp. 2d 1256 (N.D. Fla. 2011) (No. 3:10-cv-91). On May 14, 2010 the complaint was amended to include an additional seven states, including Georgia. Amended Complaint, Fla. *ex rel*. Bondi v. U.S. Dept. of Health & Hum. Servs., 780 F. Supp. 2d 1256 (N.D. Fla. 2011) (No. 3:10-cv-91). Six more states were added to a second amended complaint on January 18, 2011. Second Amended Complaint, Fla. *ex rel.* Bondi v. U.S. Dept. of Health & Hum. Servs., 780 F. Supp. 2d 1256 (N.D. Fla. 2011) (No. 3:10-cv-91).

6. *Sebelius*, 132 S. Ct. at 2596.

7. *State Laws and Actions Challenging Certain Health Reforms*, NCSL (Aug. 1, 2014), http://www.ncsl.org/research/health/state-laws-and-actions-challenging-ACA.aspx.

8. *Sebelius*, 132 S. Ct. at 2607. Congress may offer Affordable Care Act funds to encourage and provide for the expansion of health care availability, and Congress may require that states accepting the

Georgia, could either expand Medicaid and accept new federal funding or maintain the state's current program or reject the new federal funding, and lose existing funds.[9]

Georgia elected to maintain its existing Medicaid program and, as of August 2014, did not expand Medicaid coverage to able-bodied adults earning up to 133 percent of the federal poverty line.[10] The federal government paid roughly sixty-six cents on the dollar under the then current Georgia Medicaid program.[11] Health care was a substantial portion of the State's budget— health care accounted for 4.1 billion dollars of Georgia's 19.7 billion dollar budget—roughly twenty percent.[12] The Governor's 2015 fiscal year budget proposal estimated 2.9 billion dollars—of the total 4.1 billion dollar health care budget—would be spent to pay for health care services for 1.9 million Georgians covered by the Georgia's Medicaid and PeachCare programs.[13] Had Georgia decided to expand Medicaid coverage, it was estimated that between 600,000 and 800,000 additional Georgians would have qualified for health care coverage, increasing health care costs and pushing that twenty percent even higher.[14]

Georgia is one of eight states that did not require a vote by the state legislature to expand the Medicaid income threshold.[15] The

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funds comply with pre-determined conditions. *Id.* Congress is not, however, free to penalize states that choose not to participate. Congress may not take away existing Medicaid funding. *Id.*

9. *Issue Analysis: Options for Georgia Going Forward under the ACA*, GEORGIA PUBLIC POLICY FOUNDATION (Jan. 17, 2013) [hereinafter Issue Analysis] (on file with Georgia State University Law Review). This study was first published for Florida but the Georgia Public Policy Foundation added Georgia-specific data and analysis. *Id. See also Policy Brief: Options for Florida Going Forward Under the ACA*, THE JAMES MADISON INST. (Oct. 2012), http://www.jamesmadison.org/wp-content/uploads/PolBrief_ACARecommendations_JMIStaffOct12.pdf.

10. *Georgia Medicaid Moving Forward in 2014*, MEDICAID.GOV, http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-State/georgia.html (last visited May 24, 2014).

11. *See* Telephone Interview with Sen. Chuck Hufstetler (R-52nd) (Apr. 3, 2014) [hereinafter Hufstetler Interview]; *see also Georgia Budget Primer 2014: Health Care*, GA. BUDGET AND POL'Y INST. (July 19, 2013), http://gbpi.org/wp-content/uploads/2013/07/Georgia-Budget-Primer-2014-Health-Care-Section.pdf.

12. Tim Sweeney, *Overview: 2015 Fiscal Year for Medicaid and PeachCare,* GA. BUDGET & POL'Y INST. (Jan. 22, 2014), http://gbpi.org/overview-2015-fiscal-year-for-medicaid-and-peachcare.

13. *Id.*

14. *See* Audio Recording of House Judiciary Committee, Feb. 24, 2014 at 26 min., 51 sec. (remarks by Rep. Jan Jones (R-47th)) (on file with the Georgia State University Law Review) [hereinafter House Committee Recording].

15. Andy Miller, *Georgia House Committee Passes Bill to Block Medicaid Expansion*, ONLINE ATHENS (Feb. 26, 2014), http://onlineathens.com/general-assembly/2014-02-25/georgia-house-committee-passes-bill-block-medicaid-expansion.

authority to increase the income threshold, expanding Medicaid coverage, rested solely with the Governor.[16] In 2013, Governor Nathan Deal chose not to support Medicaid expansion and has made it clear that he has no intention of expanding Medicaid should he be reelected to a second gubernatorial term.[17] The power to unilaterally impact the budget through expanding Medicaid rested with Georgia's executive branch, but members of the General Assembly wanted to put that power in the hands of the people, where meritorious debates are possible prior to expansion.[18] In response, Speaker Pro-Tempore Jan Jones (R-47th) introduced House Bill (HB) 990 during the 2014 legislative session.[19]

Bill Tracking of HB 990

Consideration and Passage by the House

Speaker Pro-Tempore Jones, Speaker David Ralston (R-7th), Majority Leader Larry O'Neal (R-146th), Majority Whip Matt Ramsey (R-72nd), Representatives Chad Nimmer (R-178th), and Jason Spencer (R-180th) sponsored HB 990.[20] The House read the bill for the first time on February 17, 2014.[21] It read the bill for the second time on February 18, 2014.[22] Speaker Ralston assigned the bill to the House Judiciary Committee, which recommended several

16. House Committee Recording, *supra* note 14, at 19 min., 30 sec. (remarks by Rep. Jan Jones (R-47th)).

17. Nathan Deal, *Staying No. 1. It's why I'm running*, https://cmgajcpolitics.files.wordpress.com/2014/09/deal-manifesto.pdf (last visited Sept. 9, 2014). Any possible future expansion, however, does remain with the state's governors and state's leaders. *The Daily Briefing: Where the States Stand on Medicaid Expansion*, THE ADVISORY BD. CO., http://www.advisory.com/daily-briefing/resources/primers/medicaidmap (last visited Mar. 28, 2014); *see also* Audio Recording of Senate Health and Human Services Committee, Mar. 12, 2014 (remarks by Rep. Jan Jones (R-47th)) (on file with the Georgia State University Law Review).

18. *See* Telephone Interview with Rep. Jason Spencer (R-180th) (Apr. 2, 2014) [hereinafter Spencer Interview].

19. HB 990, as introduced, 2014 Ga. Gen. Assem. *See also* House Committee Recording, *supra* note 14, at 36 min., 35 sec. (remarks by Rep. Jan Jones (R-47th)).

20. Georgia General Assembly, HB 990, Bill Tracking, http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/990.

21. State of Georgia Final Composite Sheet, HB 990, May 1, 2014.

22. *Id.*

changes to the bill. The committee reported the bill by substitute on February 24, 2014.[23]

Differing only slightly from the bill as first introduced, the committee substitute contained one substantive change: it qualified that legislative approval was not needed for increases to income threshold that resulted from a cost-of-living increase in the federal poverty level.[24] The substitute also included a cosmetic change in Section One clarifying that increasing the income threshold for the Medicaid entitlement program would increase the number of Georgians on Medicaid, noting that this was not limited to aged, blind, or disabled individuals.[25] The Committee noted that children under eighteen, certain individuals in nursing homes, those in hospice, pregnant women, people with breast or cervical cancer, and some foster children or disabled children with federal waivers would also benefit through increased eligibility.[26] The House read the Committee substitute as amended on March 3, 2014.[27] The House passed the Committee substitute by a vote of 118 to 57, with four Representatives not voting and one member excused from voting.[28]

Consideration and Passage by the Senate

Senator Renee Unterman (R-45th) sponsored HB 990 in the Senate.[29] The bill was first read on March 4, 2014 and was assigned to the Senate Health and Human Services Committee.[30] The bill was read a second time on March 13, 2014.[31] The Senate Committee unsuccessfully offered several changes to the bill, seeking to add legislation addressing privatization of child welfare services state wide through contracts with community-based providers.[32] The bill,

23. House Committee Recording, *supra* note 14, at 37 min., 56 sec. (remarks by Rep. Jan Jones (R-47th)).

24. HB 990 (LC 33 5569S), § 2, p. 2, ln. 43–44, 2014 Ga. Gen. Assem.

25. *Id.* § 1, p. 2, ln. 22–30, 2014 Ga. Gen. Assem.

26. *Id.* § 1, p. 2, ln. 25–30, 2014 Ga. Gen. Assem.

27. State of Georgia Final Composite Sheet, HB 990, May 1, 2014.

28. Georgia House of Representatives Voting Record, HB 990 (Mar. 3, 2014).

29. Georgia General Assembly, HB 990, Bill Tracking, http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/990.

30. State of Georgia Final Composite Sheet, HB 990, May 1, 2014.

31. *Id.*

32. HB 990 (LC 37 1783S), 2014 Ga. Gen. Assem.

without the committee's suggested amendments, was tabled in the Senate on March 18, 2014, but then read for the third time the same day.[33] The Senate passed the bill on March 18, 2014 by a vote of 35 to 19.[34] HB 990 was sent to the Governor on March 26, 2014 and signed into law on April 15, 2014.[35]

The Act

The Act amends Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to medical assistance generally, for the purpose of prohibiting the expansion of Medicaid through an increase in the income threshold without prior legislative approval.[36]

Section One of the Act provides the justification for transferring the power to expand Medicaid from the governor to the state legislature.[37] The legislature based this change on its constitutional mandate to balance the state budget and on the fact that Medicaid is one of the largest annual expenditures in the state budget.[38] The Act explains that the decision to expand Medicaid must be considered in light of the state's responsibility to fund other critical services such as education, infrastructure, and public safety.[39]

Moreover, Section One describes the potential impact of expanding Medicaid coverage.[40] An increase in the income threshold would "dramatically increase" the number of Georgians receiving public assistance who do not otherwise qualify under the existing requirements.[41] Lastly, Section One asserts that the Act supports the

33. State of Georgia Final Composite Sheet, HB 990, May 1, 2014.
34. Georgia Senate Voting Record, HB 990 (Mar. 18, 2014).
35. State of Georgia Final Composite Sheet, HB 990, May 1, 2014.
36. 2014 Ga. Laws 293.
37. *See generally id.* 2014 Ga. Laws 293, § 1, at 293–94.
38. *Id.* at 293.
39. *Id.* at 294.
40. *See generally id.*
41. *Id.* The expansion of Medicaid would expand coverage to those Georgians not currently qualifying under the existing low-income program requirements for

> aged, blind, and disabled individuals; for families or children age 18 and under; for aged, blind, and disabled individuals receiving nursing home care; for individuals receiving hospice care; for pregnant women; or for individuals with breast or cervical cancer; or by meeting other program requirements for children in foster care or adopted from foster care or for children with disabilities receiving services under a federal Deeming waiver[.]

Id.

Governor's opposition to the expansion of the income threshold for benefits under Medicaid and seeks to "assure any similar efforts by the federal government are seriously evaluated in the future."[42] To make sure that this "serious evaluation" occurs, the Georgia legislature deemed it "essential" that any potential expansion of Medicaid eligibility be "thoroughly debated and voted upon by the legislature."[43]

Section Two adds a new Code section, 49-4-142.2. The Act states that no representative of the state will have the power to expand Medicaid eligibility through an increase in the income threshold without prior legislative approval.[44] Legislative approval is defined as either an "Act of the General Assembly or the adoption of a joint resolution of the General Assembly."[45] The Section does not apply to increases in coverage resulting from a cost-of-living increase in the federal poverty level.[46]

Analysis

Intended Consequences and Public Policy

The Act's purpose was twofold: first, to protect Georgia's resources and budget; and second, to oppose the ACA.[47] These concerns are consistent with that of other states; governors opposed to expanding Medicaid almost universally cited concerns about the affordability of expansion and its impact on their state's budget.[48] Georgia is among nine contiguous Southern states that have chosen

42. 2014 Ga. Laws 293, § 1, at 294.
43. *Id.*
44. O.C.G.A. § 49-4-142.2 (Supp. 2014).
45. *Id.*
46. *Id.*
47. Spencer Interview, *supra* note 18.
48. Benjamin D. Sommers & Arnold M. Epstein, *U.S. Governors and the Medicaid Expansion: No Quick Resolution in Sight*, 68 NEW ENG. J. MED. 496, 499 (2013). Ninety-two percent of governors opposed to expanding Medicaid cited these concerns. *Id.* Medicaid is the next biggest expenditure after education for most states, and many Republican governors are afraid that expanding Medicaid will prevent spending on vital services such as education. Tony Pugh, *Despite Health Challenges, Southern States Resist Medicaid Expansion,* MCCLATCHY NEWSPAPERS (Apr. 11, 2013), http://www.mcclatchydc.com/2013/04/11/188297/health-challenged-southern-states.html.

not to expand Medicaid due to budget concerns.[49] Governor Deal explained his support of the bill in light of budget concerns.[50]

Control of the Budget

Two mandates for the state legislature in the Georgia constitution are to balance the budget and to fund public education.[51] Members of the legislature thought that accomplishing these two mandates would be very difficult if Medicaid were expanded.[52] The percentage of the state budget devoted to health care has steadily increased in recent years.[53] Georgia's Department of Community Health (DCH) estimated that it would cost $4.3 billion per year by decade's end, $379 million of which would be state funds, to expand Medicaid.[54] Members of the legislature believed that if Georgia expanded

49. Pugh, *supra* note 48. The Southern states opposed to the ACA are: Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas and Oklahoma. If these states continue to resist expansion approximately five million individuals newly eligible for coverage will not have it in 2022. *Id.* These states would benefit from Medicaid expansion because of their high levels of working poor adults who cannot pay medical bills. *Id.*

50. Jim Galloway, *Political Insider*, *Michael Thurmond Wooed for State Superintendent Contest*, ATLANTA J.-CONST. (Aug. 11, 2014, 3:23 PM), http://politics.blog.ajc.com/2014/02/19/michael-thurmond-wooed-for-state-school-superintendent-contest/. Governor Deal stated at a press conference:

> It is an issue that has huge economic impacts and would seriously affect any budget that the General Assembly would come up with. And I think on that basis since they are responsible for passing a budget and yet have no say so under the current process about something that could tremendously impact what a budget might look like, I think it's altogether appropriate.

Id.

51. Spencer Interview, *supra* note 18.

52. Video Recording of Senate Proceedings, Mar. 18, 2014 at 58 min., 37 sec. (remarks by Sen. Renee Unterman (R-45th)) [hereinafter Senate Video Recording], http://www.gpb.org/lawmakers/2014/day-39. Expansion would strain the budget as well as the delivery of health care to the state's most vulnerable citizens. *Id.*

53. Spencer Interview, *supra* note 18. Sen. Spencer stated that over the past four years the percentage of the budget devoted to health care has increased from nineteen percent to twenty three percent. *Id.*

54. *Issue Analysis*, *supra* note 9. Georgia's Department of Community Health (DCH) estimated that the total cost to Georgia to expand Medicaid would be $3.8 billions from 2014-2023. *Id.* DCH predicted that by fiscal year 2018-2019, Georgia would be spending 3,395 million dollars per year on newly eligible individuals, 292 million dollars per year on individuals who are eligible but who are not currently enrolled, seventy-three million dollars per year on newly eligible individuals who either dropped or lost their private insurance coverage, and 615 million dollars per year in administrative and other costs. *Id.*

Medicaid, the State would have to reduce funding of education, transportation, and public safety.[55]

Individuals newly eligible for Medicaid were not the only cost factoring into the debate; experts predict that all states opting to expand the Medicaid program will probably see their Medicaid rolls grow as working poor adults stop paying for job-based health coverage when they realize they now qualify for Medicaid.[56] In making its decision to support the Act, the legislature considered what is known as the "woodwork effect," an increase in Medicaid costs due to previously eligible individuals beginning to participate in the program after the expansion begins.[57] However, in calculating all of these costs associated with expanding Medicaid, some estimates show the state costs of Medicaid expansion would be small.[58] If it chose to expand Medicaid, the State of Georgia would pay less than seven percent of the cost to do so between 2014 and 2023.[59] Some estimates show that expanding Medicaid would result in states saving money in the long term.[60]

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55. Spencer Interview, *supra* note 18. The Georgia Public Policy Foundation recommended not expanding Medicaid as the program already made up an "inordinate" percentage of the budget, preventing funds from being be devoted to education, public safety, and to maintaining and improving the state infrastructure. *Issue Analysis*, *supra* note 9. Expanding Medicaid would require cuts to other areas of the budget, such as education, or higher taxes because Medicaid and other services to the vulnerable and needy already make up eighty percent of the budget. *See* Senate Video Recording, *supra* note 52, at 58 min., 37 sec. (remarks by Sen. Renee Unterman (R-45th)).

56. Pugh, *supra* note 48.

57. Spencer Interview, *supra* note 18. States will also face additional costs due to the likely enrollment increase among adults who are currently eligible for Medicaid but who are not now signed up. Pugh, *supra* note 48. While most enrollees would be newly-eligible, some of the increased enrollment would be those who are currently eligible. John Holohan et al., *The Cost and Coverage Implications of the ACA Medicaid Expansion: National and State-by-State Analysis*, KAISER COMM. ON MEDICAID AND THE UNINSURED (Nov. 2012), http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8384.pdf.

58. Pugh, *supra* note 48. Estimates show that if the nine Southern states which are currently opposed to Medicaid dropped this opposition, their spending for Medicaid would increase between three and seven percent from 2013 to 2022. *Id.* These estimates show the states being compensated for these additional costs by savings for hospital indigent care because more of the currently uninsured patients would have coverage through Medicaid. *Id.* The cost to states for expanding Medicaid would be eight billion dollars spread out over 2013-2022, which represents a 0.3 percent increase over what their spending would be under the ACA without the expanding Medicaid. Holohan, *supra* note 57, at 1. This amount includes both the expense for the adults who become newly eligible under the expansion and the additional participation among those individuals who are currently eligible resulting from the expansion. *Id.*

59. *Georgia Budget Primer*, *supra* note 11 at 35.

60. *See generally* Holohan, *supra* note 57. Estimates show that states would save a total of ten billion dollars between 2013 and 2022 if they expanded Medicaid. *Id.* at 1. This amount is calculated by

Opposing the Affordable Care Act and Distrust of the Federal Government

Some legislators wished the Act had gone further and had actually prohibited the expansion of Medicaid altogether, rather than simply transferring the power to do so from the governor to the legislature.[61] They oppose Medicaid expansion because they see it as the "centerpiece" of the ACA.[62] Beyond a disagreement with the federal healthcare program, more than half of the governors who oppose Medicaid expansion expressed their belief that the federal government would not provide the promised funding for the program.[63] One reason for this belief was the current status of the national debt and concern over how the federal government could fund an expensive program like Medicaid.[64] At the time the Act was passed the national debt was more than $17 trillion.[65] If all states expanded Medicaid, federal spending would increase by $800 billion,

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combing state and local savings of eighteen billion dollars, due to the resulting decline of spending on uncompensated care, and the expansion's eight billion dollar increase in total state Medicaid costs. *Id.* at 6. Hospitals would also save money, with estimates showing them receiving an additional 314 billion dollars, or eighteen percent, more than they would receive under the ACA with no state expansion of Medicaid. *Id.* States would receive more than ten times as many federal dollars if they spent more on Medicaid, which could then help their economies and help create jobs. Pugh, *supra* note 48.

61. *See* Spencer Interview, *supra* note 18.

62. *Id.* Rep. Spencer stated:

> I personally do not feel like the federal government is competent enough to operate such a massive program . . . the people have no faith in this program, it's too big, it's too menacing, it just enhances the federal leviathan and the people aren't convinced that Obamacare is the answer to healthcare issues in our state, in our country.

Id.

63. Sommers & Epstein, *supra* note 48 at 499. This was a concern of members of the General Assembly, who expressed the belief that there was no guarantee that the Federal Government would keep its promise to fund Medicaid past the initial three years and that the federal government was not trustworthy regarding its promises to fund programs. *See* Spencer Interview, *supra* note 18.

64. *See* Spencer Interview, *supra* note 18. Supporters of Medicaid expansion argue that the state is giving away free money while other states are taking it but "the truth of the matter is the federal government has no money." *Id.* The nation has an eighteen trillion dollar debt and will need to "either borrow the money from China," print money, or digitize the currency in order to be able to afford Medicaid expansion, which would cause inflation. *Id.* As inflation increased so would the cost of health care. *Id.* However, others question if the government will use the money wisely if Georgia does not take it. *See* Hufstetler Interview, *supra* note 11. Another concern is rejecting federal Medicaid expansion dollars will do nothing to lower the deficit. *See* Senate Video Recording, *supra* note 52, at 1 hr., 22 min., 11 sec. (remarks by Sen. Chuck Hufstetler (R-52nd)).

65. *The Daily History of the Debt Results*, TREASURYDIRECT, http://www.treasurydirect.gov/NP/debt/search?startMonth=04&startDay=14&startYear=2014&endMonth=&endDay=&endYear= (last visited Sept. 10, 2014).

or twenty-one percent, compared to the cost of the ACA if no states implemented Medicaid expansion.[66]

However, the federal contribution towards Medicaid is written into the ACA and cannot be altered unless Congress passes another act.[67] Currently, the federal government pays almost two-thirds of Georgia's Medicaid expenses.[68] In contrast, even though there has been a twenty percent increase in the number of Georgians receiving their health insurance through the Medicaid and PeachCare programs since 2009, state General Fund investment has only increased three percent to 2.2 billion dollars in 2014.[69]

Unintended Consequences of the Act

Now that the power to expand Medicaid has been transferred from the Governor to the General Assembly, the legislature could decide to expand the Medicaid program in Georgia.[70] The Act "preserves" the debate for the people; if legislative opinion towards expansion changes, the legislature is now empowered to expand the program.[71] There are a few consequences of deciding not to expand Medicaid that could cause legislative opinion to shift in favor of the expansion.

Georgia is home to nearly 1.9 million people without insurance, one of the highest national totals.[72] States in the South, like Georgia, have chosen to invest in public safety-net hospitals, where indigent and uninsured patients can receive care subsidized by the taxpayers.[73]

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66. Holohan, *supra* note 57 at 29.

67. Letter from Douglas W. Elmendorf, Dir., Cong. Budget Office, to Representative Jerry Lewis, Ranking Member, Comm. on Appropriations, U.S. House of Reps. (May 11, 2010) *in* CONG. BUDGET OFFICE, SELECTED CBO PUBL'NS RELATED TO HEALTH CARE LEGISLATION, 2009-2010, 52–3 (2010); *Explaining Medicaid*, COVER GEORGIA, http://www.coverga.org/medicaid101/medicaid101.html (last visited Aug. 8. 2014); *Federal Funding Under the Affordable Care Act*, THE HENRY J. KAISER FAMILY FOUND. (Apr. 2010), http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8301.pdf.

68. *Georgia Budget Primer*, *supra* note 11 at 33.

69. *Id.*; PeachCare is authorized under O.C.G.A. § 49-5-273 and is Georgia's program to provide health care to children under the age of eighteen who live in households with incomes either at or below 247 percent of the federal poverty level. *What is PeachCare for Kids?*, PEACHCARE FOR KIDS, https://www.peachcare.org/FaqView.aspx?displayFaqId=101 (last visited Sept. 9, 2014). This program began operating in 1999 under Title XXI of the Social Security Act. *Id.*

70. *See* Spencer Interview, *supra* note 18.

71. *Id.* Six out of ten Georgians currently believe we should expand Medicaid. *See* Senate Video Recording, *supra* note 52, at 1 hr., 23 min., 35 sec. (remarks by Sen. Chuck Hufstetler (R-52nd)).

72. *Georgia Budget Primer*, *supra* note 11 at 33.

73. Pugh, *supra* note 48.

However, many of the health problems facing Southerners—such as obesity, poor diet, lack of exercise, and smoking—require primary care and prevention care, which hospitals do not adequately provide.[74] The cost of the uncompensated care provided by hospitals to indigent patients total approximately $4 billion annually in Georgia, costs which are passed on to insured patients through higher premiums, affecting individuals and employers alike.[75]

A prime example of a "safety-net hospital" in Georgia, also the largest hospital in the state, is Grady Memorial Hospital. More uninsured patients are treated at Grady than at any other hospital in the state.[76] Grady is considered to be a "disproportionate share hospital" (DSH), because of the large number of Medicaid and low-income uninsured patients it serves.[77] As a result of the state's decision not to expand Medicaid, the hospital may have to cut some of its services. As part of the ACA, DSH payments were to be reduced by approximately $17.1 billion between 2014 and 2020.[78] These funds are relied on by hospitals, such as Grady, to offset the costs of treating large numbers of uninsured patients.[79] In recent years, Grady has received about $90 million a year in DSH funding.[80] Grady's Vice President of Government Relations has projected that this amount will be cut almost in half by the year 2018.[81] The new

74. *Id.* Instead of receiving preventative care, patients go to the hospitals when they have a serious health issue and receive the most expensive care. *See* Neil Irwin, *This Georgia Hospital Shows Why Rejecting Medicaid Isn't Easy*, WASH. POST (June 26, 2013), http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/26/this-georgia-hospital-shows-why-rejecting-medicaid-isnt-easy/.

75. Amanda Ptashkin, *The Affordable Care Act: What's in it for You and Your Patients?*, GEORGIANS FOR A HEALTHY FUTURE 35 (Oct. 29, 2012), http://healthyfuturega.org/pdfs/swog.pdf.

76. Irwin, *supra* note 74.

77. *Id.*

78. *Id.* Federal law mandates that state Medicaid programs make DSH payments to hospitals that serve a large number of Medicaid and uninsured individuals and meet federal qualifications. *Medicaid Disproportionate Share Hospital (DSH) Payments,* MEDICAID.GOV, http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Medicaid-Disproportionate-Share-Hospital-DSH-Payments.html (last visited Sept. 9. 2014). However, the ACA reduced federal DSH allotments based on the assumption that under the ACA there would be an increase in the number of patients with insurance and thus a reduction in uncompensated care costs. Robin Rodowitz, *How Do Medicaid Disproportionate Share Hospital (DSH) Payments Change Under the ACA?*, THE HENRY J. KAISER FAMILY FOUND. (Nov. 2013) (on file with Georgia State University Law Review). Because of the reduction in DSH funding four hospitals in Georgia have closed and fifty-seven percent of the hospitals in rural areas are losing money. Hufstetler Interview, *supra* note 11.

79. Irwin, *supra* note 74.

80. *Id.*

81. *Id.*

money which would have come into the state, had Georgia chosen to expand Medicaid, would have helped to offset the DSH cuts.[82] Grady Chief Executive, John Haupert, estimates that the hospital would have received around $60 million.[83] The decision not to expand Medicaid is expected to eliminate the $27 million profit that the hospital made in 2012.[84] The executives also project that the hospital will have to reduce services for mental health, obstetrics, and gynecology, and defer needed maintenance.[85] Aside from the prison system, Grady is the largest mental health provider in the state.[86] Therefore, the indigent population will be affected by all of the cuts. Smaller hospitals will feel these cuts more.[87]

Many of the poorest individuals in Georgia will be left without health insurance due to the decision not to expand Medicaid.[88] The ACA offers tax credits for those making between 100 percent and 400 percent of the federal poverty level, so they can more easily afford insurance through the new insurance marketplace.[89] However, individuals making less than 100 percent of the federal poverty level do not qualify for the credits, which means—with Georgia electing not to expand Medicaid—these individuals do not yet have an affordable option for health insurance.[90] This creates a coverage gap for those states that choose not to expand Medicaid.[91] Estimates by the Urban Institute show that over 11.5 million low-income individuals nationwide will fall into this gap.[92]

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82. *Id.*
83. *Id.*
84. *Id.*
85. Irwin, *supra* note 74.
86. *Id.*
87. *Id.* Clayton County is considering a fifty million dollar SPLOST (Special-Purpose Local-Option Sales Tax) for Southern Regional hospital in order to try and keep it solvent; all hospitals in Georgia get less money due to the ACA without Medicaid expansion. *See* Senate Video Recording, *supra* note 52, at 1 hr., 21 min., 04 sec. (remarks by Sen. Chuck Hufstetler (R-52nd)). The Georgia Hospital Association, Emory, Children's Hospital, and groups such as the Medical Association of Georgia support the expansion of Medicaid. *Id.* By not expanding Medicaid, hospitals are left with the bill for uninsured patients whom they must treat. *Id.*
88. *Explaining Medicaid*, *supra* note 67.
89. *Id.*
90. *Id.* ACA coverage will have "large unintended gaps" because millions of adults below 100 percent of the federal poverty level will remain without insurance. Sommers, *supra* note 48 at 499.
91. *Issue Analysis*, *supra* note 9.
92. *Id.*

While Georgia's decision to transfer the power to expand Medicaid from the Governor to the General Assembly effectively guarantees that the program will not be expanded in Georgia, the Act is unlikely to be successfully challenged legally. Georgia was one of only eight states that did not already require a vote by the state legislature to expand the Medicaid income threshold.[93] Georgia's governor was not the only state executive to sign such a bill; a similar piece of legislation was signed by the governor of Kansas, Sam Brownback.[94] Kansas House Bill 2552 transferred the Governor's power to expand Medicaid to the legislature.[95] A legal challenge to the bill is also unlikely to be successful because the reasoning behind allowing the legislature to debate this issue is based on the legislature's constitutional mandate to balance the budget.[96]

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93. House Committee Recording, *supra* note 14, at 19 min., 30 sec. (remarks by Rep. Jan Jones (R-47th)). "What many of us in this chamber did not appreciate until Obamacare is that Georgia is one of only a few states that relies solely on the Governor to make that decision." Senate Video Recording, *supra* note 52, at 1 hr., 0 min., 15 sec. (remarks by Sen. Renee Unterman (R-45th)).

94. Tara Culp-Ressler, *Kansas Governor Ensures His State Won't Expand Medicaid Anytime Soon*, THINKPROGRESS (April 21, 2014), http://thinkprogress.org/health/2014/04/21/3428858/kansas-governor-medicaid/.

95. KAN. STAT. ANN. § 39-709(e)(2) (West 2014). The Act reads:

> Medical assistance eligibility for receipt of benefits under the title XIX of the social security act, commonly known as medicaid, shall not be expanded, as provided for in the patient protection and affordable care act, public law 111–148, 124 stat. 119, and the health care and education reconciliation act of 2010, public law 111–152, 124 stat. 1029, unless the legislature expressly consents to, and approves of, the expansion of medicaid services by an act of the legislature.

Id. Expansion of Medicaid in Kansas would have provided health care to approximately 78,000 people. Culp-Ressler, *supra* note 94.

96. *See* Spencer Interview, *supra* note 18.