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How Illinois Medicaid Reform Could Affect You

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I. INTRODUCTION

Medicaid is the primary financier for medical and health-related services for the indigent and disabled in America.¹ In Illinois alone, more than 2.8 million people are enrolled in Medicaid.² To put that into perspective, one out of every five Illinois residents is on Medicaid, one out of every three children in Illinois is on Medicaid, and one out of every two births in Illinois are paid for by Medicaid.³ These statistics make Illinois the fifth largest Medicaid program in the country.⁴ The sheer size of the Medicaid program in Illinois understandably results in one of the largest Medicaid budgets in the country. Thus, in 2009, Illinois's total Medicaid

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² Barbara S. Klees et al., *Brief Summaries of Medicare & Medicaid*, CENTERS FOR MEDICARE AND MEDICAID SERVICES, 22 (Nov. 12, 2010), <https://www.cms.gov/MedicareProgramRatesStats/downloads/MedicareMedicaidSummaries2010.pdf>.

³ Monifa Thomas, *How Illinois' Medicaid Reforms Could Affect You*, CHI. SUN-TIMES, Feb. 14, 2011, <http://www.suntimes.com/lifestyles/health/3810934-423/how-illinoismedicaid-reforms-could-affect-you.html>.

⁴ Benjamin Yount, *Feds Halt Ill. Medicaid Reform*, ILL. STATEHOUSE NEWS (July 18, 2011), <http://illinois.statehousenewsonline.com/6610/feds-halt-illinois-medicaid-reform/> (last visited Sept. 22, 2011).

⁵ THE HENRY J. KAISER FAMILY FOUND., Kaiser State Health Facts, *Total Medicaid Enrollment Fiscal Year 2007*, <http://www.statehealthfacts.org/comparetable.jsp?ind=198&cat=4&sub=52&yr=23&typ=1&sort=a>.

expenditures were the seventh highest in the country.⁵ However, the amount of money that Illinois spends on Medicaid has increased dramatically over the past few years. According to Illinois State Representative Patti Bellock, who helped write the recent Medicaid reform package (House Bill 5420), Illinois spent about \$7 billion on Medicaid in 2006.⁶ In 2011, however, Illinois is projected to spend \$15 billion.⁷ Illinois's total annual spending budget is \$33.4 billion, which means that nearly half of every dollar the Illinois government expects to spend this year will be on Medicaid.⁸

The majority of Illinois taxpayers are able to provide their own health insurance without the state's assistance.⁹ Unfortunately, nearly fifty percent of Illinois tax dollars are spent on a program that in no way benefits these taxpayers.¹⁰ According to the Patient Protection and Affordable Care Act (PPACA), by the year 2014, all states will be required to provide Medicaid to individuals whose income is less than 133% of the Federal Poverty Level (currently \$29,300 for a family of four).¹¹ Raising taxes is not necessarily the answer, but achieving efficiencies may be. Thus, on January 25, 2011, Governor Quinn signed House Bill 5420, which he believes will save the state \$624 million to \$774 million over the next five years, while delivering better services to those that need them.¹² However, there are many negative consequences to this reform plan that will affect all Illinois residents.

This article will examine the four major reforms being implemented by House Bill 5420 and its impact on both Medicaid and non-Medicaid

5. *Id.*

6. Yount, *supra* note 3.

7. Yount, *supra* note 3.

8. *Id.*

9. *See id.*

10. *See id.*

11. ILL. HEALTH REFORM IMPLEMENTATION COUNCIL, *Affordable Care Act Implications for Ill.*, 2 (Nov. 16, 2010), <http://www2.illinois.gov/healthcarereform/Documents/IL-HRIC%20Presentation%20111610.pdf>.

12. Ill. Gov. News Network, Gov. *Quinn Signs Landmarks Medicaid Reform Legislation*, (Jan. 25, 2011), <http://illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&RecNum=9183>.

recipients. Part I of this article provides a brief overview of the importance of Medicaid in Illinois and introduces Governor Quinn's reform plan, which he believes will reduce Illinois's excessive Medicaid spending. Part II will explore Illinois's plan to increase the number of participants in the Medicaid managed care program and how this could negatively affect most Illinois residents. Part III will examine the plan's effect on the children whose benefits may be cut under House Bill 5420. Part IV will discuss how Illinois's reduced reliance on nursing homes will improve living conditions for elderly and disabled individuals while saving the state money. Part V will explain why the federal government rejected Illinois's requirement that Medicaid recipients provide proof of their income and residency and the serious implications this presents for House Bill 5420.

II. THE PROBLEM WITH MANAGED CARE

Governor Quinn projects that moving fifty percent of Illinois Medicaid recipients to managed care by 2015, as mandated by House Bill 5420, will reduce Medicaid costs while providing better health care services.¹³ Currently, only eight percent of Illinois Medicaid recipients are enrolled in managed care, which is far below the national average of forty-six percent.¹⁴ Governor Quinn is correct to expect a reduction in Medicaid costs from this plan. The savings will come from shifting the Illinois Medicaid program from a fee-for-service system to a capitation system, or one where the state pays insurance companies a set rate per year for each patient.¹⁵ However, Governor Quinn may be incorrect to expect managed care insurers to provide better health care services to Medicaid recipients.¹⁶ In fact, health care quality may decline for some individuals and force them

13. Christine Vestal, *Crushed by Medicaid Costs*, STATELINE (Feb. 4, 2011), <http://www.stateline.org/live/details/story?contentId=547640>.

14. *Id.*

15. *See id.*

16. *See* Judith Graham, *Ill. Medicaid's Managed Care Effort Stumbles*, CHI. TRIB. (Aug. 26, 2011), http://articles.chicagotribune.com/2011-08-26/health/ct-met-medicare-managed-care-20110826_1_care-and-lower-costs-care-doctor-hmo-style.

to find medical treatment through alternative sources.¹⁷ This would have negative implications for Medicaid and non-Medicaid recipients, such as hospital emergency room overcrowding.¹⁸

The state believes that shifting Medicaid recipients to managed care will improve health care because insurance companies will now bear the financial burden.¹⁹ As a result, insurance companies will have financial incentive to carefully coordinate patient care to reduce avoidable hospitalizations and deteriorating of chronic conditions.²⁰ Essentially, the state's hope is that the managed care plans "will prevent costly hospitalizations by connecting people with teams of doctors, social workers and case managers, improving access to preventive services such as mammograms, and teaching them how to manage chronic conditions such as diabetes."²¹ Thus, it is fair to assume that managed care is a viable solution to improving health care services. The vast majority of managed care plans in other states cover only children and pregnant women because they are generally healthy and inexpensive to cover.²² However, Illinois plans to provide managed care to adults with disabilities and seniors who require long-term care as well.²³ As Bellock stated, these people will finally have a "medical home."²⁴

Unfortunately, finding a "medical home" is not as simple as it sounds, especially for disabled adults and senior citizens.²⁵ The disabled and senior populations make up only twenty percent of the Medicaid population in

17. *See id.*

18. *See* U.S. GEN. ACCOUNTING OFFICE, *Emergency Care: EMTALA Implementation and Enforcement Issues*, 2, (June 2001), <http://www.emtala.com/062001.pdf>. Medicaid recipients who are unable to make timely appointments with their personal physicians will be forced to visit the emergency room for nonemergency services. This will cause hospital overcrowding.

19. *See* Vestal, *supra* note 13.

20. *See id.*

21. Graham, *supra* note 1616.

22. *See* Vestal, *supra* note 13.

23. *See id.*

24. Diane S.W. Lee, *Ill. Embraces Medicaid Reform*, ILL. STATEHOUSE NEWS, Jan. 25, 2011, <http://illinois.statehousenewsonline.com/5005/illinois-embraces-medicaid-reform/>.

25. *See* Graham, *supra* note 16.

Illinois, but their services account for seventy cents of every Medicaid dollar spent.²⁶ Moreover, managed care has a history of difficult administrative requirements and restricted reimbursements.²⁷ As a result, several hospitals in Illinois have been resistant to making the change.²⁸ Thus, managed care recipients may be faced with the difficult decision of either traveling a long distance to find a doctor who is willing to accept managed care or visiting a hospital and attempting to receive emergency treatment.²⁹ Furthermore, those recipients who are lucky enough to find a personal physician in their area often have difficulty obtaining timely appointments, which then leads to overcrowding of hospitals.³⁰ Overcrowding in hospitals affects patients through inefficiency, the spread of infection, longer hospital stays, and scarcity of rooms.³¹ Additionally, overcrowding can cause doctors and nurses to become overly stressed, which can affect the quality of patient care.³²

It is likely that managed care will begin to cause hospital overcrowding in Illinois in the very near future.³³ A pilot program, which enrolled about 40,000 disabled adult and elderly Medicaid recipients into two private HMO-style plans, is already presenting problems.³⁴ Many of these disabled adults and elderly individuals are already having difficulty finding new doctors, and as the managed care initiative progresses, hundreds of

26. Adam Doster, *Finding Waste in Medicaid: Easier Said Than Done*, PROGRESS ILL., Dec. 16, 2010, <http://www.progressillinois.com/posts/content/2010/12/16/finding-waste-medicaid-easier-said-done>.

27. See Graham, *supra* note 16.

28. *Id.*

29. See *id.*; see also U.S. GEN. ACCOUNTING OFFICE, *supra* note 18 at 2.

30. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 18 at 2.

31. See UOPX Writer Network, *How Does Overcrowding Impact Hospitals?*, U. OF PHX. (Aug. 22, 2010), https://www.phoenix.edu/colleges_divisions/nursing/articles/2010/08/how-does-overcrowding-impact-hospitals.html.

32. *Id.*

33. See Herald News, *Area Doctors and Hospitals Snub Medicaid Managed Care Program*, CHI. SUN-TIMES (August 27, 2011, 12:04 PM), <http://heraldnews.suntimes.com/news/7295665-418/area-doctors-and-hospitals-snob-medicaid-managed-care-program.html>. Most prominent Illinois hospitals have refused to accept Medicaid's managed care program. As a result, it is likely that overcrowding will occur in the hospitals that do accept the managed care program.

34. See *id.*; see also Graham, *supra* note 16.

thousands of individuals on Medicaid will be forced to seek treatment within managed care's restricted network of doctors.³⁵ Many doctors and the majority of prominent hospitals, such as Northwestern Memorial Hospital, Rush University Medical Center, the University of Chicago Medical Center, Children's Memorial Hospital, and Loyola University Health System, have already refused to join the program.³⁶

Although these hospitals have refused to join managed care panels, the Emergency Medical Treatment and Labor Act (EMTALA) requires them to provide initial screenings to any person who comes to the emergency department, regardless of the individual's ability to pay.³⁷ While the hospital only has to treat that individual when the initial screening shows that they have an emergency condition, the threat of being sued for violating EMTALA and potentially losing the ability to practice medicine may sometimes cause doctors to broaden their conception of "emergency medical condition."³⁸ Overall, the plan to shift fifty percent of Medicaid recipients to managed care will save the state money and simplifies the system, but it may reduce access to those who need it most and cause harm to non-Medicaid recipients.

III. THE IMPACT ON CHILDREN

Illinois is known as a national leader in providing quality health insurance to children in need.³⁹ Children are, in essence, the centerpieces of the Medicaid reform plan because they make up 1.6 million of the 2.8 million people enrolled.⁴⁰ All Kids is Illinois's medical program for

35. See Graham, *supra* note 16.

36. See *id.*; Herald News, *supra* note 33.

37. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 18, at 1.

38. See *id.*; See also *EMTALA*, AMERICAN COLLEGE OF EMERGENCY PHYSICIANS, <http://www.acep.org/content.aspx?LinkIdentifier=id&id=25936&fid=1754&Mo=No&acepTitle=EMTALA> (last visited Sept. 26, 2011).

39. Andrea Kovach, *Progress Made with Illinois Medicaid Reforms but Policy Concerns Remain*, THE SHRIVER BRIEF (Jan. 26, 2011), <http://www.theshriverbrief.org/2011/01/articles/health-care-reform-1/progress-made-with-illinois-medicaid-reforms-but-policy-concerns-remain>.

40. Lee, *supra* note 24; State of Ill. Department of Healthcare and Family Services,

qualifying children who need health insurance coverage.⁴¹ Since July, eligibility for All Kids has been capped at 300% of the federal poverty level, reversing an expansion under former Governor Rod Blagojevich in 2006.⁴² The federal poverty level varies depending on the size of an individual's family.⁴³ A family of four is considered within 300% of the federal poverty level if their total yearly income is under \$66,150.⁴⁴ This change will cause about 3,100 children to lose their health insurance.⁴⁵ Although 3,100 children out of 1.6 million is less than two percent, it still may be too many in some people's eyes.

However, these children will not have much trouble finding new health insurance. Under the PPACA, children now have access to affordable private insurance that they did not originally have under All Kids.⁴⁶ Among these affordable insurance options is the modified All Kids, which will still provide health insurance for a fee to those children who are not eligible for the free program.⁴⁷ The cost of this insurance will be in relation to the family's income for those who are ineligible for free coverage.⁴⁸

Health insurance is also more available to children due to the PPACA.⁴⁹ Insurance companies are now prohibited from denying coverage to children with pre-existing medical conditions.⁵⁰ Thus, children being cut from All Kids and those who simply had difficulty finding health insurance due to their medical conditions no longer need to worry. Furthermore, children are

About All Kids, ALL KIDS, <http://www.allkids.com/hfs8269.html> (last visited Sept. 25, 2011).

41. State of Ill. Department of Healthcare and Family Services, *Answers to Your Questions about All Kids*, ALL KIDS 2, <http://www.allkids.com/assets/hfs8269.pdf>.

42. Thomas, *supra* note 2.

43. See State of Ill. Department of Healthcare and Family Services, *supra* note 40.

44. Kovach, *supra* note 39.

45. Thomas, *supra* note 2.

46. *Id.*

47. See State of Ill. Department of Healthcare and Family Services, *All Kids Income Standards & Cost Sharing Chart*, ALL KIDS, <http://www.allkids.com/income.html> (last visited Sept. 25, 2011).

48. See *id.*

49. Public Health Service Act, 42 U.S.C. § 300gg-3 (2010). A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any preexisting condition exclusion with respect to such plan or coverage.

now able to remain on their parents' health policy until the age of twenty-six.⁵¹ Overall, the only negative consequence that the Medicaid reform plan will have on children is that 3,100 of them will lose their health insurance.⁵² Fortunately, due to the combination of the reform plan's other policies and the PPACA, children will be able to find coverage at an affordable cost.

IV. BETTER LIVING CONDITIONS FOR THE DISABLED AND ELDERLY

Integrating disabled and elderly individuals from state-run institutions, such as nursing homes, into community housing was a major component of this Medicaid reform plan.⁵³ As stated above, the disabled and elderly account for seventy percent of Medicaid expenses in Illinois.⁵⁴ Community housing developments are small, family scale facilities that are cheaper to administer and more comfortable for those who want greater autonomy.⁵⁵ Essentially, community housing consists of subsidized apartments that allow residents to function independently.⁵⁶

There is no doubt that Illinois needs to improve on living conditions and economic efficiency for disabled and elderly individuals. Illinois is currently ranked forty-ninth in the nation for adults treated in community housing.⁵⁷ Not only will redirecting state funds from public institutions to private community living institutions save the state money, it will also help improve the horrible living situations in which many of these individuals find themselves. According to an investigation conducted by the Chicago Tribune in 2009, some of the nursing homes that the elderly are forced to live in are "grim, profit making institutions that provide little therapy or

50. *Id.*

51. *Affordable Care Act Implications for Illinois*, *supra* note 11, at 4.

52. *See* Thomas, *supra* note 2.

53. *See* Thomas, *supra* note 2; *See also* Adam Doster, *Breaking Barriers for Illinois' Disabled*, *PROGRESS ILL.* (Nov. 16, 2010, 3:14 PM), <http://www.progressillinois.com/posts/content/2010/11/16/breaking-barriers-disabled>.

54. Doster, *supra* note 26.

55. *See id.*

56. *See* David Jackson, *Settlement Eases Reliance on Nursing Homes to House Adults with Disabilities*, *CHI TRIB.* (Aug. 30, 2011), http://articles.chicagotribune.com/2011-08-30/news/ct-met-nursing-homes-20110830_1_nursing-homes-disabilities-access-living.

discharge planning.”⁵⁸ In some of the most troubled facilities, numerous cases of sexual assault, violence, and drug abuse were found.⁵⁹ An increase in community housing will improve this situation, while saving the state money.

Although the governor’s plan was to increase the amount of community housing, the legislature did not specify many details about spending, number of housing units, or any timetable.⁶⁰ Ironically, Governor Quinn no longer has to specify these details for Cook County because United States District Judge Joan Humphrey Lefkowitz has specified this information for him.⁶¹ A class action lawsuit, filed by approximately 20,000 Medicaid-eligible Cook County residents living in nursing facilities, recently reached a settlement that will require Governor Quinn to begin the transitional process.⁶² The state of Illinois will be required to spend \$10 million in the first thirty months of implementation to ensure that over 1,000 nursing home residents will be able to move into community housing.⁶³ Additionally, the state will be required to develop a plan to transition other nursing facility residents into community housing in the near future.⁶⁴

One might question where the \$10 million and the future community housing development money will come from. Governor Quinn claims that the new agreement will not cost taxpayers any money because the state will recoup Medicaid dollars as it offers community housing to former nursing facility residents.⁶⁵ Furthermore, the court agreement requires that the new housing plan be implemented in a manner that costs the state no more than

57. Doster, *supra* note 26.

58. Jackson, *supra* note 56.

59. *Id.*

60. See Thomas, *supra* note 2.

61. See Kate Dries et al., *Settlement Improves Living Opportunities for Disabled Chicagoans*, WBEZ 91.5 (Aug. 30, 2011), <http://www.wbez.org/story/settlement-improves-living-opportunities-disabled-chicagoans-91260#>

62. See *id.*, See also *Colbert v. Quinn Fact Sheet*, AMERICAN CIVIL LIBERTIES UNION OF ILL., <http://www.aclu-il.org/wp-content/uploads/2011/08/Fact-Sheet-Colbert-8-11.pdf> (last visited Sept. 26, 2011).

63. Dries, *supra* note 61; *Colbert v. Quinn Fact Sheet*, *supra* note 62.

64. See *Colbert v. Quinn Fact Sheet*, *supra* note 62.

its current use of nursing homes.⁶⁶ According to officials under Governor Quinn, community housing in other states has proved to be less costly to taxpayers than nursing facilities, so it is unlikely that this will result in a tax increase.⁶⁷

V. ELIGIBILITY VERIFICATION REQUIREMENT NOT LEGAL

Preventing Medicaid fraud was a key component of Governor Quinn's Medicaid reform plan.⁶⁸ Currently, all one must do to prove Medicaid eligibility is provide a single pay stub, which could be a pay stub from one day or one week, regardless of whether it is artificially low compared to the income one actually earns.⁶⁹ Additionally, to prove Illinois residency, all one must do is write down an address.⁷⁰ As a result, people who earn more than the Medicaid threshold or who do not even live in Illinois are fraudulently collecting Medicaid funds.⁷¹ The state government recognized this problem, and the Medicaid reform plan provided a solution.⁷² The strategy was to create a civil remedy to prevent Medicaid fraud by requiring applicants to provide proof of Illinois residency and documentation of income made for an entire month.⁷³ Those who are found to have provided false information will incur a financial penalty of up to \$2,000 per fraudulent claim and will repay the state five percent per annum on the value of benefits fraudulently received.⁷⁴ Medicaid would be provided only to those in need, and those who fraudulently take advantage of taxpayers'

65. Jackson, *supra* note 56.

66. *Id.*

67. *Id.*

68. See Ryan Long, *Feds Say No to Quinn on Tightening Medicaid Proof*, CHI. TRIB. (Jul. 19, 2011), <http://www.chicagotribune.com/news/politics/clout/chi-feds-say-no-to-quinn-on-tightening-medicaid-proof-20110719,0,6804492.story>.

69. *Id.*

70. *Id.*

71. See Avik Roy, "Ridiculous" Obama Administration Blocks Modest Medicaid Reforms in Illinois, FORBES (Aug. 27, 2011, 12:34 PM), <http://www.forbes.com/sites/aroy/2011/08/27/ridiculous-obama-administration-blocks-modest-medicaid-reforms-in-illinois/>.

72. *Id.*

73. *See id.*

74. Kovach, *supra* note 39.

money would be severely punished.⁷⁵ The simplicity of this plan will likely be a positive factor in its implementation, as the risk of complications is lower.

However, in July, the federal government informed Illinois that it cannot ask Medicaid recipients to prove how much they earn or where they live.⁷⁶ The federal government's reason for denial was because states are not allowed to enforce additional procedures that are more restrictive than they were on March 23, 2010, the day President Obama signed the PPACA.⁷⁷ There is a major flaw in this reasoning. One of the main objectives of the PPACA is to ensure that Medicaid coverage is provided to citizens with the greatest need.⁷⁸ Illinois has also made this a main objective, and its policy requiring eligibility verification helps ensure that only those with the greatest need receive Medicaid coverage.⁷⁹ However, the federal government believes that a policy which requires individuals to provide verification that they qualify for Medicaid is an additional restrictive procedure, even though it will likely prevent fraud.⁸⁰ "[T]his is what enrages people," said Illinois Senate Minority Leader Christine Radogno, "If all we want to do is find out if people are actually eligible for the services, and the federal government is telling us we can't do that, that's absolutely ridiculous."⁸¹

Due to the federal government's denial of Illinois's Medicaid eligibility requirements, it is probable that the state will have more citizens enrolled in Medicaid than originally anticipated. Aside from the negative implications discussed above, the amount of money the state estimated it would save will likely need to be adjusted. It is unfortunate that the federal government

75. See Roy, *supra* note 71.

76. *Id.*

77. Long, *supra* note 68.

78. See *Medicaid Cost-Savings Opportunities*, U.S. DEPT. OF HEALTH AND HUMAN SERV. (Feb. 3, 2011), <http://www.hhs.gov/news/press/2011pres/02/20110203tech.html>.

79. See Roy, *supra* note 71.

80. *Id.*

81. Long, *supra* note 68.

denied this policy because it could have devastating effects on Illinois's Medicaid reform plan. According to Bellock, stopping fraud is the first step Illinois must take to successfully implement this reform plan and contain the skyrocketing costs of Medicaid.⁸² Unfortunately, it appears that Illinois will have to take different measures to complete this first step.

VI. CONCLUSION

Illinois's Medicaid reform plan is a major step in helping to solve the recent explosion of Medicaid spending. Additionally, difficulties for children are kept to a minimum, while elderly and disabled adults living in nursing homes can expect to have their living situations improved.⁸³ However, there will likely be negative implications for both Medicaid and non-Medicaid recipients. Medicaid recipients are already beginning to experience difficulties such as finding a doctor who accepts managed care.⁸⁴ The potential hospital overcrowding that may occur as a result of Illinois's Medicaid reform plan will also have serious negative consequences for all individuals in Illinois.⁸⁵ Additionally, it is possible that the federal government's non-allowance of Illinois to request eligibility verification could cause Medicaid fraud to increase.⁸⁶ As a result, the state's estimated savings of \$624 million to \$774 million over the next five years may need to be adjusted.⁸⁷ Although the Medicaid reform plan is an improvement, Illinois lawmakers must continue the complex task of finding ways to improve Medicaid while remaining compliant with federal regulations.

82. Yount, *supra* note 3.

83. See Thomas, *supra* note 2; see also Jackson, *supra* note 56.

84. See Graham, *supra* note 16.

85. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 18 at 2.

86. See Long, *supra* note 68.

87. See Ill. Gov. News Network, Gov., *supra* note 12.