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Bill to Replace Medicaid Expansion in Utah Would Cover Fewer People, Create New Financial Risks

By Jesse Cross-Call and Jessica Schubel

The Utah House of Representatives will likely vote this week on Senate Bill 96,¹ a state Senate-passed bill that would repeal a voter-approved ballot initiative to expand Medicaid under the Affordable Care Act (ACA) and provide health coverage to approximately 150,000 Utahns, coverage state officials previously said could begin on April 1. In its place, the bill directs the state Medicaid agency to seek approval for an unusual and uncertain federal Medicaid waiver that would provide Medicaid coverage to 48,000 fewer Utahans and would cost the state \$50 million more over the next two years, according to a state fiscal analysis.

Contrary to claims by some Utah policymakers that SB96 makes small changes to what voters approved,² the bill is very similar to a waiver that Utah submitted to the federal Centers for Medicare and Medicaid Services (CMS) last year, which policymakers promoted then as an *alternative* to the Medicaid expansion initiative. Voters rejected that approach when they voted for full Medicaid expansion. Like the earlier waiver, the new bill depends on federal approval of unprecedented restrictions — far from guaranteed — to expand coverage to a smaller group of low-income Utahns than the voter-approved initiative would, and it includes provisions that restrict Medicaid eligibility, including an enrollment cap and the termination of coverage for people who don't meet a rigid work requirement. Moreover, if implemented, SB96 will cost the state *more* than full expansion, at least initially and potentially on a permanent basis.

Under SB96, Coverage Expansion Depends on Uncertain Federal Approvals

Utah legislators envision a multi-step process to implement their plan to extend Medicaid eligibility to people with incomes below the poverty line (“partial expansion”), as opposed to below 138 percent of the poverty line, as the ACA requires and the full expansion approved by the voters

¹ <https://le.utah.gov/~2019/bills/static/SB0096.html>.

² Lisa Riley Roche, “Bill replacing Prop. 3 Medicaid expansion passes committee,” *Desert News*, January 29, 2019, <https://www.deseretnews.com/article/900053082/bill-replacing-prop-3-medicaid-expansion-passes-committee.html>; Benjamin Wood, “The Legislature’s Medicaid bill replacing voter-approved Prop 3 could be on the governor’s desk next week,” *The Salt Lake Tribune*, February 1, 2019, <https://www.sltrib.com/news/politics/2019/01/31/legislatures-medicaid/>.

would put in place. Each step depends on CMS taking unusual or unprecedented actions, meaning that there's no guarantee that the more limited coverage expansion will take effect as its supporters envision.

First, *no one* will gain coverage unless the federal government approves a nearly unprecedented enrollment cap. Under SB96, partial expansion would take effect only if CMS agreed to let Utah suspend new enrollment in the program at will if at any point it decides it doesn't have enough money, an approach CMS has never allowed a state to adopt in the context of Medicaid expansion.

Second, coverage will be delayed unless the federal government approves a waiver exceptionally quickly and without following its normal procedures. To implement their alternative to Medicaid expansion by April 1 — the date when state officials previously said the straightforward Medicaid expansion as approved by voters could start — the bill sponsors hope to gain rapid federal approval for a waiver for partial expansion. Federal rules require a state to hold a 30-day public comment period on any proposed waiver, after which the state must take time to incorporate the public's feedback into the proposal. After the state submits a proposal to CMS, at least 45 days must elapse (during which a 30-day federal comment period must occur) before CMS can make a decision. Since Utah could not prepare a new waiver, go through the comment period, and gain CMS approval by April 1, the legislators instead are hoping CMS will approve the waiver the state submitted last year, which state officials haven't formally rescinded — but which voters rejected, opting instead for full Medicaid expansion.

Third, Utah will spend more to cover fewer people — at least at first, but indefinitely unless the federal government approves an unprecedented financing arrangement. The partial expansion under SB96, if approved, would cause 48,000 fewer newly eligible people to enroll in Medicaid than the full expansion plan voters approved, which would cover approximately 150,000 people. Under CMS guidance, states can only receive the ACA's enhanced federal match rate of 90 percent if they cover the *entire* expansion eligibility group.³ Therefore, Utah expects to initially receive its normal 68 percent federal match rate for its partial expansion, meaning it will have to cover 32 percent of the cost, instead of 10 percent under full expansion. Because it would cost more to pay for 32 percent of the cost of covering about 100,000 people than 10 percent of the cost of covering about 150,000 people, *Utah would pay \$50 million more to cover 48,000 fewer people through Medicaid*, a fiscal note prepared for the Utah legislature confirms.⁴

Utah could eventually pay less for partial expansion than for full expansion in one of two ways. The first is if it successfully negotiates with CMS to gain approval to get the enhanced 90 percent match for its partial expansion. But as noted, CMS guidance says states can receive the enhanced match only for full expansion, and CMS recently didn't approve requests from Arkansas and

³ Centers for Medicare and Medicaid Services, "Frequently Asked Questions on Exchanges, Market Reforms and Medicaid," December 10, 2012, <https://www.medicare.gov/federal-policy-guidance/downloads/FAQ-12-10-2012-Exchanges.pdf>.

⁴ <https://le.utah.gov/lfa/fnotes/2019/SB0096S03.fn.pdf>.

Massachusetts for just this type of arrangement. Likewise, the Administration chose not to approve Utah's earlier request for enhanced match for partial expansion.⁵

Second, with CMS approval, Utah could use an enrollment cap to take coverage away from tens of thousands of those covered under partial expansion. Under that approach, the state would end up spending the same amount of state resources to cover about *one-third* as many people.⁶

Fiscal Arguments for Partial Expansion Are Flawed

Legislators say they are pursuing this strategy to limit the state's Medicaid costs, in response to new state projections that show the sales tax revenue from the voter-approved initiative falling modestly short of covering the cost of expansion.⁷ But that rationale doesn't make sense, since, as explained above, SB96 will result in *higher* state spending than a full expansion, at least initially and potentially over the long run as well.

Moreover, the bill supporters' claim that full expansion would create a budget shortfall that needs to be addressed is also flawed. Even under the state's recent projections, the small sales tax increase included as part of the ballot initiative would more than cover the state's cost of expansion for the first year and 90 percent of the state's cost after that, leaving a shortfall of \$10 million in state fiscal year 2021. That means Utah legislators are considering jeopardizing coverage for 150,000 people due to concerns about a *possible* shortfall that — if it materialized — would amount to \$6 per person who would gain coverage per month.

Second, even that cost may be overstated because the new estimates don't incorporate savings elsewhere in the state's budget from the expansion that previous estimates have projected, such as lower state spending on the state's medically needy program and public assistance programs as more low-income uninsured people gain Medicaid coverage through the expansion. Opponents of Medicaid expansion in Utah falsely claim that states that have expanded Medicaid have seen the cost of providing expansion coverage far exceed projections. A review of studies on the cost of expansion concluded, "[c]laims that the costs of Medicaid expansion have far exceeded expectations are overstated, misleading, and substantially inaccurate, based on a review of the credible evidence from either academic or government sources."⁸

Third, if there is indeed a shortfall in the future, the legislature has a number of options to make up the difference. It could, for example, modestly increase an assessment on the state's hospitals, as

⁵ Robert Pear, "Trump Spurns Medicaid Proposal After Furious White House Debate," *New York Times*, July 30, 2018, <https://www.nytimes.com/2018/07/30/us/politics/trump-medicaid-partial-expansion.html>.

⁶ Utah would pay 32 percent of the cost of partial expansion at regular match, compared to 10 percent of the cost of full expansion at enhanced match. Thus, to limit its total costs to what it would pay for full expansion, it could only cover about a third as many people.

⁷ "Governor Gary R. Herbert Budget Recommendations," Governor's Office of Management and Budget, January 2019, <https://gomb.utah.gov/wp-content/uploads/2019/01/Budget-Book-FINAL-01.10.19.pdf>.

⁸ Mark Hall, "Do states regret expanding Medicaid?" Brookings Institution, March 26, 2018, <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2018/03/26/do-states-regret-expanding-medicaid/>.

it is proposing *right now* as part of SB96 to cover some of the state share of its proposed partial expansion. Or, it could consider a bill already introduced in the legislature that would eliminate a separate provision of the voter-passed initiative that increases payments to Medicaid providers.⁹ These tweaks would leave the Medicaid expansion passed by voters intact and address lawmakers' fiscal concerns.

SB96 Would Harm Utahns in Additional Ways

The proposal Utah lawmakers are considering is not just a partial expansion of Medicaid; it also adds policies that will severely restrict the ability of low-income Utahns to access affordable health care.

Partial Expansion Would Result in Fewer People Insured and Less Access to Care

In states not implementing the ACA's expansion of Medicaid to cover adults with incomes up to 138 percent of the poverty line, people with incomes from 100 to 138 percent of the poverty line can buy subsidized coverage through the ACA marketplaces. Some Utah lawmakers claim that this means no one would lose out from a partial expansion that only covers adults with incomes up to the poverty line, because near-poor adults could still get coverage through the marketplaces.

But Medicaid coverage meets the needs of near-poor adults better than marketplace coverage does.¹⁰ It offers significantly lower premiums and cost sharing, coverage of non-emergency medical transportation (an important benefit for near-poor adults who often face transportation barriers), and the option to enroll at any time during the year, versus only during open enrollment. Likely largely as a result, uninsured rates among people with incomes between 100 and 138 percent of the poverty line are significantly higher in non-expansion states, where they can enroll in subsidized coverage through the marketplaces, than in expansion states, where they can enroll in Medicaid.

Taking Medicaid Coverage Away From People Who Don't Meet a Work Requirement Would Further Limit Coverage Gains

The waiver Utah submitted last year also included a proposal to take coverage away from people who aren't working 30 hours a week. In Arkansas, requirements that are in many ways less stringent than what Utah would impose have caused more than 18,000 people — more than 1 in 5 people subject to the new requirement — to lose coverage since the program began last year. Most of these people likely have not transitioned to private coverage because they gained higher-paying jobs and are now uninsured.¹¹ In fact, it is much more likely that *working* people have lost their coverage

⁹ <https://le.utah.gov/~2019/bills/static/HB0210.html>.

¹⁰ Jessica Schubel, "Partial Medicaid Expansions Fall Short of Full Medicaid Expansion With Respect to Coverage and Access to Care," Center on Budget and Policy Priorities, August 13, 2018, <https://www.cbpp.org/research/health/partial-medicaid-expansions-fall-short-of-full-medicaid-expansion-with-respect-to>.

¹¹ Jennifer Wagner, "Fact Checking Arkansas Governor's Claims About Jobs and Medicaid Waiver," Center on Budget and Policy Priorities, January 28, 2019, <https://www.cbpp.org/blog/fact-checking-arkansas-governors-claims-about-jobs-and-medicaid-waiver>.

because they couldn't meet the reporting requirements. Losing health coverage can worsen a person's health and cost them their job.

So far, Utah officials have not accounted for coverage losses from a work requirement in their projections of Medicaid enrollment under this alternative proposal, but a work requirement would likely further depress coverage gains.