Ensuring That Health Reform Reaches Vulnerable Populations

Advising consumer advocates and policy-makers regarding policy issues that arise in the course of health reform implementation and their impact on coverage

SUMMARY

The National Health Law Program provided legal analysis to state and national policy-makers and consumer advocates as regulations and policies were developed to implement the Patient Protection and Affordable Care Act. The emphasis was on protecting and advancing the interests of vulnerable populations as health care reform evolved.

The project began in November 2010, about eight months after President Obama signed the act into law, and ran through November 2012, some six months after the U.S. Supreme Court upheld most of its provisions.

Founded in 1969, the National Health Law Program is a nonprofit agency based in Washington and Los Angeles with the mission of protecting and advancing the health rights of low income and underserved individuals. It advocates, educates, and litigates at the federal and state levels.

Key Results

National Health Law Program attorneys and other staff:

- Provided legal and policy support to national and state-based coalitions working to ensure that health care reform reaches the most vulnerable populations. Staff offered technical assistance, training, and monthly teleconferences that allowed state and national advocacy groups to share information.

- Provided legal support to policy-makers, advocates, and providers to influence the regulations and other guidance being developed at the federal and state levels to implement the Affordable Care Act.

- Engaged in in-depth analysis and advocacy to protect the health reform legislation against the constitutional challenge before the U.S. Supreme Court.
• Developed a communications strategy to emphasize the impact of health reform on coverage for low-income people, targeting national and state policy-makers and advocates, health lawyers, the courts, health care providers, the public, and the media

**Funding**

The Robert Wood Johnson Foundation (RWJF) supported this project from November 2010 to November 2012 with a grant of $250,000. It was funded through the Getting Americans Covered: Ideas from the Field—2 solicitation of 2010. See the **Introduction** to the solicitation for more information on Getting Americans Covered and links to Program Results on other projects it funded.

Seven other foundations provided an additional $3.4 million in funding. (See the **Appendix** for details.)

**CONTEXT**

The Patient Protection and Affordable Care Act has the potential to transform the health status of millions of low-income and underserved individuals through the expansion of Medicaid and other provisions. However, tremendous challenges lie ahead.

The new law is grafted onto an already complex set of public health insurance laws and programs. Medicaid alone is governed not only by federal law but by more than 50 sets of state laws, as well as constantly evolving administrative interpretations and court decisions.

Regulations and policies at the state and federal level will determine whether the health reform law’s promise of expanded coverage is actually realized. Advocacy networks that support vulnerable populations will need extensive technical support if they are to advocate effectively on behalf of their communities as implementation moves ahead. As regulations are debated and finalized, attempts to restrict the reach of the legislation continue to grow, demanding a coordinated defense.

“The difference between positive and negative outcomes is so big,” said Project Director Leo Cuello, JD, who is also Director of Health Reform at the National Health Law Program. “Between now and 2016 is the most important time I can think of. We are at the cusp of great progress and inches away from a cliff.”

**RWJF’s Interest in This Area**

This grant was made under the May 2010, RWJF solicitation, Getting Americans Covered: Ideas from the Field. Through it, RWJF funded projects that focused on addressing specific aspects of the Affordable Care Act that presented significant opportunities to expand coverage, for example, Medicaid expansions, subsidy programs
for small businesses and individuals who otherwise would not be able to afford insurance, or private-market health insurance reforms. See the Introduction for a list of other projects on which there are Program Results.

RWJF allocated up to $2 million for individual grants of up to $250,000.

THE PROJECT

The National Health Law Program provided legal analysis and support to state and national policy-makers and consumer advocates as regulations and policies were developed to implement the Affordable Care Act.

Specific objectives were to:

- Ensure that the principles and goals of the Affordable Care Act are protected and accurately integrated into the framework of state and federal laws and regulations.

- Defend national health reform from a range of federal and state regulatory and legal challenges aimed at diminishing its reach.

Attorneys and other project staff took a leadership role in defending the law against a constitutional challenge. Eight months after this project began, the Supreme Court upheld most of its provisions, but found that states could not be required to expand their Medicaid programs to increase coverage.

RESULTS

Project Director Cuello described these results in a report to RWJF and an interview for this report. Attorneys and other project staff:

- **Provided legal and policy support to national and state-based coalitions working to ensure that health care reform reaches the most vulnerable population:**
  - Responded to 867 technical assistance requests on health care reform from advocates and policy-makers
  - Provided 76 training sessions to advocates at four national conferences and other events
  
  At the National Health Law Program’s annual Health Advocates Conferences in 2010 and 2011, speakers included representatives of the Centers for Medicare and Medicaid Services, the Department of Justice, and Congress. Trainings co-sponsored with the National Legal Aid & Defender Association were held in July 2011 in Baltimore and July 2012 in Austin, Texas.
  
  — Sponsored monthly teleconferences so that state and national advocacy groups could share information and provide feedback to the federal government about
their concerns. Other conference calls brought together advocates in states that were “ahead of the curve” in moving to implement health reform.

— Linked National Health Law Program attorneys with health advocates in Georgia, Kansas, Kentucky, Montana, and West Virginia to support their efforts to expand Medicaid and develop insurance exchanges. “They were specifically selected because they needed some support that would make a difference,” said Cuello. “They were within a range of being winnable. Everybody was watching what they were doing.”

- **Provided legal support to policy-makers, advocates, and providers to inform the federal and state regulations and policies that will implement the Affordable Care Act.** National Health Law Program staff strengthened relationships at the federal level, especially with the White House and Department of Health and Human Services. Staff also shared strategies, legal analyses and model regulatory comments with advocates around the country.

For example, project attorneys and other staff:

— Provided input to the federal Department of Health and Human Services before draft implementation regulations were released to the public

— Participated on various national advisory committees. These included a National Quality Forum panel that was developing health care measures for individuals eligible for both Medicare and Medicaid and an advisory committee to the federal Office of Minority Health.

— Recommended that the Department of Health and Human Services include all preventive services mandated in the Affordable Care Act (ACA) on its list of “essential health benefits.” This recommendation was adopted.

— Submitted formal and informal comments on a wide variety of proposed regulations, including:
  - Unified eligibility and enrollment processes for Medicaid and health information exchanges
  - Benefits package for individuals enrolled in new coverage under the ACA
  - The right of Medicare beneficiaries to choose their providers
  - Consumer protections where Medicare and Medicaid services are integrated
  - The need to assure provider continuity
  - The structure of home and community-based services
  - The need to collect data aimed at reducing health disparities
• Structuring the basic health option, a state-level public insurance program for poor individuals who are not eligible for Medicaid

• Guided advocates in developing their own comments

• **Engaged in in-depth analysis and advocacy to protect the Affordable Care Act against the constitutional challenge before the U.S. Supreme Court.** Attorneys and other staff:
  
  — Filed two friend of the court briefs with the Supreme Court. One, filed on behalf of 38 health provider and consumer organizations, supported an expansion of Medicaid and was cited by Justice Ruth Bader Ginsburg. The other described the many public health provisions of the legislation.

  — Created and maintained the Health Law & Litigation website, in partnership with the O’Neill Institute for National and Global Health Law. The clearinghouse of information about the Supreme Court challenge included the briefs, motions, orders and judgments as they were filed.

  — Provided alerts and issue briefs to more than 70 legal organizations

  — Convened a media briefing and disseminated communications pieces to discuss the implications of the court decision prior to the oral arguments

  — Launched an online resource center, Medicaid Expansion Toolbox, to provide up-to-date information for advocates trying to understand the implications of the Supreme Court decision and other resources

  — Immediately after the court announced its decision, project staff released an analysis of the decision, held a series of calls with advocates to discuss the case, and blogged on the Public Health Law Network. Staff also held three webinars, attended by more than 4,500 advocates, medical professionals and policy-makers, and made presentations at various conferences to discuss the decision.

• **Developed a communications strategy to emphasize the impact of health reform on coverage for low-income people, targeting national and state policy-makers and advocates, health lawyers, the courts, health care providers, the public, and the media.** Two national firms, the Raben Group and the VENG Group, guided those efforts, which included:

  — A 900-member listserv of health advocates

  — A confidential health advocates listserv with more than 200 members to discuss more sensitive matters of policy and strategy

  — Issue briefs, Q&A’s, and other resources, available on the National Health Law program’s website
LESSONS LEARNED

1. **Organizational flexibility and advance planning are essential to effective advocacy.** Project staff had no way of knowing when regulations or policy guidance would be released, and had not anticipated that the Supreme Court would overturn the Medicaid expansion requirement. Developing more contacts with government agencies could improve information sharing, but staying nimble as legal decisions are made is also essential. (Project report to RWJF)

2. **Take advantage of the expertise of advocates and the extent of their alliances.** Project staff focused on the legal expertise that stakeholders needed, and did not fully recognize opportunities to draw on their connections and knowledge. “We didn’t think enough about the areas of specialty of state advocates, and especially whom they had alliances with,” said Cuello. “Hospitals, for example, are key allies on Medicaid issues.”

AFTERWARD

The coverage and service provisions of the Affordable Care Act are expected to be fully implemented by 2014. As the federal government continues to develop policies and regulations, and the states develop their own responses to health reform requirements, the National Health Law Program is promoting policies that address the needs of low-income and vulnerable populations. It is also working to support advocates and coalitions across the nation with technical assistance and resources.

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## APPENDIX

### Other Funders

*(Current as of the end date of the program; provided by the program’s management; not verified by RWJF.)*

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Toolkits
