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Eight Reasons ObamaCare's Medicaid Expansion is Wrong for Montana

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EXECUTIVE SUMMARY

In its June 2012 decision to uphold the federal Patient Protection and Affordable Care Act, commonly known as ObamaCare, the U.S. Supreme Court also held that states were not required to implement an expansion of Medicaid, which the law initially mandated. This leaves Montana policymakers with a choice; accept federal funding to expand Montana Medicaid to cover able-bodied, working-age adults with no children or reject ObamaCare's optional Medicaid expansion. The wisest course is for Montana to reject the Medicaid expansion for the following eight reasons:

1. ABLE-BODIED CHILDLESS ADULTS HAVE NEVER BEEN—AND WERE NEVER INTENDED TO BE—ELIGIBLE FOR TAXPAYER-FUNDED MEDICAID.

Medicaid was created to be a health care safety net for the most vulnerable: the elderly, individuals who are blind or disabled and low-income families. A recent poll found that 77 percent of Americans oppose providing Medicaid for working-age adults without kids.

2. MONTANA LAWMAKERS HAVE NO RELIABLE COST ESTIMATES.

A series of projections have been released predicting the cost of expanding Montana Medicaid, but modest differences in enrollment assumptions and costs to provide care for the newly-eligible populations have resulted in a wide range of estimates. Because of the lack of agreement among these projections, no reliable estimate of the true cost of Medicaid expansion exists.

3. MEDICAID COSTS ARE ALREADY GROWING RAPIDLY AND EXPANSION WOULD JEOPARDIZE OTHER STATE PRIORITIES.

Montana's Medicaid welfare spending is already unsustainable. The program's annual costs skyrocketed to $1.1 billion in 2012, up from just $563 million a decade earlier. Even without expanding Medicaid, costs for the program are expected to grow to $2.2 billion by 2022.

4. MEDICAID IS ALREADY FAILING MONTANA'S MOST VULNERABLE PATIENTS.

Medicaid patients already face a declining number of doctors who are accepting new Medicaid patients, primary care doctor shortages in 34 of Montana's 56 counties, poor access to specialists and worse health outcomes. Dumping tens of thousands more people into the program will make these problems worse for truly vulnerable Montana Medicaid patients.

5. EXPANDING MEDICAID IS UNLIKELY TO REDUCE HOSPITALS' UNCOMPENSATED CHARITY CARE.

Although supporters of ObamaCare's optional Medicaid expansion promise a reduction in uncompensated charity care, actual experiences of other states that previously expanded Medicaid confirm expansion has little impact and those promises are unlikely to be kept.

6. MEDICAID EXPANSION CROWDS OUT PRIVATE HEALTH COVERAGE.

ObamaCare proponents promise a reduction in the number of Montanans without health coverage if policymakers expand Medicaid. But other states saw a huge number of individuals drop their private insurance to enroll in Medicaid after previous expansions, while the rate of uninsured residents was essentially unchanged.

7. THE FEDERAL GOVERNMENT IS UNLIKELY TO KEEP ITS FUNDING PROMISES TO MONTANA.

ObamaCare promises to fund 100 percent of Montana's Medicaid expansion costs to 2016 and 90 percent thereafter, indefinitely. With federal debt already standing at more than $17 trillion—and expected to grow to more than $26 trillion in the next decade—and a poor record of keeping past promises, it is highly unlikely Washington will be able to keep its new promises to Montana and probable that expansion costs will be passed down to the state taxpayers.

8. IT IS UNLIKELY MONTANA WILL EVER BE ABLE TO SCALE BACK THE SIZE OF ITS MEDICAID PROGRAM IF IT DECIDES TO EXPAND.

Expanding Medicaid to able-bodied childless adults may turn this group of people into a "mandatory population" for Montana and make it difficult, if not impossible, to discontinue providing taxpayer-funded Medicaid to those childless adults unless policymakers exit the Medicaid program entirely.

ObamaCare supporters want Montana policymakers to overload the state's broken Medicaid system with tens of thousands of able-bodied, working-age adults with no kids, but doing so poses too great a risk to the most vulnerable patients Medicaid was created to protect. A more responsible approach is for Montana to reject Medicaid expansion and instead refocus efforts on fixing the current program so that it works for patients and taxpayers.

INTRODUCTION

Under ObamaCare, Montana policymakers may choose to expand Medicaid eligibility to cover all individuals earning up to 138 percent of the federal poverty level.[1] Although Montana is permitted to expand Medicaid eligibility in this way, the U.S. Supreme Court ruled in June 2012 that the state is under no obligation to do so and no deadline exists to express interest.[2-3]

The wisest course for Montana policymakers exploring the issue is to reject the Medicaid expansion. At the very least, policymakers should delay any decision until there is a clear understanding of how it will impact patients and taxpayers. There are at least eight major reasons why lawmakers should take this course:

1. Able-bodied childless adults have never been—and were never intended to be—eligible for taxpayer-funded Medicaid.
2. Montana lawmakers have no reliable cost estimates.
3. Medicaid costs are already growing rapidly and expansion would jeopardize other state priorities.
4. Medicaid is already failing Montana's most vulnerable patients.
5. Expanding Medicaid is unlikely to reduce hospitals' uncompensated charity care.
6. Medicaid expansion crowds out private health coverage.
7. The federal government is unlikely to keep its funding promises to Montana.
8. It is unlikely Montana will ever be able to scale back the size of its Medicaid program if it decides to expand.

In light of the obvious failures of the current Medicaid system and the daunting unknowns associated with expansion, Montana policymakers should assess the results of Medicaid expansion in other states before obligating their patients and taxpayers to a final decision.

1. ABLE-BODIED CHILDLESS ADULTS HAVE NEVER BEEN—AND WERE NEVER INTENDED TO BE—ELIGIBLE FOR TAXPAYER-FUNDED MEDICAID.

Between 75 percent and 85 percent of the uninsured individuals expected to be made eligible for Medicaid if Montana expands the program are able-bodied, working-age adults without children.[4]

Montana's Medicaid and CHIP programs already cover children in households earning up to 266 percent of the federal poverty level, while pregnant women in households earning up to 164 percent of the federal poverty level are covered under Medicaid.[5] Parents earning up to 53 percent of the federal poverty level are also covered under the current Medicaid program.[6]

Medicaid already covers Montana's most vulnerable citizens

Montana Medicaid and CHIP eligibility standards effective January 1, 2014

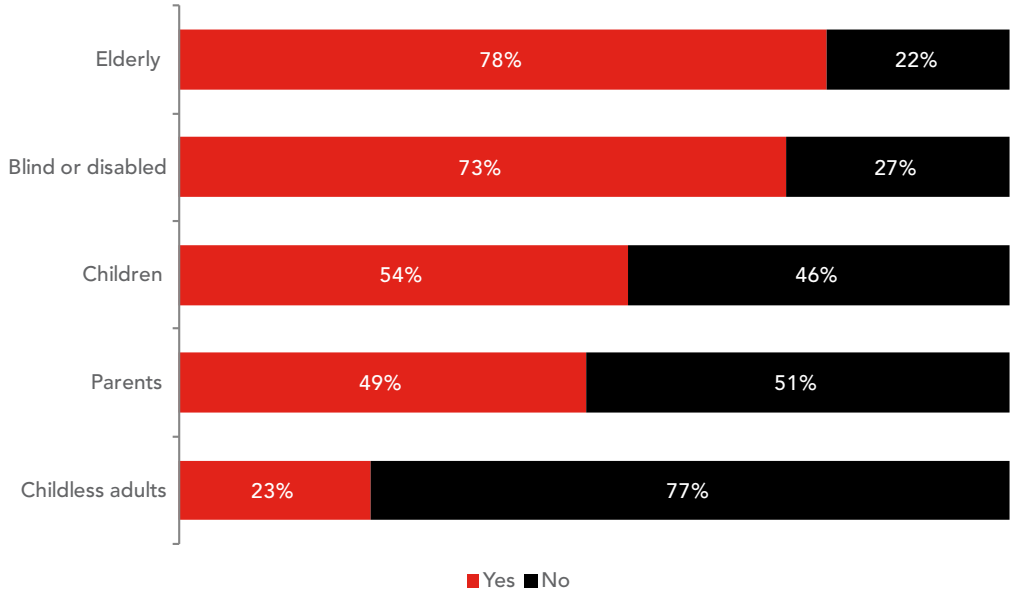
		Family size				
	As a share of FPL	1	2	3	4	Each additional person
Children	266%	$31,042	$41,842	$52,641	$63,441	$10,800
Pregnant women	164%	$19,139	$25,797	$32,456	$39,114	$6,658
Parents	53%	$6,185	$8,337	$10,489	$12,641	$2,152

Source: U.S. Department of Health and Human Services

Medicaid was created to be a health care safety net for the most vulnerable. It was never intended to be a welfare program for adults without children and without any disabilities keeping them from meaningful employment. The groups generally considered most vulnerable are the elderly, individuals who are blind or disabled, low-income children and, to a lesser extent, low-income parents. A 2012 poll conducted by Reuters found that most Americans want to preserve safety net programs for the truly needy, with 77 percent opposing non-cash assistance, such as food stamps and Medicaid, for working-age adults without children.[7]

An overwhelming majority of Americans oppose non-cash assistance from the government for childless adults

Question: Who deserves non-cash assistance from the government, such as food stamps and Medicaid?



Source: Reuters

Because non-disabled adults without children have never been considered among the most vulnerable, they have generally been ineligible for other types of taxpayer-funded welfare. For example, childless adults are not eligible for cash assistance under the Temporary Assistance for Needy Families (TANF) program.[8] Only low-income pregnant women and families with children qualify for cash assistance under Montana's TANF program.[9] Able-bodied adults without children are also generally ineligible for long-term food stamp benefits under the Supplemental Nutrition Assistance Program (SNAP).[10]

Medicaid expansion would redirect limited state and federal resources away from the elderly, from children and from disabled individuals in order to fund Medicaid welfare benefits for working-age, able-bodied adults without children. Montana policymakers should carefully weigh their options before extending Medicaid to an entirely new class of individuals who have never qualified for other types of welfare, particularly given the fact that they have no reliable estimates of the true cost of expansion.

2. MONTANA LAWMAKERS HAVE NO RELIABLE COST ESTIMATES

A number of groups have produced cost estimates associated with Medicaid expansion. However, these projections lack consistency and use assumptions that vary widely from one analysis to the next. This should be a red flag to policymakers and taxpayers.

There is no agreement on the number of people who will actually sign up for Medicaid if expansion occurs. The Montana Commissioner of Securities and Insurance, for example, published projections assuming that 83 percent of uninsured individuals who would be eligible for Medicaid after expansion will eventually enroll.[11] In the first year, however, that report predicted just 57 percent of those eligible will enroll.[12] For comparison, the Urban Institute estimates 74 percent participation and the RAND Corporation estimates 82 percent participation nationally.[13-14] Actuaries for the federal Centers for Medicare and Medicaid Services (CMS) predict participation rates of 95 percent.[15]

Study	Assumed Participation Rates
Montana Commissioner of Securities and Insurance	57-83%
Urban Institute	74%
RAND Corporation	82%
Centers for Medicare and Medicaid Services	95%

The projections produced for the Montana Commissioner of Securities and Insurance also assume enrollment will increase by just 1 percent per year, despite historical enrollment growth averaging 4 to 6 percent per year.[16-17] Small changes in this enrollment growth can add up to tens of thousands of potential enrollees.

The projections also assume that Medicaid costs will grow slowly during the next decade, with per-person costs increasing by only 3.6 percent per year.[18] But actuaries at the CMS predict per-person costs will grow by an average of 5.2 percent annually during the next decade.[19] Even small changes in these trends could cost Montana taxpayers millions of dollars.

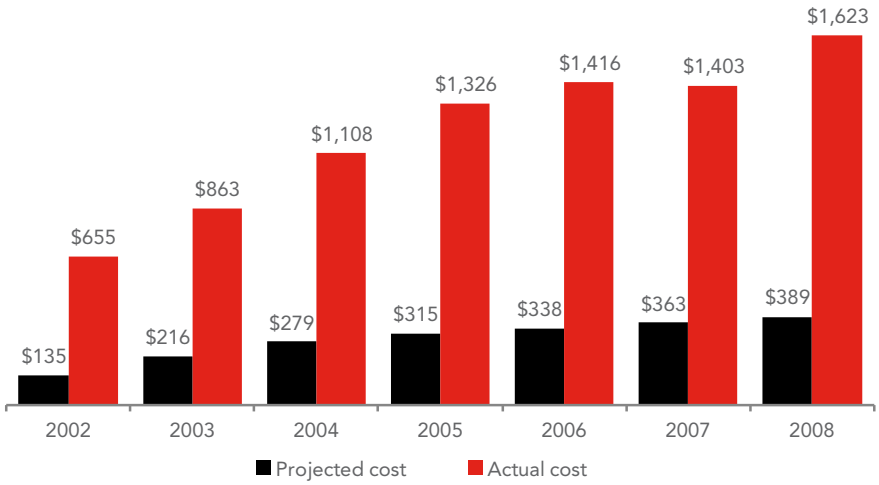
Another giant red flag for policymakers should be that groups in Montana producing cost estimates predict that providing Medicaid coverage for childless adults will cost roughly the same as providing coverage for low-income parents.[20] In fact, states that have already expanded Medicaid eligibility to cover childless adults found that the childless adult population costs much more than low-income parents.[21]

In Arizona, which expanded Medicaid to childless adults in 2000, coverage for the new expansion population cost more than twice as much as coverage for low-income parents.[22] Similar cost differences exist in other states that have expanded Medicaid to include childless adults, including Delaware, Maine and Oregon.[23] Indeed, research published by CMS found that coverage costs were an average 60 percent higher for childless adults than they were for low-income parents to provide the same benefits package.[24]

Flawed assumptions like the ones currently being used in Montana have a huge impact on cost estimates. When Arizona expanded Medicaid eligibility, for example, it used many of the same assumptions now being used in Montana.[25] These flawed assumptions have resulted in Arizona's Medicaid expansion costing four times what was originally projected.[26]

Arizona's Medicaid expansion has cost four times what was originally projected

Projected cost vs. actual cost (in millions)



Sources: Arizona Joint Legislative Budget Committee; Arizona Health Care Cost Containment System

Unexpected cost increases force policymakers to make painful choices. Arizona, unable to reduce eligibility levels for the expansion population, was forced to eliminate coverage for life-saving organ transplants in its Medicaid program.[27] Even under the rosy assumptions used by the University of Montana's Bureau of Business and Economic Research, Medicaid expansion requires the state to redirect limited state resources toward able-bodied adults as early as 2018.[28] Under more realistic scenarios, state taxpayers could be on the hook for millions of dollars much sooner.

Lawmakers should not expect taxpayers to sign a blank check, nor jeopardize funding for other state priorities, in order to provide Medicaid to a group of able-bodied, working-age adults without children who have never before qualified for other types of welfare.

3. MEDICAID COSTS ARE ALREADY GROWING RAPIDLY AND EXPANSION WOULD JEOPARDIZE OTHER STATE PRIORITIES.

Montana's Medicaid welfare spending is already spiraling out of control and has nearly doubled during the last decade. In 2003, Montana spent roughly $563 million on its Medicaid program.[29] By 2012, Medicaid welfare spending had spiked to more than $1.1 billion.[30] Montana's Medicaid spending is far outpacing the state's revenue growth, which grew by a modest 5.7 percent per year during the past decade.[31]

Even without expanding Medicaid, costs are expected to grow to $2.2 billion by 2022.[32] At a time when policymakers are concerned with rebuilding Montana's cash reserves, paying down existing state debt and increasing development of the state's natural resources, expanding Medicaid to cover an entirely new class of able-bodied adults should not be a priority.

Montana's Medicaid welfare spending has nearly doubled during the last decade

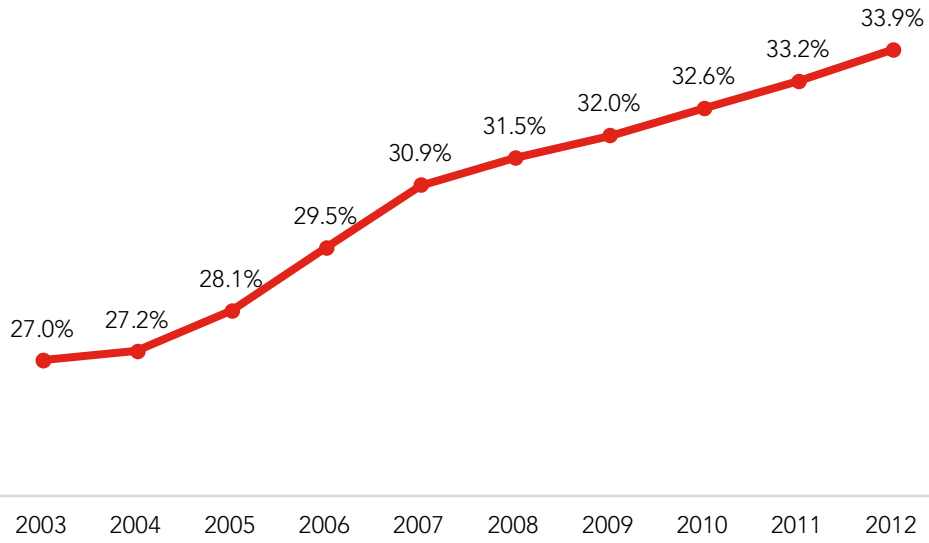
Annual Medicaid spending (in millions)

Source: U.S. Department of Health and Human Services

Worse yet, the state's share of those Medicaid costs has grown dramatically in recent years. The federal government has cut Montana's reimbursement rate year after year for more than a decade. In 2003, for example, Montana was responsible for 27 percent of the total cost of the Medicaid program.[33] But by 2012, that share had increased to 34 percent of all Medicaid spending.[34] Changes in federal reimbursements can have major impacts on state spending. When the federal government cuts Montana's Medicaid reimbursement by a single percentage point, state taxpayers are put on the hook for another $11+ million.[35] As a result of this cost-shift, the state's share of Medicaid spending has grown twice as fast as federal support.[36]

The federal government is already shifting more and more Medicaid costs onto Montana taxpayers

Share of Montana's Medicaid spending paid for with state funds



Note: These shares exclude the temporary increases in federal Medicaid funding caused by the American Recovery and Reinvestment Act.

Source: U.S. Department of Health and Human Services

Skyrocketing enrollment has contributed to ever-increasing Medicaid costs. The number of Montanans on Medicaid has grown by nearly 66 percent since 2000, reaching more than 115,000 people in 2012.[37] For comparison, private non-farm employment grew by just 13 percent during that same time period.[38]

Medicaid is already consuming resources meant for other state priorities, such as investments in education and public safety. Expanding Medicaid will not only make this worse, it will also deplete resources relied upon by existing groups covered by Medicaid, including the elderly, individuals with disabilities, pregnant women and children.

Montana has already deemed the existing Medicaid population a priority. Policymakers should beware unintended consequences of expanding a program already struggling to provide quality care to the most vulnerable.

4. MEDICAID IS ALREADY FAILING MONTANA'S MOST VULNERABLE PATIENTS.

Montana's Medicaid program is already failing to meet the needs of the state's most vulnerable citizens. Overloading an already-failing Medicaid program with tens of thousands more people will only make problems worse for truly needy patients. More than 10 percent of Montana doctors refuse to accept a single new Medicaid patient.[39] Even among those doctors still able and willing to participate in the Medicaid program, many limit the number of Medicaid patients they will accept to just a few.[40]

Montana's severe physician shortage makes the situation even more troubling. According to federal data, Montana has a primary care doctor shortage in 34 of its 56 counties.[41] Facing a continuing decline in access to physicians, Medicaid patients are turning to emergency rooms for treatment of preventable conditions more than any other group, including those with no insurance at all.[42-43]

Worse yet, nearly 30 percent of Montana's physicians are 60 or older, while just 11 percent are under the age of 40.[44] Montana ranks last in the nation in the number of residents and fellows in accredited medical programs.[45]

Dumping thousands of additional people into Montana's Medicaid program will make these access problems much worse. Massachusetts experienced this firsthand after expanding its Medicaid eligibility. The number of family physicians accepting new patients dropped to 50 percent by 2012, down from 70 percent in 2007.[46] This has resulted in Medicaid patients experiencing longer wait times for care. The average wait time to see an internal medicine

physician in Massachusetts spiked to 52 days in the year following expansion, up from 33 days in 2006.[47] Wait times have remained high, averaging 49 days since 2007.[48] The current Medicaid program already has a massive problem with wait times, with Medicaid patients often waiting weeks or even months to see specialists.[49]

Huge access problems inevitably lead to poor health outcomes. Medicaid patients frequently suffer worse health outcomes than the privately insured and, in some cases, fare worse than patients with no health coverage at all.[50-51] Indeed, the only randomized controlled trial studying the effects of Medicaid expansion found that expansion produced "no significant improvements" in clinical health outcomes.[52]

Given Medicaid's dismal track record at improving health, overloading the program with tens of thousands more people is unlikely to produce positive health results. Medicaid expansion is likely to hurt not just the most vulnerable patients currently in the Medicaid program, but other groups as well. The medical workforce shortages will force seniors and others with Medicare, as well as active-duty military personnel and veterans with TRICARE, to compete with this new group of able-bodied adults on Medicaid for fewer and fewer available doctor's appointments.

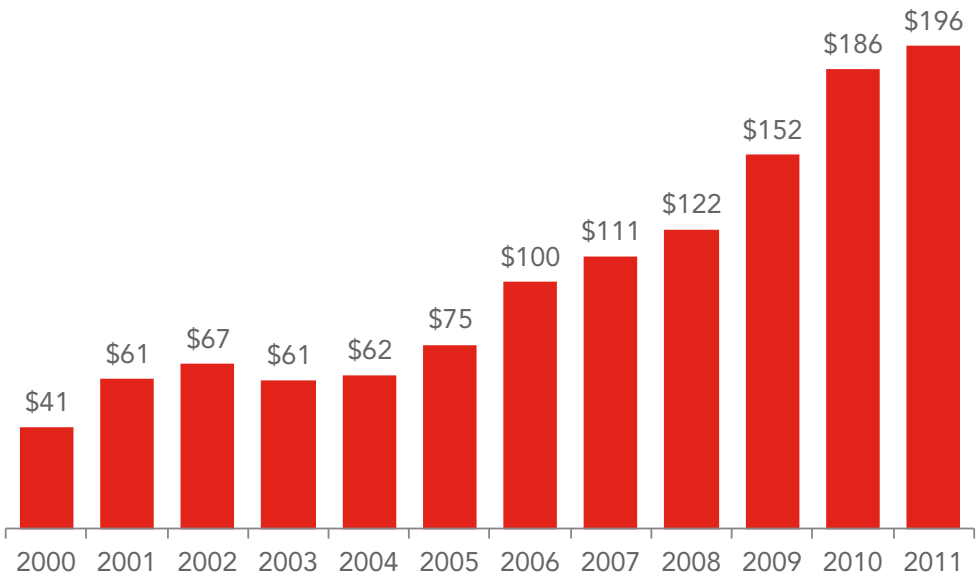
5. EXPANDING MEDICAID IS UNLIKELY TO REDUCE HOSPITALS' UNCOMPENSATED CHARITY CARE.

Proponents of ObamaCare's Medicaid expansion promise that expanding Medicaid will reduce hospitals' uncompensated charity care and cost-shifts to the privately insured. But the experiences of states that have already expanded Medicaid tell a much different story and are instructive for Montana lawmakers. Expansion supporters were unable to keep their promises in those states and will likely fail to keep them in Montana if lawmakers ultimately decide to expand.

In Maine, expanding Medicaid had little effect on reducing uncompensated charity care. In 2000, charity care provided by Maine hospitals amounted to roughly $40 million per year.[53] By 2011, after Maine's Medicaid expansion in 2002, uncompensated charity care costs had risen to $196 million.[54] Although Maine made a slight adjustment in classifying charity care in 2007, the growth trends before and after the adjustment remained relatively the same.[55]

Maine's Medicaid expansion did not reduce uncompensated charity care

Hospitals' uncompensated charity care, by year (in millions)



Source: Maine Department of Health and Human Services

Likewise, Medicaid expansions have not reduced cost shifts to the privately insured. In Arizona, hospitals charged people with private insurance 125 percent of the actual cost to provide medical services in 2003.[56] But by 2007, hospitals were charging individuals with private insurance 140 percent of the actual cost of services.[57] This means that the cost shift to private insurance increased following the expansion of Medicaid eligibility, rather than decreased as expansion supporters promised.

It is no surprise that uncompensated charity care savings never materialize, given the fact that many of the people who ultimately enrolled after expanding eligibility were not uninsured, but previously had private health insurance.

6. MEDICAID EXPANSION CROWDS OUT PRIVATE HEALTH COVERAGE.

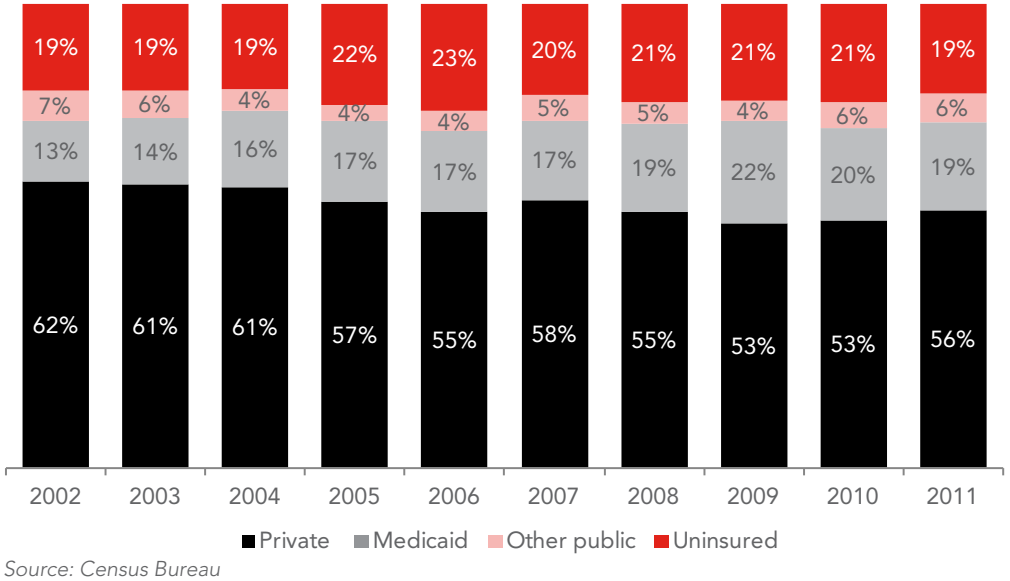
While preliminary estimates predict that 64,000 newly-eligible Montanans would enroll in Medicaid following expansions, the incremental reduction in the uninsured would be just 39,000.[58] The remaining 25,000 Montanans represent individuals who currently have private health insurance, but will be shifted to Medicaid as a result of expansion.[59] In fact, the Census Bureau reports that 40,000 adults with private insurance are below 138 percent of the federal poverty level in Montana, as are 20,000 of their children who would also be shifted if their parents enrolled in Medicaid.[60]

The crowd out is likely to be even greater than these numbers suggest, primarily because individuals between 100 percent and 138 percent of the federal poverty level would lose eligibility for federal subsidies if policymakers expand Medicaid. This means that even more Montanans could be diverted from private insurance and instead pushed into Medicaid.

States that have already expanded Medicaid eligibility have seen a huge number of individuals shifted from private insurance to Medicaid. In Arizona, for example, the share of non-elderly individuals with private insurance dropped to 56 percent in 2011, down from 62 percent in 2002.[61] During that same time, the share of non-elderly individuals enrolled in Medicaid grew to 19 percent in 2011, up from 13 percent in 2002.[62] Despite this massive increase in Medicaid enrollment, the expansion did not reduce the rate of uninsured.[63] Similar patterns played out in other states that expanded Medicaid eligibility.[64]

Arizona's Medicaid expansion has not reduced the rate of uninsured

Non-elderly population, by insurance status



Source: Census Bureau

Economists, including ObamaCare architect Jonathan Gruber, estimate that Medicaid expansions in the late 1990s and early 2000s produced a crowd-out effect of 60 percent.[65] This means that for every ten new Medicaid enrollees, six were previously covered with their own private insurance.

Research focusing specifically on the populations targeted by ObamaCare predicts a substantial crowd-out effect resulting from Medicaid expansion. Economists predict that expanding Medicaid eligibility under ObamaCare will produce a crowd-out rate of 82 percent for working adults, suggesting that the optional expansion will merely "shift workers and their families from private to public insurance" rather than reduce the number of individuals without insurance.[66] This means that for every ten new Medicaid enrollees classified as working adults, more than eight will come from the ranks of the privately insured.

Although a report prepared for the Montana Commissioner of Securities and Insurance assumes a crowd-out rate of just 25 percent, it provides no explanation for this assumption, as it sits in stark contrast to the scientific literature and experiences from other states.

Ultimately, Montana policymakers are being asked to gamble that the federal government will keep its funding promise to provide Medicaid for a group of able-bodied adults who will come not from the ranks of the uninsured, but from the privately insured.

7. THE FEDERAL GOVERNMENT IS UNLIKELY TO KEEP ITS FUNDING PROMISES TO MONTANA.

Congress has promised to provide enhanced federal support for Medicaid expansion. For the first three years until 2016, the federal government has promised to pay the full cost of providing Medicaid coverage to the newly-eligible population, with federal support phasing down to 90 percent thereafter.[67] The federal government will not provide enhanced funding for individuals who were previously eligible for Medicaid who enrolled as a result of ObamaCare, nor for the additional administrative costs of the Medicaid expansion.[68] For individuals currently eligible for Medicaid that will enroll as a result of ObamaCare, Montana will receive its typical 66 percent matching rate from the federal government.[69] This means that Montana policymakers will already be struggling to pay for the current program, even before considering the Medicaid expansion decision before them.

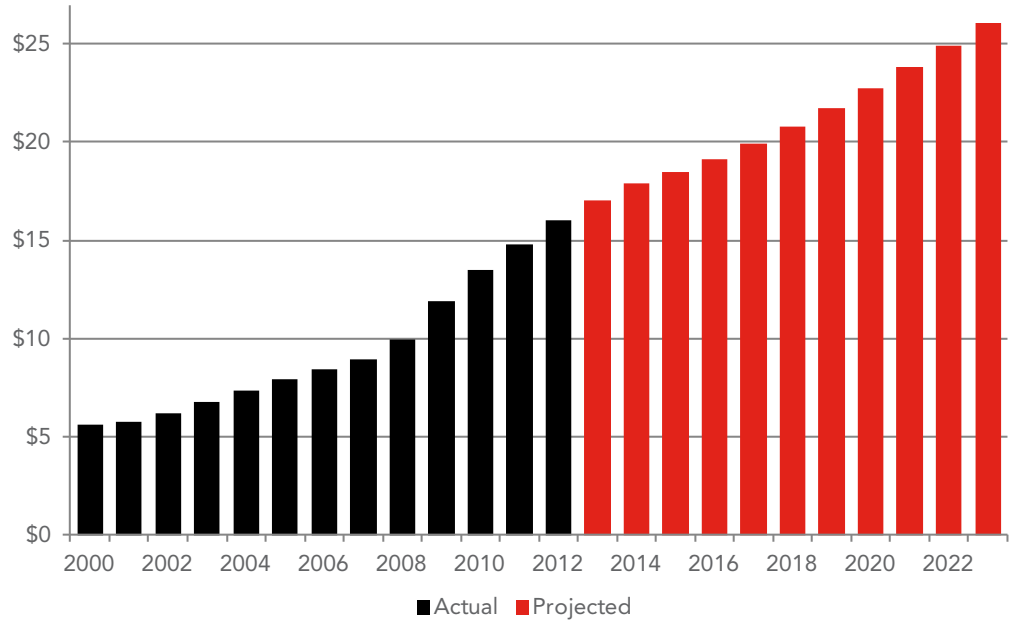
Congress has the power to arbitrarily change these matching rates at any time. The federal government's severe and widely-known fiscal problems make it highly likely that future federal support will be reduced for Montana and any other state that expands Medicaid.

Federal Medicaid spending already represents one-fourth of the federal deficit and is expected to more than double over the next decade.[70] This spending growth is nearly twice as fast as the expected growth in the economy.[71] Medicaid expansion is expected to cost more than $800 billion during the first ten years.[72-73] By 2023, federal health care programs will represent more than half of all federal mandatory spending.[74] Should Montana opt into the Medicaid expansion, federal spending would increase by at least another $2.1 billion, further increasing the federal debt.[75]

Today, the federal debt already stands at $17.1 trillion and is expected to grow to more than $26 trillion within the next ten years.[76-77] The Government Accountability Office has called this debt trajectory an "unsustainable long-term fiscal path" that must be addressed immediately.[78] Federal Reserve Chairman Ben Bernanke testified before Congress that this unsustainable debt trajectory "cannot actually happen", as creditors would stop lending to the federal government before such debt levels were ever reached.[79]

Federal debt is expected to grow to more than $26 trillion within a decade

Total federal public debt outstanding (in trillions)



Source: Office of Management and Budget; Congressional Budget Office

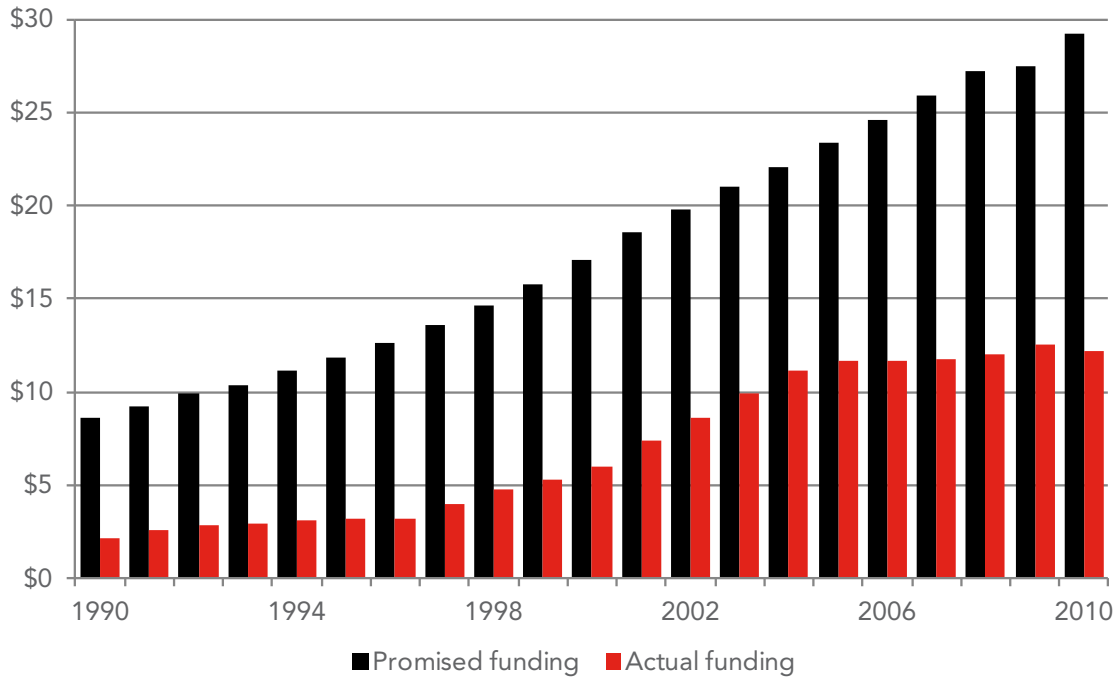
The Congressional Budget Office has previously estimated that balancing the budget long term with tax hikes would require tax rates to more than double on all income tax brackets.[80] It is inevitable, then, that the federal government will be forced to reduce budget deficits and substantial spending cuts will be required to balance the budget. Given that entitlement spending is the core driver of the deficit, states must prepare for the likely event that federal support for Medicaid will be greatly reduced from promised levels.

Exploding deficits and debt may explain why three of Obama's recent budgets have proposed shifting more of these costs to state governments and why he has included these cost-shift proposals in debt ceiling and fiscal cliff negotiations.[81-84] These proposals make clear the president's willingness to require states to pay more, up to and including changing federal Medicaid matching rates. As one of the two trustees President Obama appointed to oversee Medicare recently warned, it is a "near certainty" that federal support for Medicaid will be cut in future years.[85]

The federal government already has a record of reneging on its funding promises to states. In 1975, Congress enacted what is now known as the Individuals with Disabilities Education Act (IDEA), requiring states to provide disabled children with appropriate educational services.[86] In return, Congress committed to authorizing federal funding for 40 percent of states' additional costs to educate disabled children.[87] But after almost forty years, Congress has never appropriated the full funding authorized under the law.[88] This has become a huge cost shift—essentially an unfunded mandate—that has forced state and local governments to make up the difference. Between fiscal years 1981 and 2010, the federal government fell short of fully funding IDEA by more than $250 billion, despite its promises to the states.[89] In fiscal year 2010 alone, the federal government's underfunding totaled a whopping $17.1 billion.[90]

The federal government has never kept its promise to the states to fund special education

Promised IDEA funding vs. actual IDEA funding (in billions)



Source: U.S. Department of Education

States are also beginning to face yet another broken federal promise. In 2009, the federal government asked state and local governments to borrow money through taxable bonds, rather than the tax-exempt bonds they typically used.[91] The federal government created these bonds through the American Recovery and Reinvestment Act in order to encourage more state and local governments to invest in capital projects through the stimulus package. Because taxable bonds have higher interest rates for borrowers, the federal government offered to help offset those higher interest charges through subsidies to the states.[92] These federal subsidies were meant to bring states' total interest costs down to slightly below where interest costs would have been had they borrowed with the typical tax-exempt bonds.[93]

Across America, state and local governments issued 2,275 Build America Bonds, worth more than $181 billion.[94] Borrowing by Montana governmental bodies accounted more $30 million of those bonds.[95] Now state policymakers are beginning to realize the federal government will not keep up its end of the bargain. In 2013, the Treasury Department notified state and local governments it was cutting the federal subsidies it had promised by 8.7 percent, shifting more than $250 million of interest costs onto state and local governments.[96] States were lured into borrowing with more-expensive taxable bonds on the promise that the federal government would offset those higher costs, but are now discovering that some of the promised federal money simply will not be there. This bait-and-switch is likely to occur with Medicaid expansion funding as well. If Montana moves forward with expansion, it may be left with the tab and never able to undo its decision.

8. IT IS UNLIKELY MONTANA WILL EVER BE ABLE TO SCALE BACK THE SIZE OF ITS MEDICAID PROGRAM IF IT DECIDES TO EXPAND.

Anticipating that the federal government is unlikely to keep its funding promises, policymakers in several states, including Montana, have discussed including a "trigger" or "circuit-breaker" to back out of Medicaid expansion in the event the enhanced matching rate is reduced. However, these triggers are unlikely to be effective. Federal law classifies the expansion population as a new "mandatory population" for states that opt into the expansion, which authorizes the federal government to take away all federal Medicaid funds if a state were to roll back eligibility for that group.[97]

In June 2012, the U.S. Supreme Court held that states could forego Medicaid expansion without placing their existing Medicaid funding at risk.[98] It did not hold that separate federal requirements on maintaining eligibility for mandatory populations would not apply after a state agrees to expand Medicaid.[99]

The Court's decision rests in a large part on the fact that when states opted into Medicaid when the program was created in the 1960s, it was unforeseeable that the federal government would attempt to expand it in this way.[100] But it is not unforeseeable that the federal government may ultimately reduce its promised funding. This issue came up during Supreme Court oral arguments. Chief Justice John Roberts asked what would happen if the federal government decided to renege on the deal and reduce the enhanced matching rate.[101] As the government explained in its response to Chief Justice Roberts, states' only choice at that point would be to exit the Medicaid program altogether.[102] This very real risk was also acknowledged by the Supreme Court in the majority and minority opinions.[103]

The federal government has said in non-binding letters that states may enter or exit the expansion as they please, but states should be wary that this non-binding promise has never been codified into law or regulation and Medicaid beneficiaries are likely to have standing to litigate the matter in federal court.[104] Ultimately, the state will be held to the requirements of the law and court decisions, not to opinions and views expressed in non-binding letters.

This means that accepting the federal government's enhanced matching rate could tether Montana to Medicaid expansion permanently, even if Congress later shifted more costs to the states. Additionally, just as Congress lacks the power to bind the legislative authority of its successors, trigger provisions would still be subject to endorsement by a future Montana Legislature.[105]

Even if they could, it is unlikely state politicians would later roll back eligibility for an entitlement and remove tens of thousands of expansion enrollees off Medicaid. States that have previously expanded Medicaid have had little success doing so, even when facing severe budget crises.

Even politically unpopular expansions have proven difficult to roll back. In 2007, Illinois' disgraced former Governor Rod Blagojevich expanded Medicaid eligibility to families earning up to 400 percent of the federal poverty level without legislative approval.[106]

The Legislature invalidated the Administration's unilateral expansion of Medicaid and the Secretary of State prohibited the Blagojevich Administration from proceeding.[107] Nevertheless, the governor's staff moved forward with the expansion and began enrolling the group into Medicaid.[108]

The Illinois Legislature again invalidated the expansion, but the Administration continued to proceed with the expansion.[109] The Administration continued to enroll people in the expansion even after a court issued an injunction to immediately halt the expansion.[110] It was not until fiscal year 2013, with Illinois facing a $2.7 billion Medicaid shortfall, that lawmakers were able to successfully roll back this expansion.[111-112]

Given the political ramifications of trying to reduce entitlement eligibility and the very real possibility that doing so may not be legally possible, Montana policymakers should be wary of jumping headfirst into any Medicaid expansion.

CONCLUSION

Medicaid is already failing Montana patients and taxpayers. Promises of fewer uninsured residents and a reduction in hospitals' uncompensated charity care are unlikely to be kept. And the combination of a poor track record of meeting its commitments to states and a $17 trillion debt make it highly unlikely the federal government will keep its promise to Montana to fund the cost of expansion.

Montana policymakers should protect their patients and taxpayers by rejecting Medicaid expansion and instead refocus their efforts on fixing the current program so that it works for patients and taxpayers. Medicaid was intended to be an affordable health care safety net for the truly vulnerable. Montana policymakers should prioritize meeting this critical goal instead of undermining it with a short-sighted Medicaid expansion scheme.

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