Medicaid Expansion Update

By now it is well known that the one provision in the Affordable Care Act ("ACA") that the U.S. Supreme Court struck down was the penalty of withdrawing all federal funding from any state's Medicaid program when the state refused to expand its Medicaid program to include adults up to 133% of the federal poverty guideline. The ruling means that any state which elects not to expand its Medicaid program eligibility rules will forego only the federal funding associated with the expansion and will continue to receive federal funding at the pre-ACA sharing rate for the pre-ACA Medicaid eligibles in that state. In guidance issued in December, CMS indicated (in response to questions from several state governors) that expansions of eligibility up to 100% of the federal poverty guideline or up to any other percentage short of the full 133% expansion required by ACA would not receive the 100% federal funding included in ACA for the first three years nor the gradually declining federal funding thereafter. The federal share will be 100% in 2014, 2015 and 2016, and reduce 2% per year thereafter until 2020 when the permanent 90% federal share will be fully phased in. Supported by a study commissioned by the Missouri Hospital Association, Governor Nixon is committed to the full expansion in Missouri, but Republicans who control the House and Senate in Missouri remain skeptical. This issue will, therefore, likely be one of the key debates of the 2013 legislative sessions in the Missouri House and Senate. Faced with a number of varying independent estimates regarding how many Kansans would enroll and how much the expansion would cost the state, Governor Brownback advised the legislature's Joint Committee on Health Policy Oversight that his administration would develop its own estimate. The Governor remains skeptical that the federal share of the expansion cost will continue at 90% after it reduces to that level in 2020. Given that both houses in Kansas are Republican led and the Republican Governor has had success with his positions on legislation in 2012, it seems likely that the decision his administration reaches regarding Medicaid expansion will be carried out. One clue to where he may be headed was his reaction to the CMS guidance described above that states who increase eligibility to something less than 133% of the federal poverty level would not be eligible for the full share of federal funding under ACA. A spokesman for the Governor advised the Legislative Joint Committee members that the federal government missed an opportunity to reach a compromise with Republican governors skeptical of the expansion when CMS gave that guidance. As of 12/17/12, Avalere Health's tracking of state decisions indicated that 11 states will decline to expand their Medicaid programs, 18 states will embrace the expansion, and 21 remain undecided. Interestingly, Missouri was included in Avalere's data for those states planning to expand even though the legislature remains to be convinced. Kansas was accurately reported as undecided. Among those states that have decided, the decision has been along party lines with Republican led states declining expansion and Democrat led states opting for it. Because Medicaid expansion was paid for in part by planned reductions in disproportionate share hospital ("DSH") payments, hospitals located in states that do not participate in the Medicaid expansion when receive a double whammy—reduced DSH payments and no expansion of the Medicaid covered population to replace the lost DSH revenue. Watch for this to be an issue raised in undecided states with significant presence of hospitals dependent in part on DSH payments. Look also for this issue to be raised at the national level highlighted by hospitals that are distressed as a result of losing DSH payments in states that did not expand Medicaid eligibility. We will continue to follow the Medicaid expansion saga and keep our friends and clients advised of significant developments.