Ohio Medicaid Expansion: Is it Legal?

Erin Killeen, The Ohio State University

Available at: https://works.bepress.com/erin_killeen/4/
Ohio Medicaid Expansion: Is it Legal?

Erin Killeen*

I. INTRODUCTION

As we approach January 1st, 2014—the date on which significant Affordable Care Act reforms come into effect—states must decide whether to opt in or out of Medicaid expansion. In Ohio, the decision is proving to be a difficult one.

On October 21st, 2013, the Ohio Controlling Board authorized the appropriation of nearly $3 billion in Affordable Care Act funds from the federal government for Medicaid expansion in Ohio. Starting January 1st, the appropriation would provide Medicaid Coverage for 275,000 Ohioans who formerly did not qualify for Medicaid. But six Ohio lawmakers and two anti-abortion groups filed suit against the Controlling Board, arguing that the Controlling Board’s actions were not consistent with the intent of the legislature.

The legal issue at hand is whether or not the Ohio Controlling Board, in approving the appropriation of Medicaid expansion funds, acted in accord with R.C. 127.17, which states that “the Controlling Board ‘shall take no action which does not carry out the legislative intent of the general assembly.’” In what follows, I will discuss the history of the Affordable Care Act, the evolution of its legislation, and Ohio’s past actions involving Medicaid expansion. I will argue that because the Controlling Board undertook actions that were in fact consistent with enacted appropriation laws, it did not act against the intent of the General Assembly. I predict that the lawsuit against the Controlling Board should—and will—be dismissed.

*Undergraduate Student of English, The Ohio State University

1 25 of the 50 states plus the District of Columbia are moving forward with Medicaid expansion at this time. See http://kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/


3 See http://www.nytimes.com/2013/10/22/us/medicaid-expansion-is-set-for-ohioans.html?_r=0


5 R.C. 127.17
II. The History of the Affordable Care Act: 2010—2012

The Patient Protection and Affordable Care Act, commonly known as the “ACA” or “Obamacare,” was signed into law by President Obama on March 23, 2010.6 The Affordable Care Act has as one of its central goals the expansion of health insurance to cover more Americans. When the ACA was enacted, it required each state to provide Medicaid coverage for a “new eligibility group” as of January 2014.7 This new eligibility group, or group VIII under section 1396a(a)(10)(A)(i)(VIII) of the Act, includes low-income individuals who “are not otherwise eligible under mandatory eligibility categories.”8 Group VIII includes adults under 65 without dependent children who have incomes that do not exceed 133 percent of the poverty line (with a 5 percent disregard that increases the limit to 138 percent of the poverty line).9

At the time of its enactment, the ACA required each state to provide Medicaid coverage for this new eligibility group as a condition of receiving Medicaid funding at all. The ACA stated that if a state fails to expand Medicaid to group VIII, all federal funding would be withheld.10 However, on June 28, 2012, the United States Supreme Court rendered it optional for states to expand Medicaid. In National Federation of Independent Business vs. Sebelius, the United States Supreme Court held that it is unconstitutional for the federal government to force the states to participate in the ACA’s Medicaid expansion under the threat of losing existing Medicaid funding.11 Whether or not to expand Medicaid under the ACA is now up to the states to decide.

III. The Medicaid Debate in Ohio: 2013

On February 4, 2013, the Ohio General Assembly introduced House Bill 59, the appropriation bill for the 2014-2015 fiscal year.12 The original bill contained the Governor’s budget proposals. These original proposals, specifically R.C. 5163.03, instructed the Medicaid Director to cover “all mandatory eligibility groups,” as well as any “optional eligibility groups.”13 This appropriation bill permitted the Medicaid Director to decide whether to cover Group VIII.

In June of 2013, the General Assembly submitted to the Governor a revised HB 59 with language explicitly prohibiting ACA Medicaid Expansion. According to the proposed R.C. 5163.04, “The Medicaid program shall not cover the group described in the ‘Social Security

---

6 See http://con.ent.healthaffairs.org/content/29/6/1173.full.pdf
8 Id.
9 Id.
10 Id.
13 R.C. 5163.04 “The medicaid program may cover any of the optional eligibility groups to which either of the following applies: (1) State statutes expressly permit the Medicaid program to cover the optional eligibility group. (2) State statutes do not address whether the Medicaid program may cover the optional eligibility group.”
Act,’ section 1902(a)(10)(A)(i)(VIII), 42 U.S.C. 1396a(a)(10)(A)(i)(VIII)’. However, on June 30, the Governor line-item vetoed the proposed ban set forth by R.C. 5163.04, rendering it void. The prevailing appropriation act signed into law did not include the prohibition on Group VIII coverage. Because the prohibition was vetoed, the Medicaid Director was given the authority to extend Medicaid coverage to Group VIII.

After getting the amendment approved from the Centers for Medicare and Medicaid Services, the Medicaid Director then went to the Ohio Controlling Board. The role of the Controlling Board is outlined in R.C. 131.35 (A) (2): “If the federal funds received are greater than the amount of such funds appropriated by the general assembly for a specific purpose, the total appropriation of federal and state funds for such purpose shall remain at the amount designated by the general assembly, except that the expenditure of federal funds received in excess of such specific appropriation may be authorized by the controlling board.” One of the Controlling Board’s primary duties is to authorize the appropriation of excess funds from the federal government.

The Medicaid Director acted lawfully when he went to the Controlling Board to approve the appropriation of federal funds for Medicaid expansion. As previously stated, R.C. 131.35 (A)(2) requires the Medicaid Director to receive approval from the Controlling Board when seeking to appropriate federal funds above the amount outlined in the appropriation act. On October 21, 2013, the Controlling Board passed the Medicaid Director’s request when five of the seven members voted to approve the request. Since a vote of four is necessary to pass a vote, the request was approved.

IV. The Controlling Board and R.C. 127.17

The issue at hand is whether or not the Controlling Board’s action to appropriate federal Medicaid funds was consistent with the intent of the General Assembly. The General Assembly clearly intended for Medicaid expansion to be prohibited, as outlined in R.C. 5163.04. However, because the Governor line-item vetoed the proposed R.C. 5163.04, which contained the prohibition on expansion to Group VIII, the prevailing law that was actually enacted allowed for Medicaid expansion. The Controlling Board therefore followed the written appropriation law in deciding to approve the appropriation of Medicaid funds.

R.C. 127.17 states, “The controlling board shall take no action which does not carry out the legislative intent of the general assembly regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts of the general assembly.” Significant to this case are the words “legislative intent” and “as expressed in the prevailing appropriation acts of the general assembly.” In what follows, I will explain that the intent of the legislature

14 Including adults under 65 without dependent children who have incomes that do not exceed 133 percent of the poverty line (with a 5 percent disregard that increases the limit to 138 percent of the poverty line) See http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_166
15 R.C. 131.35
16 The vote was 5-2: See http://www.nytimes.com/2013/10/22/us/medicaid-expansion-is-set-for-ohioans.html?_r=0
17 Cleveland Right to Life v. State of Ohio Controlling Board (Respondents’ Merit Brief)
18 R.C. 127.27
refers to enacted laws, and that the Controlling Board followed written laws in approving the appropriation of Medicaid funds.

A. PUCO vs. the Controlling Board (1935)

In 1935, the court held that an act would be unconstitutional if it directed the Controlling Board to ignore the Governor’s veto. In Public Utilities Commission of Ohio vs. the Controlling Board of Ohio, an administrative body tried to compel the Controlling Board to provide funding for a line item that the Governor had vetoed. The case cited a number of relevant statutes, which are also relevant to the case at hand.

First, PUCO vs. the Controlling Board cited article 2 section 16 of the constitution, and determined that “Where Governor vetoed certain items of appropriation of money made by Legislature to Public Utilities Commission, the items vetoed became void where not repassed by Legislature in manner provided by Constitution.’

Analogously, the Governor vetoed R.C. 5163.04. The proposed bill prohibiting Medicaid expansion to Group VIII therefore became void.

Further, the General Assembly did not attempt to repass R.C. 5163.04 in the manner outlined in article 2 section 6 of the constitution, which states, “If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor.’ The General Assembly never attempted to repass R.C. 5163.04 in this manner, and thus, it became void.

The second relevant statute from PUCO vs. the Controlling Board prohibits the Controlling Board to transfer money to vetoed items, since those items were made void by the veto. “Where Governor vetoed certain items of appropriation of money made by Legislature to Public Utilities Commission, provisions of appropriation act authorizing controlling board to transfer ‘to new classification items in cases where proper code items have not been provided by the Legislature’ held not to authorize controlling board to transfer moneys to vetoed items since those items were made void by the veto.’

Similarly, then, the Controlling Board may transfer money to non-vetoed items while acknowledging that vetoed bills must be ignored.

19 Cleveland Right to Life v. State of Ohio Controlling Board (Respondents’ Merit Brief)

22 Id.
23 Id.
V. Conclusion

Consistent with R.C. 127.17, the Controlling Board acted in accord with the intent of the General Assembly “as expressed in the prevailing appropriation acts of the general assembly”24. The Court should interpret R.C. 127.17 to direct the Controlling Board to enacted laws when considering the intent of the legislature. The phrase “prevailing appropriation acts” refers to binding laws, not vetoed bills. If the legislature intended for all of its vetoed bills to be followed, there would be no need to have a process by which bills become enacted into law.

While the General Assembly clearly expressed its intent by proposing a bill to prohibit expansion to Group VIII, this bill was never passed into law, and thus does not constitute a “prevailing appropriation act.” Further, as discussed in PUCO vs. the Controlling Board, it would be unconstitutional for the Controlling Board to ignore the Governor’s veto. Because the Governor vetoed the proposed R.C. 5163.04, Medicaid expansion to Group VIII was not prohibited. The Controlling Board therefore acted lawfully by appropriating federal funds for Medicaid expansion in Ohio.

24 R.C. 127.17