

MEDICAID EXPANSION IN NEBRASKA: ADDRESSING SOCIOECONOMIC INEQUITIES

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I. INTRODUCTION

In November 2018, Nebraska voters passed Initiative Measure No. 427 to expand Medicaid coverage in Nebraska.¹ Medicaid expansion will provide health insurance to nearly 90,000 low-income Nebraskans.² Often, these 90,000 Nebraskans are referred to as stuck in “the coverage gap,” meaning they are ineligible for Medicaid but do not make enough money to qualify for premium tax credits on the Health Insurance Marketplace to make insurance affordable.³ States that have not expanded Medicaid generally “have no eligibility for childless adults who are not disabled, and mandatory coverage levels for parents are very low.”⁴ The lack of coverage available for childless adults and very low eligibility levels for parents result in “significant inequities in adults’ Medicaid income eligibility nationwide” that “lead to disparities in the rate of uninsured adults.”⁵ By expanding Medicaid to cover those traditionally unserved by Medicaid and the private insurance market, Nebraska is taking a significant step forward in addressing socioeconomic inequities in the state.

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1. *Nebraska Secretary of State – Election Night Results – November 6th, 2018*, NEB. SEC’Y OF STATE, <https://electionresults.sos.ne.gov/resultsSW.aspx?text=Race&type=SW&map=CTY> (last updated Dec.3, 2018, 1:31:38 PM). *See also* NEB. REV. STAT. ANN. § 68-992 (West 2018).

2. LEG. FISCAL OFFICE, FISCAL NOTE, 105th Leg. (Neb. 2017), https://nebraska.legislature.gov/FloorDocs/105/PDF/FN/LB441_20170308-103020.pdf.

3. RACHEL GARFIELD ET AL., KAISER FAMILY FOUND., THE COVERAGE GAP: UNINSURED POOR ADULTS IN STATES THAT DO NOT EXPAND MEDICAID (2019), <http://files.kff.org/attachment/Issue-Brief-The-Coverage-Gap-Uninsured-Poor-Adults-in-States-that-Do-Not-Expand-Medicaid>.

4. JACK HOADLEY ET AL., GEORGETOWN UNIV. CTR. FOR CHILDREN & FAMILIES & UNIV. OF N.C. NC RURAL HEALTH RESEARCH PROGRAM, HEALTH INSURANCE COVERAGE IN SMALL TOWNS AND RURAL AMERICA: THE ROLE OF MEDICAID EXPANSION 2 (2018), https://ccf.georgetown.edu/wp-content/uploads/2018/09/FINALHealthInsuranceCoverage_Rural_2018.pdf.

5. *Id.* at 2.

II. MEDICAID EXPANSION

The Patient Protection and Affordable Care Act (“ACA”) included reforms designed to increase insurance rates among Americans with low and middle incomes, including the Health Insurance Marketplace, its premium tax credits, and an expansion of Medicaid coverage.⁶ The ACA’s Medicaid expansion extended coverage to adults between the ages of nineteen and sixty-four years old with incomes under 133 percent of the Federal Poverty Level (“FPL”).⁷ Adults covered by the ACA’s Medicaid expansion are individuals not otherwise eligible for Medicaid as a result of pregnancy or disability.⁸ Since individuals must have an income of at least 100 percent of the FPL to access premium tax credits on the Health Insurance Marketplace, Medicaid expansion serves those whose incomes are below the level needed to purchase affordable insurance on the Marketplace.⁹

In 2012, the United States Supreme Court heard two challenges to the ACA’s constitutionality in *National Federation of Independent Business v. Sebelius*.¹⁰ Specifically, the Court ruled on the constitutionality of the individual mandate provision and Medicaid expansion.¹¹ The Court upheld the constitutionality of the individual mandate.¹² However, it determined the Medicaid expansion exceeded Congress’s power under the Spending Clause and effectively rendered it an option for states rather than a mandatory program.¹³ Despite that decision, as of November 2018, thirty-six states, including Nebraska, and Washington D.C., had opted into Medicaid expansion.¹⁴

III. WHO WILL BE COVERED BY MEDICAID EXPANSION IN NEBRASKA?

On November 7, 2018, Nebraska voters passed Initiative Measure No. 427, a general election ballot measure to expand Medicaid.¹⁵ Medicaid expansion will cover two main groups of Nebraskans: low-

6. See Garfield, *supra* note 3, at 1.

7. 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) (2017).

8. *Id.*

9. See Garfield, *supra* note 3, at 1.

10. 567 U.S. 519 (2012).

11. Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 530 (2012).

12. *Sebelius*, 567 U.S. at 574-75.

13. *Id.* at 588.

14. *Status of State Medicaid Expansion Decisions: Interactive Map*, KAISER FAMILY FOUND. (May 13, 2019), <https://www.kff.org/medicaid/issue-brief/status-of-state-medic-aid-expansion-decisions-interactive-map/>.

15. NEB. SEC’Y OF STATE, *supra* note 1. See also Henry J. Cordes, *Nebraskans Approve Expanding Medicaid to Cover More of the State’s Low-Income Residents*, OMAHA WORLD-HERALD (Nov. 7, 2018), https://www.omaha.com/livewellnebraska/health/nebraskans-approve-expanding-medic-aid-to-cover-more-of-the-state/article_389878a4-74a3-5a82-a482-3bc43bb1bb79.html.

income parents whose incomes are too high for traditional Medicaid and low-income, childless adults.¹⁶ Traditional Medicaid in Nebraska covers low-income parents up to 58% of the FPL.¹⁷ In 2019, 58% of the FPL is \$1,031 per month for a household of three.¹⁸ Medicaid expansion will cover parents with incomes over that 58% FPL eligibility cap up to 138% of the FPL,¹⁹ or \$2,390 per month in 2019 for a household of three.²⁰ Additionally, childless adults with incomes between 0% of the FPL and 138% of the FPL will be eligible for Medicaid. For a household of one in 2019, 138% of the FPL is \$1,396 per month.²¹

The data available regarding those who will be eligible for Nebraska's Medicaid expansion demonstrate the benefits the new program could have statewide for low-income, working Nebraskans. The program would be particularly impactful in providing a source of coverage for uninsured individuals in Nebraska's rural areas.²² Nearly a quarter of Nebraskans in rural areas are uninsured and have incomes below 138% of the FPL, meaning they would be eligible for Medicaid expansion.²³ This is higher than Nebraska's metro areas, where 19% of individuals are uninsured and have incomes below 138% of the FPL.²⁴ Most states that have expanded Medicaid have reduced the discrepancy in insured rates between metro and rural areas through adopting the program.²⁵

16. *Medicaid Expansion to the New Adult Group*, MEDICAID & CHIP PAYMENT & ACCESS COMM'N, <https://www.macpac.gov/subtopic/medicaid-expansion/> (last visited April 30, 2019).

17. NEB. DEP'T OF HEALTH & HUMAN SERVS., DIV. OF MEDICAID & LONG-TERM CARE, NEBRASKA MEDICAID ANNUAL REPORT FOR STATE FISCAL YEAR 2017-2018 9 (Dec. 3, 2018), https://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Health_and_Human_Services_Department_of/107_20181130-141401.pdf.

18. NEB. DEP'T OF HEALTH & HUMAN SERVS., PROGRAM STANDARDS, FEDERAL POVERTY LEVELS (FPL), AND MAXIMUM INCOME (2019), <http://dhhs.ne.gov/Documents/FPL%20Eligibility.pdf>

19. See NEB. REV. STAT. ANN. § 68-992 (West 2018) (stating the eligibility requirements for adults under the Medicaid expansion). See also MEDICAID & CHIP PAYMENT & ACCESS COMM'N, *supra* note 16 (explaining the ACA establishes an income disregard of five percentage points of the federal poverty level making the effective eligibility level 138% of the FPL even though 133% of the FPL is included in 42 U.S.C. 1396a(a)(10)(A)(i)(VIII)).

20. See generally *Yearly Guidelines and Thresholds*, HEALTH REFORM BEYOND THE BASICS (June 2018), http://www.healthreformbeyondthebasics.org/wp-content/uploads/2017/11/REFERENCEGUIDE_Yearly-Guidelines-and-Thresholds_2019.pdf (last visited May 9, 2019) (listing annual income levels from which calculation of monthly income levels can be made).

21. *Id.*

22. Hoadley, *supra* note 4, at 1.

23. *Id.* at 4.

24. *Id.*

25. *Id.* at 6.

Medicaid expansion is a program that will support Nebraska's low wage workers.²⁶ Of the Nebraskans who would be eligible for Medicaid expansion, the majority, 70%, are employed.²⁷ Of the remaining 30%, over half are individuals with disabilities, students, non-working spouses, retirees, and young adult dependants.²⁸ The remainder are individuals classified as unemployed.²⁹ Individuals in the coverage gap hold occupations that form the backbone of Nebraska's economy, including food service, construction, and sales, amongst others.³⁰

IV. MEDICAID EXPANSION'S ROLE IN ADDRESSING SOCIOECONOMIC INEQUITIES

Medicaid expansion in Nebraska has the potential to reduce socioeconomic inequities through increasing access to care and improving health outcomes for low-income Nebraskans. Individuals without insurance "are likely to under consume medical services," meaning they delay preventive care and screenings, do not purchase prescribed medication, and defer health care for financial reasons.³¹ However, "[a] large body of research points to expansion-related improvements across a wide range of measures of access to care and utilization of medications and services" across states.³² One example of a state that has seen notable improvements in access to care and preventive services utilization through Medicaid expansion is Kentucky.³³ Data from the Kentucky Department of Medicaid Services from the first two years of the program show a large increase in the number of Ken-

26. See generally DEE MAHAN & ANDREA CALLOW, FAMILIES USA, MEDICAID EXPANSION HELPS MORE WORKING PEOPLE GET HEALTH COVERAGE, (Jan. 2016), https://familiesusa.org/sites/default/files/product_documents/MCD_ACS%20Data%20Report_web.pdf (establishing a "strong link" between health coverage gains for working residents and a state's decision to expand Medicaid).

27. FAMILIES USA ACTION, CAREERS OF WORKING NEBRASKANS WHO WOULD RECEIVE COVERAGE THROUGH MEDICAID EXPANSION (Sept. 2018), <http://www.familiesusaaction.org/careers-of-working-nebraskans-who-would-receive-coverage-through-medicaid-expansion>.

28. *Id.*

29. *Id.*

30. *Id.* at 2.

31. Allan Jenkins & Ron Konecny, Univ. of Neb. Kearney, NEBRASKA MEDICAID EXPANSION 2018 UPDATE 15 (2018); Martha Stoddard, *Medicaid Expansion Would Create Jobs and Economic Benefits, Study Finds*, OMAHA WORLD-HERALD (Oct. 15, 2018), https://www.omaha.com/livewellnebraska/health/medicaid-expansion-would-create-jobs-and-economic-benefits-study-finds/article_7184492e-e7f2-5708-bc67-7fc3fb6329d9.html.

32. ROBIN RUDOWITZ & LARISA ANTONISSE, KAISER FAMILY FOUND., IMPLICATIONS OF THE ACA MEDICAID EXPANSION 3 (2018), <http://files.kff.org/attachment/Issue-Brief-Implications-of-the-ACA-Medicaid-Expansion-A-Look-at-the-Data-and-Evidence>.

33. Laura Unger, *More Ky Patients Get Preventive Care*, COURIER JOURNAL (Aug. 7, 2015, 7:07 AM) <https://www.courier-journal.com/story/life/wellness/2015/08/05/preventive-care-rises-among-kentucky-medicaid-patients/31190973/?aid=15871991&tr=y>.

tuckians accessing preventive care.³⁴ Kentuckians enrolled in Medicaid were significantly more likely to access physical and dental exams and cancer screenings after Kentucky expanded Medicaid.³⁵ Specifically, between 2013 and 2014, the number of Kentuckians enrolled in Medicaid that had cancer screenings increased dramatically; breast cancer screenings went up 111%; cervical cancer screenings went up 88%; and colorectal cancer screenings went up 108%.³⁶ Additionally, preventive dental checkups rose by 116%, and physical exams increased by 187%.³⁷ Kentucky is just one example of the strides states have seen in access to care after expansion.³⁸

It is also projected that Medicaid expansion will have benefits for the behavioral health of Nebraskans in the coverage gap.³⁹ Researchers from the United States Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation analyzed data from 2010 to 2014 and found that 31.6% of uninsured Nebraskans between the ages of eighteen and sixty-four with incomes below 138% of the FPL had a mental illness or substance use disorder, compared to 26.2% of the state's full population.⁴⁰ However, only 14.1% of uninsured individuals between the ages of eighteen and sixty-four received treatment for mental illness or substance use disorder.⁴¹ Looking specifically at 2014 data, the researchers found that 21,000 Nebraskans who would have been eligible for Medicaid expansion had experienced a mental illness or substance use disorder in the past year.⁴² It is projected that if Medicaid were expanded, an estimated 4,000 fewer Nebraskans would experience symptoms of depression and 6,000 more Nebraskans would report "good, very good, or excellent health."⁴³

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. See LARISA ANTONISSE ET AL., KAISER FAMILY FOUND., THE EFFECTS OF MEDICAID EXPANSION UNDER THE ACA: UPDATED FINDINGS FROM A LITERATURE REVIEW 4-6 (2018), <http://files.kff.org/attachment/Issue-Brief-The-Effects-of-Medicaid-Expansion-Under-the-ACA-Updated-Findings-from-a-Literature-Review> (describing how most research shows Medicaid expansion has a positive impact on access to and utilization of care).

39. See JUDITH DEY ET AL., DEP'T. OF HEALTH & HUMAN SERVS., OFFICE OF THE ASSISTANT SEC'Y FOR PLANNING & EVALUATION, BENEFITS OF MEDICAID EXPANSION FOR BEHAVIORAL HEALTH 4-7 (2016), <https://aspe.hhs.gov/system/files/pdf/190506/BHMedicaidExpansion.pdf> (describing potential benefits on behavioral health to non-expansion states).

40. *Id.* at 4.

41. *Id.* at 6.

42. *Id.* at 5.

43. *Id.* at 6.

Medicaid expansion in Nebraska has the potential to further reduce socioeconomic disparities by improving the financial status of those who participate in the program.⁴⁴ In a study on the possible economic impacts of Medicaid expansion in Nebraska, Allan Jenkins, Ph.D., and Ron Konecny, Ph.D., two professors at the University of Nebraska-Kearney, wrote that states that expanded Medicaid “are seeing generally robust economic growth” and that expansion positively impacts a state’s economy when considering increased employment and reduced bankruptcy filings.⁴⁵ Of the ten states with the most significant decrease in unemployment rates between 2013 and 2017, nine had opted into Medicaid expansion by January 1, 2014.⁴⁶ Additionally, “eight of the ten states with the greatest decrease in Chapter 7 bankruptcies over this period were states that had expanded Medicaid in 2014.”⁴⁷ The researchers found “the overall economic effect of expansion is positive” when considering increased employment and reduced bankruptcy filings.⁴⁸ When projecting the impacts of Medicaid expansion in Nebraska, Jenkins and Konecny found that, had Nebraska expanded Medicaid in 2014, 283 fewer Nebraskans would have filed for Chapter 7 bankruptcy and that “the bankruptcy loss in the state would have been reduced by \$25.1 million” for the same period.⁴⁹

A recent study on Michigan’s Medicaid expansion reinforces the assertions of Jenkins and Konecny that Medicaid expansion has an overall positive impact on the financial health of program participants.⁵⁰ The study found an association between Medicaid enrollment and “large improvements in several measures of financial health, including reductions in unpaid bills, medical bills, over limit credit card spending, delinquencies, and public records (such as evictions, judgments, and bankruptcies).”⁵¹ Specifically, the study estimates that Medicaid enrollment “reduces the amount of medical bills in collections by \$515 (about 57% relative to the pre-ACA mean) and reduces the amount of debt past due that has not yet been sent to a third party collection agency of [sic] about \$233 (about 28%).”⁵² The study also

44. See JENKINS & KONECNY, *supra* note 31, at 12.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 31-32.

50. See Sarah Miller et al., *The ACA Medicaid Expansion in Michigan and Financial Health* (Nat’l Bureau of Economic Research, Working Paper No. 25053, 2018), <https://www.nber.org/papers/w25053.pdf> (describing the association between Medicaid and large improvements in measures of financial health in Michigan).

51. *Id.* at 4.

52. *Id.*

found a 16% reduction in the “the number of public records (such as evictions, bankruptcies, or wage garnishments),” and a 16% reduction in the likelihood of individuals overdrawing their credit cards.⁵³

V. IMPLEMENTATION OF NEBRASKA MEDICAID EXPANSION

On April 1, 2019, pursuant to Initiative Measure No. 427, the Nebraska Department of Health and Human Services filed its State Plan Amendments to expand Medicaid with the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.⁵⁴ In filing the State Plan Amendments, the Nebraska Department of Health and Human Services elected an October 1, 2020, start date for coverage.⁵⁵ As a result, Nebraskans, and specifically the 90,000 Nebraskans in the coverage gap, will wait several more months before seeing any of the potential reductions in socioeconomic inequities. Moreover, on April 1, 2019, the Nebraska Department of Health and Human Services released a concept paper outlining its plan for implementing Medicaid expansion through a Section 1115 waiver project called the Heritage Health Adult Program.⁵⁶ A Section 1115 waiver is a process by which a state receives permission from the federal government to break from traditional Medicaid law to experiment with delivering care in a new way.⁵⁷ The Heritage Health Adult Program would deviate from traditional Medicaid by including two levels of coverage known as Basic Coverage and Prime Coverage.⁵⁸ Basic Coverage would offer the regular Nebraska Medicaid benefits package with the exception of dental, vision, and over-the-counter drug coverage.⁵⁹ Prime Coverage would include the Medicaid benefits package plus dental, vision, and over-the-counter drug coverage.⁶⁰ Under the proposal, enrollees would be required to complete work and wellness activities to receive Prime Coverage; if the requirements are not met, they would receive Basic Coverage.⁶¹ The concept paper also outlines a number of additional changes to Medicaid in Nebraska, including requiring enrollees to verify eligibility for the program every six

53. *Id.*

54. *Medicaid Expansion in Nebraska*, NEB. DEP'T. OF HEALTH & HUMAN SERVS., <http://dhhs.ne.gov/Pages/Medicaid-Expansion.aspx> (last visited Apr. 30, 2019).

55. *Id.*

56. NEB. DEP'T. OF HEALTH & HUMAN SERVS., HERITAGE HEALTH ADULT PROGRAM – SECTION 1115 CONCEPT PAPER (2019), <http://dhhs.ne.gov/Documents/HeritageHealthAdultProgramConceptPaper.pdf>.

57. *Waivers 101*, FAMILIES USA, <https://familiesusa.org/initiatives/waiver-re-source-center/waivers-101> (last visited Apr. 30, 2019).

58. See NEB. DEP'T. OF HEALTH & HUMAN SERVS., *supra* note 54, at 4.

59. *Id.*

60. *Id.*

61. *Id.*

months versus the current annual reverification period.⁶² The Section 1115 waiver application will likely be submitted to the federal government for approval in fall of 2019.⁶³

As the Section 1115 waiver has not yet been submitted, approved, or operationalized, it is difficult to determine the impact that such a proposal would have on addressing socioeconomic disparities in Nebraska. However, experiences from other states demonstrate that complex waiver systems create challenges for enrollees in maintaining coverage.⁶⁴

VI. CONCLUSION

Medicaid expansion in Nebraska has the potential to reduce socioeconomic disparities by increasing access to care,⁶⁵ especially in rural areas,⁶⁶ improving coverage rates for working Nebraskans,⁶⁷ and creating financial benefits for those enrolled.⁶⁸ However, it will be critical to monitor the implementation of the Heritage Health Adult Program to ensure the potential benefits of Medicaid expansion are fulfilled.

62. *Id.* at 3.

63. *Id.* at 6.

64. *See Proposals to Couple Medicaid Expansion with Work Requirements: Frequently Asked Questions*, CTR. ON BUDGET & POLICY PRIORITIES (Apr. 10, 2019), <https://www.cbpp.org/research/health/proposals-to-couple-medicaid-expansion-with-work-requirements-frequently-asked>. *See also* ANTONISSE, *supra* note 38, at 4 (explaining coverage losses in Indiana's Healthy Indiana Plan); Sara R. Collins, *Medicaid Work Requirements Increase Coverage Gaps*, THE COMMONWEALTH FUND (Feb. 28, 2019), <https://www.commonwealthfund.org/blog/2019/medicaid-work-requirements-increase-coverage-gaps> (describing coverage losses from Arkansas's Medicaid work requirement).

65. *See* RUDOWITZ & ANTONISSE, *supra* note 32, at 3.

66. *See* HOADLEY ET AL., *supra* note 4, at 1.

67. *See* MAHAN & STOLL, *supra* note 27, at 1.

68. *See* JENKINS & KONECNY, *supra* note 31, at 12