

NEJM perspective: 'Patient CARE Act' Medicaid block grant likely unconstitutional

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The Medicaid block grant proposed as part of the Patient Choice, Affordability, Responsibility and Empowerment Act ("Patient CARE Act") would radically transform Medicaid without the consent of states and would likely be considered unconstitutional, say two legal experts in a *New England Journal of Medicine* Perspective article published online today.

Sara Rosenbaum, JD, the Harold and Jane Hirsh Professor of Health Law and Policy at Milken Institute School of Public Health at the George Washington University, and Timothy Westmoreland, JD, a professor from practice and senior scholar at the O'Neill Institute for National and Global Health Law at Georgetown University Law Center, explain that the change proposed to Medicaid, a state-run program, appears to be a violation of the Tenth Amendment.

The Patient CARE Act is a bill proposed by leading Republican members of Congress, including the chairs of two of the major committees with jurisdiction over health issues, the authors explain. It would repeal the Affordable Care Act's insurance reforms and significantly scale back premium subsidies. It would eliminate all federal funding for the ACA's new adult expansion population; end Medicaid's comprehensive coverage for low-income children, pregnant women, and families with dependent children; and end long-term care services and supports for elderly Medicaid beneficiaries as well as Medicaid beneficiaries with disabilities.

The proposed block grant in the Patient CARE Act would allocate a fixed sum to each state and that sum would be allowed to grow over time only in accordance with a specified formula, and at a rate well below that of medical inflation. The block grant would replace Medicaid's open-ended financing structure for low-income children, pregnant women and families with dependent children, and end the entitlement to long-term services and supports for elderly Medicaid beneficiaries as well as Medicaid beneficiaries with disabilities.

Rosenbaum and Westmoreland argue that the block grant would be unconstitutional based on the 2012 Supreme Court decision in *National Federation of Independent Businesses (NFIB) v. Sebelius*. In the ruling, seven Justices struck down an amendment in the Affordable Care Act finding that its proposed adult Medicaid expansion, funded nearly in full by the federal government, was unconstitutional state coercion and a violation of the Tenth Amendment.

In the opinion about the case penned by Chief Justice John Roberts, he described the amendment as constituting a "shift in kind, not merely degree."

"Viewed through a *NFIB* lens, the Patient CARE Act carries similar constitutional infirmities," Rosenbaum and Westmoreland say.

"In the Chief Justice's view, the ACA effectively commandeered states to administer a central component of national health reform, placing a 'gun to the head' of states that wanted no part of such a scheme," explain Rosenbaum and Westmoreland. "By radically restructuring federal Medicaid financing, the Patient CARE Act becomes a legal 'gun to the head': states that wish to receive continued federal Medicaid funding would be compelled to accept a block grant..."

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