Florida Budget Impasse Raises Key Federalism Questions

By Debra Miller [1]
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With a special session of the Florida legislature underway to adopt a state budget for the next fiscal year that begins July 1, federalism questions abound.

Florida Gov. Rick Scott filed a lawsuit against the Obama administration in April, challenging what Florida Attorney General Pam Bondi characterized in an April 28 press release as “the federal government’s attempt to coerce Florida into expanding Medicaid” by withholding federal funding for hospitals that provide care to the uninsured. The federal government had notified Florida it would withhold $2.2 billion in funding for Florida hospitals in fiscal year 2016.

“The federal government is trying to do precisely what the U.S. Supreme Court held that the Constitution prohibits it from doing—forcing states to expand Medicaid by threatening to cut off funding for unrelated programs,” Bondi said in the release. “The president, once again, is overstepping his authority, this time by trying to force Florida to expand Medicaid through the Affordable Care Act.

“Whether to expand Medicaid is a policy decision for Florida, and the decision should ultimately be made by Floridians, through their elected state officials, not by the federal government through force and coercion.”

Kansas and Texas have joined the lawsuit, according to a May 4 press release from Scott’s office.

"I am glad Kansas and Texas are joining our fight against the Obama administration for attempting to coerce Florida into Obamacare expansion by ending an existing federal health care program and telling us to expand Medicaid instead," Scott said in the press release. "The U.S. Supreme Court has already called this sort of coercion tactic illegal. Making sure all of our families have access to affordable, high quality health care is incredibly important and we will continue to fight to protect the health care of all of our families."

“This lawsuit raises some really interesting questions. From a lawyer’s perspective, this is an exciting case,” Lisa Soronen, director of the State and Local Legal Center in Washington, D.C., told CSG.

Soronen explained that the courts have not fully clarified what constitutes coercion on the part of the federal government when it comes to withholding funds to the states over a policy dispute. In the 2012 case, National Federation of Independent Business v. Sebelius, the Supreme Court declared that states must have a choice in expanding Medicaid under the Affordable Care Act, prohibiting the federal government from withholding Medicaid funds if they did not. However in another important case, South Dakota v. Dole, the court did hold that the federal government could withhold certain highway funds if a state did not raise its drinking age to 21.
“The question is 5 percent to 100 percent. Where does it fall on the spectrum? What is enough to be called coercion. The criteria are unclear for how much is too much,” said Soronen. The Florida lawsuit, she added, might provide more definition.

Scott did not sit on his hands after filing the lawsuit. In May, he met with U.S. Department of Health and Human Services Secretary Sylvia Burwell in Washington, D.C., to discuss how to resolve the hospital funding issue.

Florida state Rep. Shevrin Jones told CSG that Scott explained to Burwell the dilemma of public hospitals in Florida, many that may not be able to stay in business without the federal funding for care of low-income, uninsured patients.

“Even though we are suing the federal government, the governor went and asked for a favor,” Jones said. “And it appears to have worked to some degree.”

The federal government has agreed to provide Florida transitional funding for the hospitals of $1 billion for the 2016 fiscal year coming up and an additional $600 million in fiscal year 2017, down from the current $2.1 billion amount. Gerald Whitney Ray, spokesperson for Florida AG Bondi, confirmed to CSG that the litigation over the federal funding of hospital services to low income persons is ongoing.

Jones said that while the funding is critical to fill a gap in the Florida budget, the impasse over Medicaid expansion remains. On Friday, June 5, the Florida House of Representatives rejected Medicaid expansion after what the Sarasota Herald-Tribune characterized as a marathon debate.

Medicaid expansion is dead for this year, but the legislature still has to finish the 2016 fiscal year budget, including filling the budget gap left by reduced federal funding that compensated hospitals for care to the uninsured.

The Sarasota Herald-Tribune said Senate leaders who were behind the expansion proposal, even though Gov. Scott was not, expect to revive the proposal in the regular 2016 legislative session.