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ALABAMA: ROUND 1

State-Level Field Network Study of the Implementation of the Affordable Care Act

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State University of New York

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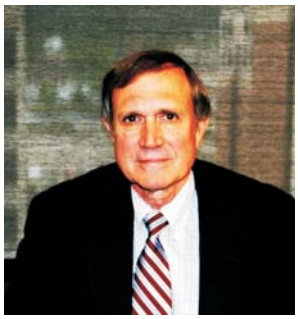

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ALABAMA: ROUND 1

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Part 1 – Setting the State Context

1.1. Decisions to Date

Introduction

Political Context

Alabama is one of the reddest of Red States. Similar to most Southern states, Alabama was a Democratic stronghold from Reconstruction through the 1950s; however, southern Democrats were always more conservative than the party as a whole. In terms of presidential politics, Alabama became largely Republican beginning in 1964, voting for Democrats only in 1968 (George Wallace) and 1976 (Jimmy Carter). The popular vote in the last three presidential elections was: 2012 — 61 percent Republican, 38 percent Democrat; 2008 — 60 percent Republican, 39 percent Democrat; and 2004 — 63 percent Republican, 37 percent Democrat.[1] In 2010, the Republican Party (much to its own surprise) gained control of both houses of the Alabama legislature for the first time in 136 years. In addition, all state-level offices are held by Republicans, and the state Democratic Party is in some disarray.

State Health Insurance Context

More than 670,000 Alabamians under age sixty-five, or about 16 percent of the population, are uninsured. Most uninsured Alabamians are in working families (77 percent) where at least one

person is employed either full time or part time. The largest total number and percentage of uninsured is aged nineteen to thirty and the uninsured are disproportionately people of color, although whites make up the majority of the uninsured population.[2]

The state insurance market is dominated by Blue Cross Blue Shield of Alabama (BCBSAL). In 2010, it had a 91 percent market share in the individual market with some 121,000 covered lives. Golden Rule, United Healthcare, and Humana had 4 percent, 3 percent, and 2 percent market shares, respectively. BCBSAL also had a 95 percent market share in the small group market.[3] Alabama has been identified by President Obama as an example of a noncompetitive insurance market. The state is also the locus of a national class action antitrust complaint against all Blue Cross Blue Shield plans filed in federal district court in Birmingham in July 2013.

The Birmingham insurance and health care delivery markets have been the subject of an October 2013 report by the Center for Studying Health System Change. The report focuses on the decisions to take a federal default exchange and not expand Medicaid. Of particular interest is the summarization of state insurance regulations that do not require guaranteed issue, allow carriers to underwrite based on health status with no rating restrictions, have no medical loss ratio requirements, and require rate filings but not insurance rate reviews by the Department of Insurance.[4]

Major Actors and Institutions

Major actors and institutions include:

- **Governor Robert Bentley, (R)** — Bentley was elected in 2010 and is a candidate for reelection in 2014. He is expected to run unopposed in the 2014 primary. Prior to becoming governor, Dr. Bentley served two terms in the Alabama House of Representatives (District 63, Tuscaloosa). He is a dermatologist trained at the University of Alabama at Birmingham (UAB). Dr. Bentley established Alabama Dermatology Associates, one of the largest practices in the Southeast.[5]
- **Don Williamson, MD**, State Health Officer — Dr. Williamson has served as the state health officer for over twenty years. Uniquely, the position is not appointed by the governor, but by the state Board of Health. The state's Children's Health Insurance Program (CHIP) is independent of Medicaid and housed within the Department of Public Health; it contracts for services through BCBSAL. Dr. Williamson effectively runs the Alabama Medicaid Agency as well, by virtue of his chairmanship of the Alabama Medicaid Advisory Commission. This Commission was established by the governor and the legislature in response to budgetary shortfalls in the agency and the resignation of its director.

Dr. Williamson championed a constitutional amendment that provided new funding for Medicaid.

- **State Senator Greg Reed and State Representative Jim McClendon** —They chair the Senate and House health committees, respectively. These legislators served as cochairs of the Alabama Health Insurance Exchange Study Commission that initially recommended the state develop a state-based exchange.
- **Commissioner Jim L. Ridling** —Ridling was appointed commissioner of the Alabama Department of Insurance by Governor Bob Riley in 2008 and has continued to serve under Bentley. The department was the lead agency in the state's initial exploration of a state-based insurance exchange.
- **Terry Kellogg, FSA** — Kellogg was appointed president and CEO of Blue Cross Blue Shield of Alabama in 2010. He has worked at BCBSAL for over thirty years as chief actuary, executive vice president, and chief operating officer.
- **David Bronner** — Bronner has been CEO of Retirement Systems of Alabama (RSA) since 1973. He has undertaken an investment strategy for RSA funds that includes direct investments in Alabama, notably the Robert Trent Jones Golf Trail. He has been a strong advocate of expanding the Medicaid program.
- **Jim Carnes** — Carnes is communications director for Alabama Arise, a coalition of low-income advocacy organizations. After working with the Southern Poverty Law Center, he joined Alabama Arise in 2003.

Federal Planning Grant

The Alabama Department of Insurance received a federal exchange planning grant of approximately $1 million in 2010. In November 2011, the department was awarded an $8.6 million federal Level One Establishment grant to support contracts and activities concerning exchange implementation. In addition, Alabama received technical assistance from the Robert Wood Johnson Foundation through the State Health Reform Assistance Network. The assistance included help setting up health insurance exchanges, expanding Medicaid to newly eligible populations, streamlining eligibility and enrollment systems, instituting insurance market reforms, and using data to drive decisions.[6]

Decisions on Health Exchanges

Although Bentley initially supported Alabama's implementation of a state-based health insurance exchange, he announced on November 13, 2012, that the state would default to a federally facilitated exchange.

The process resulting in the decision to default to a federally facilitated exchange unfolded as follows:[7]

- Bentley's executive order created the Alabama Health Insurance Exchange Study Commission to make exchange recommendations.
- In November 2011, the fifteen-member commission recommended establishment of the Alabama Health Insurance Marketplace with a quasi-public authority to operate the exchange following a free market facilitator model. The authority would administer the individual as well as the small business exchanges.
- A bill establishing the state exchange passed the state house; however, in May 2012, Bentley threatened to veto the bill if passed by the Senate before the Supreme Court ruled on the Affordable Care Act (ACA) constitutionality.
- The bill failed at the close of the 2011 session as did a similar bill in the 2012 session.
- Bentley signed a bill into law in May 2012 prohibiting health plans operating within an Alabama exchange from offering abortion services except in cases of life endangerment, rape, or incest.
- As of August 2014, the state has not applied for, and has not received, any money to promote or educate citizens about the federally facilitated exchange.

State Approach to the Exchange

It was reported in September 2013 that three companies have proposed insurance plans through the federally facilitated health insurance exchange — BCBSAL, United Healthcare, and Humana. BCBSAL and United Healthcare were said to have proposed statewide coverage, while Humana had proposed covering fifty of Alabama's sixty-seven counties. Humana indicated it would focus on markets where it already had a presence and an established health care provider network.

However, when the exchange launched in October, it only included plans offered by BCBSAL and Humana. BCBSAL was statewide while Humana offered plans in only three counties: Jefferson and Shelby (the Birmingham area) and Madison (Huntsville).

In late October, the Alabama media reported that BCBSAL had notified 87,000 policyholders that it would not be renewing their policies because they were not ACA-compliant. Unlike some carriers in other states, it appears that BCBSAL did not give these policyholders the option of early renewal (prior to December 31st) that would have allowed the policyholders to continue their existing coverage for one final year. In addition, it was reported that many BCBSAL policyholders were experiencing substantially increased health insurance rates.[8]

Alabama ACA Navigator Grant Recipients

As reported by the Centers for Medicare & Medicaid Services (CMS), the U.S. Department of Health and Human Services (HHS) awarded $1.4 million to five Alabama navigators. The awardees are:[9]

- **Ascension Health** (Anticipated grant amount: $202,706). Ascension Health is the nation's largest Catholic and nonprofit health system. The Ascension Health navigator project will assist consumers (individuals and small employers) in understanding new programs, taking advantage of consumer protections, and navigating the health insurance system to find the most affordable coverage that meets their needs.
- **AIDS Alabama, Inc.** (Anticipated grant amount: $501,380). AIDS Alabama devotes its energy and resources statewide to helping people with HIV/AIDS live healthy, independent lives and works to prevent the spread of HIV. AIDS Alabama navigators will conduct communitywide educational events and presentations in an effort to educate Alabamians about the federally facilitated marketplace. The project will focus on those newly eligible for health insurance, especially reaching out to lower- and middle-income populations.
- **Samford University** (Anticipated grant amount: $326,794). Samford University, located just outside of Birmingham, will work with existing networks through its pharmacy, nursing, and education and professional studies schools to facilitate enrollment of individuals. The existing networks of schools and churches will reach a diverse community in the rural and metropolitan communities of northern Alabama.
- **Catholic Social Services–Archdiocese of Mobile** (Anticipated grant amount: $20,750). The Service Center of Catholic Social Services has provided essential services and skills training in Mobile County since 1953. The service center's Affordable Health Insurance Selection Program will provide enrollment assistance to low-income, underinsured, uninsured, and vulnerable participants living in Mobile County. The archdiocese, however, declined the award.
- **Tombigbee Healthcare Authority** (Anticipated grant amount: $392,356). Tombigbee Healthcare Authority (THA) will place navigators in eighteen counties in the Alabama Delta Region to help consumers understand the new federal marketplace coverage options and find the most affordable coverage that meets their health care needs. To achieve this goal, THA will develop a contractual agreement with its existing Delta Rural Access Program (DRAP) partners to expand their program focus.

THA and these partnering agencies have been providing the Delta Region counties access to primary and preventive health care services, education, and resources for more than nine years through outreach efforts in schools, churches, community centers, homes, and other community outlets.

When the grants were announced in mid-August, Alabama Attorney General Luther Strange joined forces with twelve other states to express concern about privacy protection in a letter to HHS Secretary Kathleen Sebelius.

ACA and Exchange Marketing and Publicity

Prior to October 1, 2013, there was little publicity or Alabama-specific marketing concerning the exchange, the website, or sign-up procedures. With the advent of the open enrollment, the Alabama media ran stories very similar to national ones focusing on the difficulty of accessing the federal website.

The Exchange Website

As with many of the states' exchange websites, the Alabama website was initially overwhelmed, and access was difficult and slow. It was reported in the *Birmingham News* that AIDS Alabama, which received federal grant money to help people navigate health reform, said enrollment "bogged down" because "there has been so much publicity and a huge pent-up demand." A potential twenty-seven-year-old consumer reported that he had to try the website four or five times before getting through. He said it was worth the wait, adding, "Once I got through all the technical glitches it was fairly easy to navigate."

Our research assistant was given the task of trying to enroll. She indicated that trying three times a day, it took her two weeks to get through sufficiently to apply. Once in, it took two hours to complete the application. However, she was not able to look at premiums or examine policies.

Decisions on Medicaid Expansion

On November 13, 2012, Bentley announced that he would not expand Medicaid "under the current structure that exists" because Alabama "simply can't afford it."[10] A UAB study argued that a state expansion would lead to about $20 billion in new direct and indirect spending over the first seven years of the expansion and would net the state some $935 million in new tax revenue, after paying for the state's share of the expansion costs.[11] A study funded by the Alabama Hospital Association concluded that the expansion would generate some 30,000 new jobs.[12] In addition to the hospitals, state retirement system director Bronner has been particularly critical of the governor's decision as has Carnes, the director of Alabama Arise.

The state has enacted legislation to introduce Medicaid managed care, and some argue that this could be used to justify a

change in the "current structure" of Medicaid.[13] Others argue that any change will await the end of the primary season in the summer of 2014.

1.2. Goal Alignment

Alabama has taken what might be called a "passive resistance" approach to the exchange. The state has declined to play any facilitating role in the exchange, undertaking none of the state options available to it as a federally facilitated exchange. The Department of Public Health, for example, declined to submit an application to be an exchange navigator. The Department of Insurance has not been given authority to review or set insurance rates.

The state has not moved to "positively obstruct" the exchange as have some states. For example, it has not enacted legislation requiring additional training or licensure for insurance navigators. Nor has it moved to change the "attachment points" for eligibility for stop loss coverage in the reinsurance market. This may be because the legislature has not been in session since these issues became contentious. However, some have suggested that the state's political attitude is one of "we're just not going to bother with this."

In contrast, the state has taken federal matching funds to expand and combine the enrollment process for Alabama Medicaid and the CHIP program. It maintains that its new software is up and running and able to determine eligibility based upon ACA requirements. The system is also ready to transfer "partial applications" to the federal default exchange for final subsidy determination and enrollment, "once the feds are ready to receive them."

Reinstatement of Health Plans

In mid-November 2013, President Barack Obama requested that health insurers provide a one year continuation of insurance plans that violate ACA requirements. As noted earlier in this report, Blue Cross and Blue Shield of Alabama, with 91 percent market share in the individual health insurance market, had sent cancellation letters to 87,000 customers in its individual and family markets, offering replacement policies that comply with the ACA. The majority of these policies were offered at a higher rate.[14]

In response to Obama's request, BCBSAL announced that it would not reinstate its current health plans not in compliance with the ACA. Blue Cross spokesperson Koko Mackin stated, "A one-year continuation of policies that violate the ACA's requirements could create significant legal and financial risks to our policyholders, the state and our company." Further, Blue Cross stated that "the temporary reinstatement of policies that are non-ACA compliant would create dual classes of policyholders and destabilize the state's insurance market and the risk pools associated with these health plans."[15] The Alabama Department of

Insurance responded with a statement, saying "state regulators across the nation are justifiably concerned about the potential for market disruptions resulting in higher insurance costs to consumers."[16] Gene Ramsey, president of the Birmingham Association of Health Underwriters, agreed, stating "to go back to the old plans would destabilize the health insurance model and cause greater issues for those who were put back on their old plans."[17]

Support for Medicaid Access

In mid-December 2013, the Alabama Hospital Association announced the formation of Alabama's Better Economy Starts Today (BEST), a coalition of Alabama organizations to "advocate expanding access to health care by allowing more Alabamians to participate in the Medicaid program — or by developing an Alabama-driven alternative to expand care."[18] To provide information concerning the effort, the coalition created a website, www.alabamasbest.org, to continue highlighting facts related to expanded health coverage.

Part 2 – Implementation Tasks

2.1. Exchange Priorities

Alabama has no role in setting exchange priorities. It has taken a passive resistance approach with respect to the federal exchange. No interagency task forces have been established.

2.2. Leadership — Who Governs?

Bentley is running for reelection in 2014 and has little or no competition.[19] Therefore, it is likely the political environment will remain, and the passive resistance approach to the ACA will continue. A key issue to watch will be how the ACA impacts hiring decisions by businesses in Alabama.[20] Republicans have a reputation of being pro-business, which might soften the governor's position.[21]

It is conceivable that some Republican members of the legislature will introduce measures to expand Medicaid, in as much as such an action was taken in the last legislative session. However, Bentley would almost certainly veto such legislation, so it is unlikely to emerge from committee.

Democratic candidates for governor will undoubtedly raise Medicaid expansion as a campaign issue, but there appears to be no interest in proposing a state-based insurance exchange at this time.

2.3. Staffing

State agencies have reported privately that there has been no effort to expand staff or assign dedicated state staff to facilitate the federal default exchange.

2.4. Outreach and Consumer Education

There have been no state efforts at outreach or consumer education with respect to the ACA. Public affairs radio spots produced for the federal government announcing the health insurance exchanges have played on some radio stations. Bronner, the head of the Retirement Systems of Alabama, has used his retiree newsletter and op-ed pieces to remind people of the economic benefits to the state of an expansion of Medicaid. Throughout 2013, the *Birmingham News* has printed editorials, political cartoons, and columns from political commentators on the advantages of a Medicaid expansion.

The local news media generally has covered the rollout of the ACA as a news story.

2.5. Navigational Assistance

As noted above, navigational assistance is provided by four organizations — Ascension Health is the nation's largest Catholic and nonprofit health system; AIDS Alabama, an HIV/AIDS advocacy group; Samford University (Birmingham) through its pharmacy, nursing, and education and professional studies school; and the Tombigbee Healthcare Authority in the Alabama Delta Region through the Delta Rural Access Program.

2.6. Interagency and Intergovernmental Relations

2.6(a) Interagency Relations. There are no ongoing efforts at interagency relations as they relate to the ACA, consistent with the passive resistance offered in the state.

2.6(b) Intergovernmental Relations. The state is not interacting with the federal government with respect to the ACA. The exception to this general statement relates to the Medicaid and CHIP programs, which have upgraded their eligibility determination process and software to be consistent with the requirements of the ACA. Thus, they are able to exchange applications for the existing programs with the federal government.

2.6(c) Federal Coordination. There appears to be none, in as much as the state is not assisting in any elements of the exchanges nor expanding its Medicaid program.

2.7. QHP Availability and Program Articulation

2.7(a) Qualified Health Plans (QHPs). Only two insurers are offering health plans in the Alabama individual exchange. These are Blue Cross and Blue Shield of Alabama and Humana. However, this simple statement is a bit misleading. Humana is offering plans in only three counties: Jefferson and Shelby (Birmingham) and Madison (Huntsville). In each rating area, it offers one catastrophic, bronze, silver, gold, and platinum plan. This does exceed the minimum of a single silver and gold plan required by the ACA. BCBSAL offers plans in all counties: a single catastrophic, bronze and platinum plan in each together with two silver and two gold options.

2.7(b) Clearinghouse or Active Purchaser Exchange. As a federal default state, Alabama has a federal clearinghouse exchange. This is also the model that was recommended by the governor's exchange task force in 2012.

2.7(c) Program Articulation. There is no articulation between the programs.

2.7(d) States That Did Not Expand Medicaid. The state Medicaid and CHIP programs will transfer applications to and from the federal programs to establish eligibility and enrollment in the state's existing Medicaid and CHIP programs.

2.7(e) Government and Markets. With $4 billion in revenue, Blue Cross Blue Shield of Alabama is one of the largest businesses in the state. BCBSAL has the largest health insurance market share in a single state, according to the American Medical Association. While market share estimates vary, the *Birmingham News* reported that BCBSAL serves 86 percent of the market with the next closest health insurance market concentration in Michigan, with BCBS of Michigan controlling 67 percent of its state's market.[22] In 2013, BCBSAL's membership increased to 1,643,000 and cash reserves grew to $806,152,000 (according to a BCBSAL spokesperson, "these reserves represent less than four months of Blue Cross insured claims").[23] In fact, BCBSAL points out that among the fifty states, Alabama has the lowest average family premiums among employers, according to the federal government's Medical Expenditure Panel Survey.[24] Yet, the HHS considers Alabama to be one of six states where the rate review process by the Alabama Department of Insurance to be ineffective.[25]

Although BCBSAL dominates the insurance market, resulting in the least competitive insurance market in the U.S., Alabama does not have some of the highest premiums. A Kaiser Family Foundation analyst indicated that "a dominant insurer may be able to negotiate lower reimbursement rates for doctors and hospitals, and if the insurance market is well regulated this savings can be passed on to consumers."[26]

2.8. Data Systems and Reporting

The Medicaid and CHIP eligibility systems have been upgraded and are consistent with the ACA. Reporting obligations under existing Medicaid and CHIP continue.

Part 3 – Supplement on Small Business Exchanges

3.1. Organization of Small Business Exchanges

The employer mandate has been delayed until 2015 and the options available in the federal default SHOP have been limited. Alabama has undertaken no efforts with respect to a SHOP exchange.

Part 4 – Summary Analysis

4.1 Policy Implications

The policy implications at this point are fairly clear cut. Alabama will follow the federal lead on the health insurance exchange and will not assist in any overt way. This is likely to change only if the state sees some clear advantages of having its own exchange.

The state's position as a passive resister suggests that it will not enact provisions that undermine the intent of the ACA. It will not require licenses for navigators, for example. This may change if the state legislature gets involved. However, currently there have been no public statements to this effect by members of the legislature.

Medicaid is another matter. There are elements in the state strongly supporting an expansion, and a coalition led by the state hospital association has been formed to push for it. A Democratic gubernatorial candidate will raise expansion as a campaign issue as well. However, the disarray of the state Democratic Party undercuts the success of this effort. Moreover, the budget deal passed by the Congress and signed by the president on December 26th has provisions delaying cuts in Medicare/Medicaid "disproportionate share" payments until October 15, 2015. This takes much of the financial pressure off of safety net hospitals in the state from a failure to expand Medicaid. Thus, Medicaid expansion, while more likely than a state-based exchange, is still only a remote possibility.

As of late December 2013, Alabama enrollment in the exchange is modest. HHS reported as of November 30, 2013, 25,282 Alabamians had completed an application for coverage through the exchange, and 3,448 had selected a marketplace plan.[27] It is unknown how many have paid their share of the premium for these plans. The upshot of this low enrollment, if it holds, is that BCBSAL, the only significant insurer in the exchange, may have fewer enrollees and disproportionately poorer risks than prior to the opening of the exchanges. This is likely to result in higher premiums offered in the exchange in the 2014 open enrollment period. This low enrollment also suggests that access to health services will not be eroded as a result of the law; too little will have changed.

4.2. Possible Management Changes and Their Policy Consequences

Given the small probability of change in Alabama, the biggest policy consequence is the loss of new federal dollars and commensurate tax revenues that would have been obtained from a Medicaid expansion.

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