Conditional Spending and Other Forms of Federal Cost Sharing

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INTRODUCTION

Many of the United States’s most important social welfare programs are administered by the states under mandate from the Federal Government. This Briefing Paper seeks to provide background for the legal discussion and policy debate regarding such Federal programs. Part I explores the policy rationales behind the Federal Government’s choice to engage in conditional spending and considers in detail recent legislative efforts to reform the mechanism through which the Federal Government imposes spending mandates on the states. Part II outlines the legal framework that courts use to assess the constitutionality of grants of Federal funds and demonstrates the continued significance of this debate in light of recent litigation over the Bush Administration’s Medicare reforms. Part III discusses a rough taxonomy that can be used to classify Federal spending programs. Finally, Part IV considers case studies of Federal spending programs, focusing on the size, programmatic features of, and statutory structures of the programs.

I. FEDERAL COST SHARING: AN OVERVIEW

A. Introduction

The Federal Government often decides to address national social problems by channeling money to individuals through state governments. While often contextualized in larger legal debates about the relation between different sovereigns, the financial relationship between the Federal and state governments is also circumscribed by political and budgetary realities both in Washington and in state capitals throughout the country.

Recognizing that many of their citizens face social problems that require government intervention, the states constantly struggle with the Federal Government over
the division of responsibility for the solutions to these problems. These struggles manifests themselves in a complicated system of Federal Government programs and grants designed to aid states in tackling many of the nation’s challenges. In essence, states want the most Federal money possible with the fewest conditions attached to it, and the Federal Government wants to spend the least possible while exerting as much control over program implementation at the state level as possible.

**B. Recent History**

One place where these conflicting goals came to a head is in the area of unfunded mandates. In its desire to see its priorities achieved at the state level, the Federal Government often places many types of restrictions on states. To the extent that these restrictions require the spending of state and not Federal dollars, they are traditionally characterized as unfunded mandates. Recognizing this phenomenon as a growing and potential long-term problem for states, Congress passed the Unfunded Mandates Reform Act of 19951 (“UMRA”). The fundamental goal of the UMRA was to highlight the cost of congressional legislation for states.2 The UMRA, however, maintained that conditions for obtaining most Federal grants are generally not considered mandates.3 The UMRA defined Federal mandates in three different ways: enforceable duties, changes in larger entitlement programs, and reductions in Federal funding for existing mandates.4 An enforceable duty exists when Congress compels states to act in a certain way unless that

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3 CONG. BUDGET OFFICE, supra note 2, at 3.
4 Id. at 1.
requirement is imposed as a condition for Federal aid.\footnote{See UMRA § 101, 2 U.S.C. § 658(5)(A)(i) (2000) (defining enforceable duties that qualify as federal intergovernmental mandates).} A change in an entitlement program that provides more than $500 million to state governments and results in a new condition or reduction in funding is a mandate as long as states do not have the flexibility to offset the costs or loss of funding with reductions to other parts of the program.\footnote{Id., 2 U.S.C. § 658(5)(B) (defining changes in entitlements that qualify as federal intergovernmental mandates).} Finally, a general reduction in Federal funding for an existing mandate is itself considered a mandate under the UMRA.\footnote{Id., 2 U.S.C. § 658(5)(A)(ii) (defining reductions in federal financial assistance that qualify as federal intergovernmental mandates).}

The UMRA requires the Congressional Budget Office (“CBO”) to provide Congress with estimates of the size of any intergovernmental mandates in authorizing legislation.\footnote{See id., 2 U.S.C. § 658c; CONG. BUDGET OFFICE, supra note 2, at 1–2.} The UMRA prohibits consideration of a piece of legislation unless the authorizing committee has published a CBO mandate statement and the legislation provides direct spending or authorizing authority to cover the costs above the threshold established by the Act.\footnote{See UMRA § 101, 2 U.S.C. § 658d(a).} A member of the House or Senate must raise a point of order for these rules to be enforced.\footnote{Id., 2 U.S.C. § 658d(c)(2).} Since the passage of the UMRA, a point of order has been raised only twelve times, all in the House.\footnote{CONG. BUDGET OFFICE, supra note 2, at 2} Although the aforementioned technical methods of enforcement are available, the primary result of the UMRA has been to bring the unfunded mandate issue to the attention of legislators.\footnote{Id. at 1.} In fact, between 1996 and 2004, the CBO found only 12% of the 4700 bills proposed in Congress to have any intergovernmental mandates and of those, 91% would not have created costs for states in

\begin{itemize}
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  \item \footnote{Id., 2 U.S.C. § 658(5)(A)(ii) (defining reductions in federal financial assistance that qualify as federal intergovernmental mandates).}
  \item \footnote{See id., 2 U.S.C. § 658c; CONG. BUDGET OFFICE, supra note 2, at 1–2.}
  \item \footnote{See UMRA § 101, 2 U.S.C. § 658d(a).}
  \item \footnote{Id., 2 U.S.C. § 658d(c)(2).}
  \item \footnote{CONG. BUDGET OFFICE, supra note 2, at 2}
  \item \footnote{Id. at 1.}
\end{itemize}
excess of those allowed under the UMRA. \textsuperscript{13} Although the UMRA did resolve some of the tension surrounding the unfunded mandate issue, states continue to argue that the Act did not go far enough and that the Federal Government continues to impose sizable unfunded obligations on the states. \textsuperscript{14}

The issues surrounding unfunded mandates and more generally the struggle between the Federal and state governments over funding issues arose again during the early 2000s. As money from tax revenues and tobacco settlement awards began to dry up, many states found themselves in untenable financial positions. \textsuperscript{15} Faced with budgetary shortfalls, state legislators and governors faced a choice: raise taxes, cut spending, or transfer obligations to the Federal Government. \textsuperscript{16} For obvious political reasons, the last option was the most popular, and so state political actors clamored for more Federal Government funding. \textsuperscript{17}

It is also worth noting that many categories of state spending tend to be countercyclical, falling when the economy rises, and rising when the economy falls. In particular, programs that provide support for low-income and unemployed people, such as Medicaid, tend to be countercyclical. \textsuperscript{18} Additionally, countercyclicality is often associated with programs that provide assistance for cyclical industries such as

\textsuperscript{13} Id. at 2.
manufacturing. But aside from these logical and practical reasons, state spending may take on an increased countercyclical nature for political reasons: in times of high Federal deficits — typically during economic downturns — the Federal Government may choose to soften its reported deficit by demanding greater spending from the states, essentially “export[ing] the deficit.”

II. LEGAL PRINCIPLES

A. Doctrine

The Supreme Court made its seminal decision about the Federal Government’s power to condition funding on state policy in South Dakota v. Dole. The law at issue in Dole attempted to establish a national minimum drinking age by requiring the Secretary of Transportation to withhold a fraction of Federally apportioned highway funding to any state “in which the purchase or public possession . . . of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.” South Dakota argued that the condition exceeded the constitutional limitations on Congress’s spending power, but the Court, in a 7–2 opinion, held that Congress’s encouragement of a national minimum drinking age “is a valid use of the spending power” even if Congress could not impose a national minimum drinking age directly.

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19 Id. at 2631.
23 Cf. U.S. CONST. art I, § 8, cl. 1 (“The Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.”).
24 Dole, 483 U.S. at 211–12.
In rejecting South Dakota’s challenge, the Court established a five-element test that a conditional spending decision must satisfy to be a valid exercise of congressional power. First, Congress can only exercise its spending power to promote the general welfare. Second, Congress must abide by a clear statement rule: any spending condition must be unambiguous and must “enable[e] the States to exercise their choice knowingly, cognizant of the consequences” of their policy decisions. Third, a nexus must exist between the condition and the Federal interest in the related spending decision. Fourth, the condition must not violate an independent constitutional limitation on the spending power. Fifth, and finally, the condition must not be “so coercive as to pass the point at which ‘pressure turns into compulsion.’” Although the Dole decision has been much criticized because it allows Congress to effectuate state policy reforms even when it cannot mandate such reforms directly, Dole remains a viable precedent.

25 Id. at 207.
26 Id. (quoting Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981)).
27 See id. at 207–08 (“[C]onditions on federal grants might be illegitimate if they are unrelated ‘to the federal interest in particular national projects or programs.’” (quoting Massachusetts v. United States, 435 U.S. 444, 461 (1978) (plurality opinion))).
28 Id. at 208. For example, a condition that directly preferences one race over another would presumably fail to meet this element of the test.
29 Id. at 211 (quoting Charles C. Steward Mach. Co. v. Davis, 301 U.S. 301, 590 (1937)).
30 See, e.g., Mitchell N. Berman, Coercion Without Baselines: Unconstitutional Conditions in Three Dimensions, 90 GEO. L.J. 1, 30–42 (2001) (arguing that the spending condition in Dole should have been held unconstitutional); Thomas R. McCoy & Barry Friedman, Conditional Spending: Federalism’s Trojan Horse, 1988 SUP. CT. REV. 85, 86 (stating that Dole “seriously undermines the role of state government in the federal system”).
31 For example, the Sixth Circuit recently applied Dole to conclude that Federal prison funds can lawfully be conditioned on a state’s agreement to comply with the Religious Land Use and Institutionalized Persons Act. See Cutter v. Wilkinson, 423 F.3d 579, 584–90 (6th Cir. 2005). And two courts of appeals recently used Dole to conclude that Federal education funds can lawfully be conditioned on a state’s waiver of sovereign immunity from suit under the Rehabilitation Act of 1973. See Miller v. Tex. Tech Univ. Health Sciences Ctr., 421 F.3d 342, 348–50 (5th Cir. 2005); Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 490–96 (4th Cir. 2005) (same).
In addition, the Supreme Court’s decisions in *Printz v. United States*\(^{32}\) and *New York v. United States*\(^{33}\) make clear — or at least strongly suggest — that state participation in or administration of any federal program must be voluntary, even if the Federal Government funds the entire program. In *New York*, for example, the Court considered a Federal law that provided incentives for and imposed obligations upon states to dispose of radioactive waste. The Court upheld the monetary incentives as valid exercises of the Federal spending power,\(^{34}\) but it invalidated the obligation as an infringement of the political safeguards of federalism.\(^{35}\) As a general rule, the Court stated, “where the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished” because “elected state officials cannot regulate in accordance with the views of the local electorate in matters not pre-empted by federal regulation.”\(^{36}\) Thus, as a doctrinal matter, the Federal Government cannot “‘commandeer’ state governments into the service of federal regulatory purposes”; doing so would “be inconsistent with the Constitution’s division of authority between federal and state governments.”\(^{37}\)

Likewise, in *Printz*, the Court considered a provision of the Brady Handgun Violence Prevention Act (commonly known as the “Brady Bill”) that required state law enforcement officers to run background checks on prospective handgun purchasers, on an interim basis, until the Federal Government was able to adopt a national system and take

\(^{34}\) See id. at 171–73 (citing *Dole*, among other cases).
\(^{35}\) See id. at 174–77.
\(^{36}\) Id. at 168–69.
\(^{37}\) Id. at 175.
over responsibility for the background checks.\textsuperscript{38} In a 5–4 opinion, the Court held the provision unconstitutional, again as an infringement of the political safeguards of federalism that is destructive of state officials’ accountability to the local electorate:

\textit{[New York v. United States held] that Congress cannot compel the States to enact or enforce a federal regulatory program. Today [in Printz] we hold that Congress cannot circumvent that prohibition by conscripting the State’s officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.}\textsuperscript{39}

The \textit{New York–Printz} doctrine thus illustrates that the Constitution tightly circumscribes the Federal Government’s power to compel state participation in a Federal legislative or regulatory scheme.

\section*{B. A Recent Development}

A little more than two years ago, the United States enacted the Medicare Prescription Drug, Improvement, and Modernization Act of 2003\textsuperscript{40} (the “MMA”). The MMA, among other things, added certain prescription drug benefits to the Medicare Act effective January 1, 2006.\textsuperscript{41} The states are required to contribute to the MMA’s financing by making payments to the Federal Government,\textsuperscript{42} known as “clawbacks,”\textsuperscript{43} ostensibly because the MMA’s prescription drug benefit displaces part of the Medicaid drug costs currently borne by the states.

\textsuperscript{39} \textit{Id.} at 935.
\textsuperscript{41} See 42 U.S.C. § 1395w-101.
\textsuperscript{42} \textit{Id.} § 1396u-5(c).
In March 2006, five states filed a lawsuit against the U.S. Department of Health and Human Services, seeking to invoke the Supreme Court’s original jurisdiction and alleging that the MMA’s prescription drug benefit program is an unconstitutional infringement on state sovereignty. These states — Texas, Kentucky, Maine, Missouri, and New Jersey — contend that the MMA’s prescription drug benefit is a “purely Federal benefit program” and that the clawbacks thus represent an unconstitutional tax levied on the states. The states seek to distinguish the clawback payments from the condition in \textit{Dole} on the ground that the clawbacks are not conditions on the receipt of Federal funds, but rather are taxes — direct mandates for the states to remit payments to the Federal Government. But even if the clawbacks are classified as conditions on Federal spending, the states argue that they should still be held unconstitutional under \textit{Dole}. In particular, the states contend that the clawbacks fail the second element of the \textit{Dole} test — the requirement that conditions be unambiguous. “The clawback introduces a substantial element of uncertainty into each States’ budget-making process,” the states argue, because “[s]tates have no control over, nor any way to accurately predict . . . future Part D spending, yet they are compelled to fund it,” which renders the clawback “a monetary burden on the States each year of uncertain dimensions.” Additionally, the states argue that the clawbacks violate “the anticommandeering doctrine” established in \textit{New York} and \textit{Printz} because the clawbacks “command[] action by the States in their

\footnotesize{\textsuperscript{44} Texas v. Leavitt, No. 22O135 ORG (U.S. filed Mar. 3, 2006).  
\textsuperscript{45} Motion for Leave To File Bill of Complaint, Supporting Brief, and Bill of Complaint at 3–4, Texas, No. 22O135 ORG, available at http://www.oag.state.tx.us/newspubs/releases/2006/030306medicare_complaint.pdf.  
\textsuperscript{46} Id. at 14–15.  
\textsuperscript{47} Id. at 15 n.10.}
sovereign capacities” by “conscript[ing] state legislatures to appropriate and remit funds to support a purely federal program.”

Ten states, as amici, advance a slightly different argument. The amici states read *Dole* as permitting only those spending conditions that “satisfy accountability concerns” because the legislators who superintend conditional grants are politically accountable to their constituents and responsible for their decisions at both the state and Federal levels. The clawbacks, in contrast, “thwart[] accountability in a way that traditional Spending Clause legislation does not” because they remove all control over the clawback payments from the states. The amici also make an argument based *New York* and *Printz* that echoes the argument that the complaining states advance.

### III. Classifying Federal Cost-Sharing Programs

Broadly speaking, there are two types of mechanisms for Federal funding of state-level programs: fully funded programs and matching programs. Before exploring the difference between those two financing structures, it is useful to get a sense of where the Federal money flowing through these mechanisms is targeted. Figure 1, which provides a breakdown of Federal Government grants to states by category, reveals that most of the funds in this area go to some form of income security program or to health related spending. Figure 2 shows the how this categorical breakdown has changed over time. While federal government grants to education have stayed constant over time, health grants and to some extent income security grants have risen rapidly over time. Figure 2

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48 Id. at 17–18.
50 Id. at 13.
51 See id. at 8–11.
also shows the amount by which grants to states by the Federal Government have grown over time. The total amount of grants from the Federal Government to states has grown in nominal dollars from $91,285 million in 1980 to $426,243 million in 2005.\[^{52}\] As Figure 3 shows, in terms of percentage of GDP, there was a substantial growth in the grants to states until the mid-1970s, after which the percentage of GDP spent on states largely stabilized.

With the function and size of Federal Government grants to states in mind, it is useful to distinguish between the two aforementioned types of Federal funding for state administered programs. The first type of program, in which the Federal Government fully funds the program, is generally tied to state need.\[^{53}\] Within this category there are two further sub-categories of fully funded spending. The first are block grants, such as the Head Start and School Lunch programs, which are funded at the beginning of each fiscal year by Congress and have their expenditures capped.\[^{54}\] The other sub-category of fully funded programs consists of Federally funded payments to individuals. These programs include Supplement Security Income (“SSI”), Food Stamps, and the Earned Income Tax Credit. Under these programs, the Federal Government sets all of the relevant policies and does not require states to spend any of their own money.\[^{55}\]


\[^{54}\] Id. at 10.

\[^{55}\] Id.
Additionally, the programmatic outlays are not capped at the beginning of the year but rely on the relevant eligibility criteria to determine how much money must be spent.\textsuperscript{56}

Matching programs are structurally much more complicated than fully funded programs. Matching programs can also be divided into two sub-categories: open-ended matching programs and closed-ended matching programs. Open-ended matching programs are programs in which the state controls entirely how much money it receives because the Federal Government will match a portion of state spending.\textsuperscript{57} Medicaid is the primary example of an open-ended matching program: for Medicaid, the portion of state spending the Federal Government will match is inversely related to the state’s income and generally is determined by the Federal Medical Assistance Percentage (“FMAP”).\textsuperscript{58} On the other hand, closed-ended matching programs are capped at a certain level and have pre-determined matching rates.\textsuperscript{59} The primary example of closed-ended matching programs is the Maternal and Child Health (“MCH”) Block Grant, under which the states pay $3 for every $4 of Federal funds they receive.\textsuperscript{60} However, the Federal Government’s annual outlay for the MCH program is currently capped at $850 million annually.\textsuperscript{61}

To summarize, Federal grants to states can be either uncapped or capped, and they can be either fully funded by the Federal Government or dependent on state matching. Table 1 illustrates how the above-discussed programs fit into these categories.

\begin{itemize}
\item \textsuperscript{56} Id.
\item \textsuperscript{57} Id. at 9.
\item \textsuperscript{58} Id.
\item \textsuperscript{59} Id.
\item \textsuperscript{60} 42 U.S.C. § 703(a) (2000).
\item \textsuperscript{61} Id. § 701(a).
\end{itemize}
Table 1. Classification of Federal Funding Programs

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<th>Uncapped</th>
<th>Capped</th>
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<tr>
<td>Fully Funded</td>
<td>Food Stamps</td>
<td>Head Start</td>
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<tr>
<td>Matching</td>
<td>Medicaid</td>
<td>Maternal and Child Health Block Grant</td>
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While different in structure, these types of Federal Government grants to states have many common features in terms of how much money states ultimately receive from the Federal Government. First, and most relevant to the inquiry at hand, many of both types of programs come with conditions attached. As discussed above, these conditions include eligibility and service criteria. Additionally, all of these programs focus on the wealth of the states, the need of the residents in the state or both in determining how to allocate money across states. Furthermore, regardless of whether the Federal Government pays for the entirety of the program, these programs generally have the effect of reducing the difference in social spending and outcomes between states, although large differences in both areas persist. Finally, state variation in spending and outcomes under any of these programs are determined by the same three factors: need, fiscal capacity and fiscal effort. While need is self-evident, fiscal capacity refers to the ability of states to match Federal funds and to provide their own resources to those in need. Fiscal effort, on the other hand, is the proportion of the resources available to the state that it is willing to spend on these programs. The more fiscal capacity and fiscal

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63 Id. at 2.
64 Id. at 3–6.
effort a state has, the greater the amount of money it will receive from the Federal Government and likely the better its outcomes will be.\textsuperscript{65}

IV. CASE STUDIES

B. Fully Funded Program Case Study: Food Stamps

The Food Stamp program is a national need-based program financed entirely by the Federal Government and run by states and localities. Eligibility for the program is determined by a household’s income and resources. There are also work and citizenship requirements. Currently, a household of three cannot have over $1744 in gross monthly income or over $1341 in net monthly income.\textsuperscript{66} However, in some cases, such as when a member of the household is receiving certain types of disability payments, the household must only meet the net income test.\textsuperscript{67} Furthermore, a household cannot have resources, such as a bank account, worth more than $2000 or, if a member of the household is over 60 or disabled, $3000.\textsuperscript{68} Many resources, such as a home or other government benefits, and in some cases cars, are not counted. Finally, able-bodied adults must register for work, take part in employment training classes and accept suitable jobs, in order to qualify for food stamps.\textsuperscript{69}

\textsuperscript{65} The policy reasons behind the various structures employed by federal cost sharing initiatives are beyond the scope of this Briefing Paper. For an overview of the executive, legislative, and judicial forces that have combined in recent years to shift control over regulatory and fiscal authority to the states, see Super, supra note 18, at 2546–50.


\textsuperscript{67} Id.

\textsuperscript{68} Food Stamp Program, Resources (Rules on Resource Limits), http://www.fns.usda.gov/fsp/applicant_recipients/resources.htm (last visited May 2, 2006).

\textsuperscript{69} Food Stamp Program, About Food Stamps, http://www.fns.usda.gov/fsp/applicant_recipients/about_fsp.htm (last visited May 2, 2006).
The Food Stamp Act of 1977\textsuperscript{70} authorizes the Federal Food Stamps program. Section 4 of the Act authorizes the Secretary of Agriculture “to formulate and administer a food stamp program under which, at the request of [an agency responsible for administering the food stamp program within each state], eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment.”\textsuperscript{71} Although the state agencies have obligations to engage in recordkeeping and antifraud measures,\textsuperscript{72} the states need not contribute any financing to the program other than a portion of their own administrative costs.\textsuperscript{73} Additionally, in keeping with the \textit{New York/Printz} doctrine described in section II.A, state participation in the Food Stamps program is voluntary.\textsuperscript{74}

Since the national Food Stamps program began, the number of participants has grown from 4.3 million in 1970 to 25.6 million in 2005 while the average benefit per person has risen from $10.55 to $92.69.\textsuperscript{75} This has translated into total Federal Government grants to states rising from $559 million in 1970 to $4,485 million in 2005.\textsuperscript{76} As Figure 4 reveals, while there has been nominal growth in spending on the Food Stamp program, it has stayed almost constant as a percentage of Federal

\textsuperscript{71} \textit{Id.} § 2013(a). In addition, the current version of the Act has “authorized to be appropriated such sums as are necessary [to carry out the Food Stamps program] for each of the fiscal years 2003 through 2007.” \textit{Id.} § 2027(a)(1).
\textsuperscript{72} See, e.g., \textit{id.} § 2020(a).
\textsuperscript{73} See \textit{id.} § 2025(a) (“[T]he Secretary is authorized to pay to each State agency an amount equal to 50 per centum of all administrative costs involved in each State agency’s operation of the food stamp program . . . .”).
\textsuperscript{74} See \textit{id.} § 2013(a) (stating that the Food Stamps program operates “at the request of the State agency” (emphasis added)); \textit{id.} § 2020(d) (imposing administration requirements only on “each State desiring to participate in the food stamp program” (emphasis added)).
\textsuperscript{76} \textsc{Historical Tables, supra} note 52, at 239 tbl.12.3.
Government grants to states over time. When the Federal Government reduced its commitment to the Food Stamp Program by between $200 and $300 million a year, the CBO scored the reduction as a new mandate under the UMRA. This demonstrates that even though the Food Stamps program is a fully funded program, it creates some of the same issues as other more explicitly conditional programs.

C. Matching Program Case Study: Medicaid

The Medicaid program provides healthcare related benefits to low-income people. While the Federal Government establishes some broad guidelines for the program, the amount and quality of coverage is primarily determined at the state level. There are three groups of people states may cover: the categorically needy, the medically needy and special groups. States are required to cover the categorically needy who are primarily families who meet Aid to Families with Dependent Children eligibility requirements as of July 16, 1996, pregnant women and children under the age of 6 with a family income less than 133% of the Federal poverty level, children 6 to 19 with family income below 100% of the Federal poverty level, and SSI recipients. If the state has a medically need program, it must cover pregnant women, children under the age of 18 and certain blind people. The state has the option to cover children up to the age of 21, the elderly, disabled people as well as a number of other, smaller groups of people. Beyond the categorically and medically needed, states can cover certain groups such as Medicare beneficiaries and qualified working disabled individuals and can apply for waivers to cover additional groups. The Federal Government requires that states provide certain

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77 CONG. BUDGET OFFICE, supra note 2, at 2.
79 Id. at 1–2.
services to the categorically needy, including, inpatient hospital care, outpatient hospital care, nursing facility services, family planning services and pregnancy related services.

The Medicaid Act\textsuperscript{80} requires states that choose to participate in Medicaid to participate in financing the program as well: “The sums made available under [the annual Medicaid authorization] shall be used for making payments to the States which have submitted . . . State plans for medical assistance.”\textsuperscript{81} Each state plan must satisfy sixty-seven statutory requirements\textsuperscript{82} and, in particular, must:

\begin{quote}
[P]rovide for financial participation by the State equal to all . . . non-Federal share [of the expenditures under the plan for which payments are authorized] or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will ensure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan.\textsuperscript{83}
\end{quote}

Provided that a state’s plan complies with the § 1396a requirements, the Federal Government is obligated to remit to the state, among other reimbursements, a proportion of the amount expended as medical assistance\textsuperscript{84} under the State plan,\textsuperscript{85} where the proportion varies inversely with the state’s per capita income.\textsuperscript{86} If a state plan falls out of substantial compliance with the § 1396a requirements, the Federal Government has the authority to terminate all payments after reasonable notice.\textsuperscript{87}

\textsuperscript{81} Id. § 1396.
\textsuperscript{82} See id. § 1396a(a)(1)–(67).
\textsuperscript{83} Id. § 1396a(a) (2).
\textsuperscript{84} The Medicare Act defines “medical assistance” as payment for needy individuals of the cost of inpatient hospital services, laboratory services, nursing facility services, dental services, hospital care, and various other types of medical services. Id. § 1396d(a).
\textsuperscript{85} Id. § 1396b(a)(1).
\textsuperscript{86} The proportion of Federal assistance is termed the “Federal medical assistance percentage” (FMAP). Mathematically, the FMAP for each state is computed as \[100\% - (45 \% \times (\text{state’s per capita income} / \text{national per capital income})^2)\], except that each state’s FMAP always remains between 50% and 83%. See id. § 1396d(b).
\textsuperscript{87} Id. § 1396c.
In 2002, Medicaid had over 49 million beneficiaries with an overall average payment of $4,290 per beneficiary. The amount the Federal Government spends on Medicaid through grants to the states has risen from $272 million in 1965 to $181,720 million in 2005. As Figure 4 reveals, this large nominal increase has also translated into a large increase in Medicaid’s percentage of the Federal Government grants to states. While states are primarily responsible for administering Medicaid, the Federal Government will match all expenditures at a level adjusted for state income, with a static minimum match of 50% and a current maximum of 76% in Mississippi. As a result of the state budgetary shortfalls in the early 2000s, the Federal Government gave the states a one-time $20 billion grant over two years to help further subsidize Medicaid. Even in that context, states have increasingly cut back on their expenditures on Medicaid by reducing non-required eligibility and services provided. This shows that while Medicaid is a heavily conditioned program, in many practical senses the states control the amount of money the Federal Government spends on the program as well as the program’s effects.

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89 See CTRS. FOR MEDICAID & MEDICARE SERVS., supra note 78, at 7.
90 Patrick McMahon, Governors Say $20B Bailout Won’t Fix Woes, USA TODAY, May 29, 2003, at 9A.
Figure 1
Federal Government Grants to States by Category
(Millions of Dollars)\textsuperscript{92}

\textsuperscript{92} HISTORICAL TABLES, supra note 52, at 239 tbl.12.3.
Figure 2
Grants to States by Category of Over Time
(Millions of Dollars) \(^{93}\)

\[^{93}\) Id.
Figure 3
Grants to States of Over Time
(% of GDP)\(^{94}\)

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\(^{94}\) Id.
Figure 4
Programs as a Percent of Total Grants to States
(Millions of Dollars)\textsuperscript{95}

\textsuperscript{95} Id.


