



The U.S. Supreme Court Votes to Uphold and Conserve (Most of) the Patient Protection and Affordable Care Act

Client Advisories

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The United States Supreme Court today finally rendered its much-anticipated decision on the Patient Protection and Affordable Care Act with a carefully crafted opinion in *National Federation of Independent Business v. Sebelius* that manages to constrain the power of the Federal Government without shaking the foundation of President Obama's health care plan (commonly referred to by media pundits as "Obamacare"). The individual mandate, which requires individuals to purchase a health insurance policy providing a minimum level of coverage or pay a "tax" is constitutional. The withholding of Medicaid funds from those States that do not expand Medicaid coverage to all individuals who fall below the 133% poverty line is not. The Court carefully noted that while it cannot abdicate its responsibility on matters of law to other branches of government, it certainly can and must give deference to legally elected officials on matters of public policy. While the decision will have far-reaching political and social implications, the ruling also impacts health care providers. Although the legal challenge focused on whether individuals could be required to purchase health insurance, a Supreme Court decision striking down the individual mandate would, for all practical purposes, have likely delayed or even scuttled the law's other requirements. With the individual mandate now upheld, health care providers and facilities should be prepared for the full implementation of the law.

The legal challenge to the individual mandate centered on whether the Federal Government had the authority to impose a requirement that all persons either purchase health insurance or make a "shared responsibility payment" to the government. The Court found that the government does not have the power to force individuals to participate in commerce, i.e. buy insurance, under its general "interstate commerce powers" by penalizing them if they do not do so; however, Congress may impose a tax on individuals who do not purchase insurance under its general taxing powers. Thus, while the Federal Government cannot authorize, forbid or otherwise control some activities under the interstate commerce clause, it may enact a tax so as to make the occurrence of an activity more or less probable. By so holding, the Court expressly found that the individual mandate imposes a "tax" and not a penalty, because it does not impose criminal sanctions for those who do not purchase health

insurance but instead requires payment of an amount, which is notably less than the actual cost of such insurance, through the IRS for those without insurance. The bottom line is that, regardless of the label, the Court found that the Federal Government could constitutionally coerce individuals into buying health insurance by threatening the imposition of a tax.

The second challenge to the Act concerned the requirement that States expand their Medicaid programs. Currently, the Medicaid program requires States to cover only pregnant women, children, needy families, the blind, the elderly and the disabled. Childless adults are generally not covered. Moreover, States have latitude in defining “needy”. In contrast, the Act would require States to expand their Medicaid programs by 2014 to cover all individuals under the age of 65 whose incomes fall below 133% of the federal poverty line. The Federal Government would pay the entire cost of the expansion through 2016, but following that, the federal level of participation would decrease. States that did not expand would risk losing all of their federal Medicaid payments.

The Court held that the Congress can offer funds under the Act to expand the availability of health care and require that States accepting such funds comply with conditions - like expansion of the Medicaid program. Congress could not, however, threaten States who choose not to participate in the expansion project with termination of all Medicaid funding. To do so would be to transform Medicaid from a program designed to care for the neediest among us to an element of a comprehensive national plan to provide universal health coverage and to compel State participation in violation of Congress’s limited power under the spending clause of the Constitution.

Beyond the legal nuances of the Supreme Court’s ruling, the broader impact is a practical one - if the individual mandate had been overturned, the entire Act may have been in serious jeopardy, as the design of the Act was to create affordable sources of health insurance by including healthy and sick people in broad health care insurance exchanges. Without the individual mandate, it is likely that other provisions of the Act, including those regulating health care providers and employers, would have been undermined or even replaced as the funding would not have been available to keep health insurance affordable. The bottom line is that, unless a new Administration and Congress after the Fall 2012 election can muster the overwhelming political power needed to repeal the Act (which would in all likelihood require a 60-vote majority in the U.S. Senate), the Patient Protection and Affordable Care Act and most of its key provisions will remain in effect during the next Administration.

If you have any questions or concerns regarding this groundbreaking decision, and the impact of the Patient Protection and Affordable Care Act on employers, please contact Archer’s Health Care Group at (609) 580-3700 or (215) 963-3300.

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