June 28, 2012

Supreme Court Upholds Patient Protection and Affordable Care Act But Modifies Medicaid Provisions

The United States Supreme Court today issued its eagerly awaited ruling on the constitutionality of the Patient Protection and Affordable Care Act (PPACA). *NFIB v. Sebelius/Florida et al v. HHS.* In a nutshell, the Court upheld the individual mandate as constitutional but held that the mandatory expansion of the Medicaid program must be optional for states.

The Questions Before the Court

The Supreme Court decision focused on two primary issues. First, the Court was asked to determine whether it was constitutional to require individuals to obtain qualifying private health insurance coverage or pay a penalty (the "individual mandate"). Second, the Court was asked to determine whether it was constitutional to require states to significantly expand eligibility of the state–federal Medicaid program (to cover all citizens up to 133 percent of the federal poverty line) or risk losing all of their existing federal matching funds (the "Medicaid expansion"). The decision also deals with several questions related to these primary issues, such as the Anti-Injunction Act and severability.

The Decision

In an interesting twist, five of the nine justices found the individual mandate was not a permissible exercise of Congress’ power to regulate interstate commerce under the Commerce Clause. However, a different constellation of five justices accepted the Obama administration’s alternative argument that the individual mandate is constitutional under the Congress’ power to tax. The net effect is that the individual mandate is upheld. Chief Justice John Roberts was decisive in the decision, joining the four more conservative justices to reject the Commerce Clause argument while siding with the four more liberal justices to accept the congressional taxing power argument.

In another interesting twist, the Court determined that the Medicaid expansion has to be construed as an optional, not a mandatory, requirement. The majority determined that the Medicaid expansion violates the Constitution because threatening states with the removal of existing federal Medicaid funds unless they agree to the expansion is unacceptably coercive. The Court concluded that the appropriate remedy was to strike the penalty on states for not expanding Medicaid and leave the rest of PPACA unaffected. As modified by the Court, the Medicaid expansion will essentially be an option for a state to choose to pursue.
The Implications

*From a legal perspective*, the Court's decision is a watershed in terms of defining constitutional limitations on the use of the Commerce Clause to justify congressional enactments. The Court has now clearly articulated limits on the use of the power to regulate interstate commerce that did not previously exist. At the same time, the ruling created an important precedent regarding the extent to which Congress can use its power of the purse to incentivize state action.

*From a federal health care policy perspective*, the determination regarding the Commerce Clause is essentially irrelevant because of the determination that the individual mandate is a proper exercise of the taxing power. And many states can now choose to opt against the substantial expansion of their Medicaid programs in 2014. To the extent that states decline to implement the expansion, the number of uninsured persons in the country will be higher than originally projected under the PPACA and the budgetary impact will be lower.

The decision creates a very clear result with regard to the status of the PPACA. The law remains in full force and effect except for the modified Medicaid provisions. This means that:

1. The creation of new health exchanges to provide a marketplace in each state for regulated health insurance products remains on track to be implemented in 2014. This includes extensive federal regulation of health insurance (e.g., guaranteed issue, pre-existing condition exclusions), the provision of tax credits to those earning up to 400 percent of the federal poverty line, penalties on individuals and businesses that do not obtain or provide qualified insurance coverage and tax credits for small businesses.

2. The various new taxes, reimbursement reductions, and fraud/waste/abuse provisions that were included as part of the financing of the PPACA remain in full force and effect. This includes the tax on insurance policies, the pending medical device tax, the so-called "Cadillac Tax" on higher value health plans, the Medicare reimbursement reductions, productivity reductions and the Independent Payment Advisory Board (IPAB).

3. The numerous provisions aimed at promoting reform, realignment and the provision of value-based healthcare services remain intact. This includes value-based payment modifiers, sanctions on avoidable readmissions and hospital acquired conditions, the physician value-based payment modifier, the $10 billion Center for Medicare and Medicaid Innovation, new payment methodologies (such as payment bundling and shared savings programs) and similar provisions.

4. Various unrelated provisions that were included in the PPACA are also preserved, such as the Physician Payment Sunshine Act, the regulatory provisions governing biosimilars and the Indian Health Care Act.

What’s Next?

The decision is highly complex and will no doubt be parsed and debated over the coming weeks and months.

The political implications are very clear: health care reform will be front and center in the fall elections, and the only chance that the PPACA will not be largely implemented would be if President Obama were to lose his bid for re-election. Republicans in Congress will renew their calls for outright repeal as the administration continues implementation.

States have two interesting choices: (1) those that have not moved forward with establishing a state exchange must decide whether to continue to sit on the sidelines and await the election results or begin to move on creating an exchange; and (2) whether to substantially expand their Medicaid programs with the incentive of generous matching funds. It is likely that these issues will play out differently in different states.

Unless the election alters the current trajectory, the commercial health insurance industry would appear to be a winner in this outcome because of the likelihood of being able to market policies through the exchanges to millions of new customers. Prior estimates were that the exchanges would cover approximately 30 million persons, including about 15 million newly insured individuals.
However, the Medicaid managed care industry may lose out on expansion opportunities in states that do not opt to expand their programs in 2014.

Providers, similarly, will see a drop in uninsured patients as a consequence of the exchanges, but are now facing a potential muddle on the Medicaid side. The PPACA presumes major reductions in provider payments in order to partially finance coverage expansion under Medicaid and the exchanges. For example, such reductions include cuts to inflationary updates for a number of providers, as well as significant Medicaid and Medicare disproportionate share hospital (DSH) payments. To the extent that some states now elect not to expand Medicaid coverage, but reductions in reimbursement remain, this would adversely impact providers.

The authors wish to thank Holland & Knight Associate Joel Roberson, a member of the firm’s Public Policy & Regulation Practice Group, for his assistance in the preparation of this alert.

About Us

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