

June 28, 2012

## *Supreme Court Rules Obama's Health Care Reform Act Constitutional*

In a landmark decision, the Supreme Court upheld the constitutionality of President Obama's Patient Protection and Affordable Care Act (PPACA). At 2,400 pages, the PPACA is a complicated stew of insurance law, Medicare reform, and Medicaid expansion involving the creation of new agencies and insurance exchanges, delivery models and required benefits. The central goal of Congress was to expand coverage for people who were unable to get coverage or unable to get it at affordable prices. The method Congress chose to reach this goal was to require most people to purchase "off budget/off-balance sheet" mandated insurance coverage instead of using the traditional method of increasing taxes to fund additional health care spending. Constitutional attacks against PPACA began in the federal courts before the ink had dried.

Just after 10:15 a.m. on June 28, 2012, the Supreme Court issued its 193-page split decision (5-4), upholding the constitutionality of the PPACA, and more notably, the highly controversial "individual mandate" provision, which requires non-exempted individuals to buy health insurance or pay a penalty. Chief Justice Roberts, writing for the majority, first addressed the Supreme Court's authority to hear the case at this time or whether it was barred by the Anti-Injunction Act, 26 U.S.C. §7421(a). The Court held that the Anti-Injunction Act does not bar the suit because Congress did not intend the payment to be treated as a "tax" for purposes of the Anti-Injunction Act, but rather a "penalty".

Turning to the constitutionality of the PPACA's individual mandate, the Court held that the Individual mandate is not a valid exercise of Congress's power under the Commerce Clause because it does not regulate existing commercial activity but rather, it compels individuals to become active in commerce by purchasing insurance or pay a penalty. The Court further held that the Mandate is not a valid exercise of Congress's power under the Necessary and Proper Clause because even if the mandate is necessary to the PPACA's reforms, this expansion of federal power is not the proper means for effectuating those reforms. However, the Court upheld the Mandate as being within Congress's power to "lay and collect Taxes" under Art. I, § 8, cl. 1 of the Constitution, likening the shared responsibility payment to a tax for constitutional purposes. In addition to upholding the PPACA individual mandate provision, the Supreme Court upheld many of the PPACA's less controversial provisions, including the "guaranteed issue" requirement (the mandatory coverage of pre-existing conditions) and the community rating requirement (allowing insurers to charge higher premiums because of medical history).

Addressing challenges to another of the PPACA's controversial provisions—the Medicaid expansion provisions—the Court invalidated the expansion because it threatens States with the loss of current Medicaid funding for failure to comply with the expansion. The Court stated that the "financial inducement" that Congress chose is much more than "relatively mild encouragement—it is a gun to the head". However, the Court found that the unconstitutionality of the forced expansion was fully remedied by precluding the Secretary of Health & Human Services from applying the penalty provisions for a State's noncompliance.

The following list provides guidance for what remains following the Court's ruling.

- Most Americans must obtain health insurance or pay an annual penalty.
- Insurers must accept all applicants.
- Insurers cannot charge individuals differently based on health or demographic.
- Insurers cannot drop individual's policies based on their health.
- Insurers cannot impose lifetime monetary amounts on coverage.
- Insurers must cover immunizations, contraceptives, and mental health screening without copays or deductibles.
- Medicaid will expand to cover an estimated 16 million low-income Americans, although States will not lose their previous Medicaid funding if they decide not to comply with the expansion.
- Using federal grants, states must create clearinghouses for health insurance options.
- Employer with at least 50 employees must offer group-rate insurance or face penalties.
- Young adults may stay on their parents' plans until age 26.
- Families and individuals with income up to 400% of the poverty line will receive subsidies to help pay for insurance.
- Small businesses that are exempt from the mandate will receive tax credits to help provide insurance.
- Community health centers will receive grants for construction projects.

For your reference, the decision can be found here: <http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>.

If you have any questions, please contact the authors of this alert, your Butzel Long attorney, or any member of the Butzel Long Health Care Practice Group listed below.

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