

Legal Alert

July 2, 2012

Health Care Reform: Supreme Court upholds individual mandate but places restrictions on Congress' expansion of Medicaid

By Megan M. Hard, Attorney

In a 5-4 vote on June 28, the Supreme Court of the United States upheld the controversial Individual Mandate provision of the Affordable Care Act (ACA). The Supreme Court also issued a plurality opinion, meaning that no majority opinion was reached, regarding the expansion of the Medicaid program under the ACA. According to the plurality, the expansion of the Medicaid program was constitutional, but the provision requiring that a state lose all Medicaid funding if the state chose not to participate in the Medicaid expansion was not constitutional. Thus, the expansion can proceed, but the states will have the option of whether to participate.

Individual Mandate

Chief Justice Roberts authored the majority opinion relative to the Individual Mandate, joined by Justices Kagan, Sotomayor, Breyer and Ginsburg. The majority upheld the Individual Mandate under Congress' power to tax. Under the Mandate, if an individual does not maintain health insurance, the only consequence is that he must make a payment to the IRS when he pays his taxes; this payment is called the "shared responsibility payment". Thus, the Mandate need not be read as a legal command to buy insurance. Rather, the Mandate establishes a condition, i.e. not owning health insurance, which triggers a tax. The Court found that Congress had the authority under its taxing power

to enact such a tax. The joint dissenting opinion of Justices Kennedy, Scalia, Alito and Thomas would have found the Individual Mandate an unconstitutional exercise of the taxing power because, according to their dissent, the Mandate is a penalty, not a tax, and therefore it is outside of Congress' authority to enact.

Interestingly, a majority of the Justices on the Supreme Court found that the Individual Mandate was not authorized under Congress' commerce power, which was the government's primary argument for the law's constitutionality. Rather, the four dissenting Justices and Chief Justice Roberts concluded that under the Commerce Clause, Congress can only regulate "activity" that has a substantial impact on interstate commerce. However, Congress' enactment of the Individual Mandate was attempting to regulate "inactivity", specifically by requiring that individuals enter the market and purchase insurance, which the Justices found to be outside of the scope of Congress' commerce power. Because the Individual Mandate was upheld on other grounds, however, this analysis by the Court does not impact the Mandate's success.

The majority upheld the Individual Mandate under Congress' power to tax. Under the Mandate, if an individual does not maintain health insurance... he must make a payment to the IRS when he pays his taxes.

Medicaid Expansion

Despite the Individual Mandate being the highlight of most of the news coverage and

commentary surrounding the ACA and its journey through the federal court system, it was the Medicaid expansion provision that truly divided the Court, so much so that a true majority was not reached. Under the ACA, Congress substantially expanded the definition of individuals eligible for Medicaid, increasing coverage by 2014 to all individuals under the age of 65 with incomes below 133% of the federal poverty line. The plurality opinion held that this expansion was constitutional under Congress' Spending Clause power. However, the Medicaid expansion also contains a requirement that if a state does not accept the new expansion, the state will lose all of its Medicaid funding, which on average accounts for around 10% of each state's budget. The plurality found that this condition imposed by Congress amounted to compulsion or coercion, which is not allowed under the Spending Clause. Congress, in short, is free to impose conditions on the financial incentives that it provides to the states, but when pressure to accept such funds turns into compulsion, that power is overstepped.

Instead of ruling that the entire Medicaid expansion was unconstitutional, however, the plurality ruled that the compulsion provision is severable from the remaining portion of the law, allowing the remainder of the expansion to occur. In short, the Medicaid expansion is constitutional, but states have the option of whether or not to participate without fear of losing their current Medicaid funding. Justices Ginsburg and Sotomayor would have found the entire Medicaid expansion constitutional, including the requirement that a state participate or lose all

Medicaid funding, but both Justices concurred in the result of the plurality, which was to sever the unconstitutional provision from the remainder of the Medicaid expansion, as opposed to throwing out the entire expansion as unconstitutional.

The four dissenting Justices would have ruled that the entire ACA, including the Individual Mandate and Medicaid expansion, is invalid.

Conclusion

One conclusion that can be reached by the Court's ruling is that members of the health care industry should continue to progress in implementing the requirements of the ACA and look to the federal and state governments for guidance as such guidance is released. One of the next benchmarks that will be implemented as a part of the ACA is the statewide exchanges for individuals and companies to purchase insurance. The exchanges become effective January 1, 2014.

In short, the Medicaid expansion is constitutional, but states have the option of whether or not to participate without fear of losing their current Medicaid funding.

Smith Haughey will continue to monitor the implementation of the ACA and the guidelines issued by the state and federal governments that will impact members of the health care industry. If you have any questions or concerns, now or in the future as the ACA is implemented, please feel free to contact our Health Law Team.

Megan counsels and represents health care providers in the areas of health law and medical malpractice defense. She can be reached directly at mhard@shrr.com or 616-458-2362.

Smith Haughey's Health Law Attorneys:

Brian J. Kilbane, Co-Chair: 616-458-0296 ■ bkilbane@shrr.com
Kirk W. Morgan, Co-Chair: 616-458-3319 ■ kmorgan@shrr.com
Joseph E. Belsito: 616-458-2490 ■ jbelsito@shrr.com
Megan M. Hard: 616-458-2362 ■ mhard@shrr.com
Christopher R. Genther: 616-458-0222 ■ cgenther@shrr.com
R. Jay Hardin: 231-486-4534 ■ rhardin@shrr.com