Health Law Daily Wrap Up, Court upholds ACA, but modifies Medicaid expansion, (Jul. 2, 2012)

Health Law Daily Wrap Up

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Implementation of the Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148), commonly referred to as the Accountable Care Act (ACA), will continue in the wake of the U.S. Supreme Court's 5 to 4 vote to uphold the sweeping reform of the U.S. health care system (National Federation of Independent Business v. Sebelius, No. 11-393, June 28, 2012). Chief Justice John Roberts was joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan in writing the majority opinion regarding the individual mandate.

The key part of the decision was that the individual mandate to purchase health insurance was ruled constitutional. The Court disagreed, however, with the Obama Administration's main arguments that the individual mandate was a valid exercise of Congress' power under the Commerce Clause and the Necessary & Proper Clause of the U.S. Constitution. Instead, the Court concluded that the mandate fell within Congress' power to tax.

Roberts, joined by Justices Breyer and Kagan, found that the ACA's Medicaid expansion violated the Spending Clause of the U.S. Constitution because it threatened states with the loss of existing Medicaid funding.

Background

Under the ACA, starting in 2014 most Americans are required to carry health insurance, either through their employer; a public program such as Medicare, Medicaid or TRICARE; or by purchasing health insurance as an individual in the private health insurance market. Individuals purchasing insurance will have a choice of health plans to purchase, which will vary in coverage and price, with all plans having a minimum essential benefits package.

Any individual required under the law to purchase health insurance who refuses to do so will be subject to a penalty, or tax, for any month during a year in which he or she does not have coverage. The penalty or tax will be based on the individual’s income but will not be more than the cost of a basic health insurance plan in the person’s geographical area. The ACA also required states to expand their Medicaid programs by 2014 to cover all individuals under the age of 65 with incomes below 133 percent of the federal poverty line.

States also will have to provide to all Medicaid beneficiaries a new essential health benefits package that will match the benefits that a basic health plan in the private health insurance market would offer. The federal government will pay 100 percent of the cost of the newly eligible under Medicaid through 2016. After that, the federal government's share of the payment to cover the newly eligible will drop to 90 percent. States that do not expand Medicaid coverage to the newly eligible faced loss of all federal funding for Medicaid.

Twenty-six states, several individuals, and the National Federation of Independent Business brought suit in federal district court, challenging the constitutionality of the individual mandate and the Medicaid expansion. The Court of Appeals for the Eleventh Circuit upheld the Medicaid expansion as a valid exercise of Congress's spending power but concluded that Congress lacked authority to enact the individual mandate (see ¶303,849).

Decision on individual mandate

The main argument that the Obama Administration used in defending the mandate was that it was a permissible exercise of Congress power under the Commerce Clause of the U.S. Constitution (Article I, Section 8, Clause 3). Roberts wrote for the majority that the Clause “authorizes Congress to regulate interstate commerce, not to order individuals to engage in it.”
Roberts reasoned that the power to regulate commerce is dependent on the pre-existence of commercial activity that can be regulated. According to Roberts, the individual mandate does not regulate commercial activity; instead, it compels individuals to become active in commerce by purchasing a product, on the ground that the failure to do so affects interstate commerce. Congress does not have the power to force individuals who have chosen not to engage in commerce to buy a product they do not desire. To grant such a power to legislators would be dangerously opening a door to a “new and potentially vast domain to congressional authority,” putting a potentially unlimited number of individual decisions under Congress’s authority to make those decisions for people.

The second argument that the Administration made to support the insurance mandate was that the mandate was necessary under the Necessary & Proper Clause (Article I, Section 8, Clause 18 of the Constitution) since it was an “integral part of a comprehensive scheme of economic regulation” of insurance reforms. The Court noted that the Necessary & Proper Clause does not license the exercise of any “great substantive and independent power” beyond those specifically granted in the Constitution. By contrast, the individual mandate provides Congress with the “extraordinary ability to create the necessary predicate to the exercise of an enumerated power.”

The Court did, however, uphold the individual mandate under the Taxing Clause (Article I, Section 8, Clause 1 of the U.S. Constitution). Although the law itself refers to the payment that an individual would make in lieu of purchasing health insurance a “penalty,” the Court concluded that regardless of its label, the payment was a tax because (1) the “penalty” would be paid by individuals when they file their annual income tax returns; (2) the “penalty” does not apply to persons who do not pay federal income taxes; (3) the amount of the “penalty” is calculated by taking into account factors including number of dependents, joint filing status and amount of taxable income; and (4) the requirement is included in the Internal Revenue Code and is enforced by the IRS.

Roberts wrote, “Congress's use of the Taxing Clause to encourage buying something is, by contrast, not new. Tax incentives already promote, for example, purchasing homes and professional educations....Sustaining the mandate as a tax depends only on whether Congress has properly exercised its taxing power to encourage purchasing health insurance, not whether it can. Upholding the individual mandate under the Taxing Clause thus does not recognize any new federal power. It determines that Congress has used an existing one.”

He concluded his discussion of the individual mandate by stating “The Affordable Care Act's requirement that certain individuals pay a financial penalty for not obtaining health insurance may reasonably be characterized as a tax. Because the Constitution permits such a tax, it is not our role to forbid it, or to pass upon its wisdom or fairness.”

**Decision on Medicaid**

During the oral arguments in March, the states argued that the expansion of Medicaid and the threatened loss of all federal Medicaid funding for states that did not comply exceeded Congress's authority under the Spending Clause, which grants Congress the power to pay the debts and provide for the general welfare of the states. The majority concluded that Congress cannot threaten to terminate all Medicaid funding as a means of pressuring states to accept an expansion of Medicaid eligibility.

The majority concluded that Congress cannot threaten to terminate all Medicaid funding as a means of pressuring states to accept an expansion of Medicaid eligibility. Specifically, the termination of all Medicaid funding was not a “relatively mild encouragement” to expand a state Medicaid program to meet the needs of an entire population; rather, it was a “gun to the head.” States must be free to decline participation in the new program without losing their current level of funding.

In effect, while Congress can offer new funds under the ACA to expand availability, they cannot withdraw any existing funding. Although Congress assumed that all states would participate in the expanded program, the Supreme Court found that even if they did not, the expanded coverage program can continue on a state-by-state basis. Failure of all the states to participate does not invalidate the entire portion of the ACA.
Justice Kennedy, in the dissent (in which he was joined by Justices Scalia, Thomas and Alito), had harsh words for the conclusion that the mandate was valid if considered as a tax as opposed to a penalty. “[T]o say that the Individual Mandate merely imposes a tax is not to interpret the statute but to rewrite it,” according to the dissent. The dissent also noted that considering the mandate as a tax was an argument that even the Obama Administration spent little time supporting during the oral arguments in March.

“Rewriting” the mandate as a tax in order to sustain its constitutionality, according to the dissent, “is a question of first impression that deserves more thoughtful consideration than the lick-and-a-promise accorded by the Government and its supporters.”

Regarding Medicaid, the dissenting justices noted that “because the Medicaid Expansion is unconstitutional, ... the most natural remedy would be to invalidate the Medicaid Expansion.” Instead, the majority's conclusion that the Medicaid expansion is acceptable if states that reject the expansion of their Medicaid programs can still retain their existing Medicaid funding “takes the ACA and this Nation in a new direction and charts a course for federalism that the Court, not the Congress, has chosen; but under the Constitution, that power and authority do not rest with this Court.”

In remarks made after the Court's decision, President Obama said, “The highest court in the land has now spoken. We will continue to implement this law.” National Federation of Independent Business v. Sibelius, No. 11-393, June 28, 2012, ¶304,066.