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HEALTH CARE REFORM

Eye on Washington

UPDATE ON U.S. SUPREME COURT AND HEALTH CARE REFORM

BACKGROUND:

Since being signed into law in March 2010, the Affordable Care Act (ACA) has been subject to numerous lawsuits that have challenged the constitutionality of ACA's "individual mandate" (the requirement that most Americans purchase health insurance starting in 2014 or face a financial penalty), as well as other provisions discussed below. As a result of split decisions relating to these lawsuits among several federal appellate courts, the Supreme Court recently heard oral argument on ACA.

ISSUES BEFORE THE SUPREME COURT:

The Supreme Court agreed to hear four distinct issues, each briefly summarized below. Indications are that the Supreme Court will rule before their summer recess begins at the end of June.

1. **Can The Case Be Heard At This Time?** (Argued March 26, 2012)

- *Issue:* Are challenges to the individual mandate barred by the Anti-Injunction Act (AIA)?
- The AIA, a federal law enacted in 1867, provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed" until after the tax is collected.
- Neither ACA's challengers nor the Obama Administration chose to argue that the case was barred by the AIA, so the Supreme Court appointed a disinterested party to argue the AIA prohibition in front of the Court.
- *Implication:* If the penalty for violating the individual mandate requirement is considered to be a "tax," the AIA could prevent the case from being heard by the Supreme Court until after the tax has been paid (i.e., until 2015 or later).



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2. **Is The Individual Mandate Constitutional?** (Argued March 27, 2012)

- *Issue:* Can the federal government require individuals to purchase health insurance?
- The Supreme Court will seek to resolve a split in decisions at the federal circuit court level as to whether Congress has the power under the Constitution to enact the individual mandate. The Sixth Circuit upheld ACA's individual mandate as a constitutional exercise of congressional authority under the Commerce Clause. On the other hand, the Eleventh Circuit held that the individual mandate was unconstitutional.
- *Implication:* The individual mandate is considered central to the funding and operation of ACA and necessary to avoid adverse selection (i.e., individuals postponing the purchase of health insurance until they need coverage).

3. **Is The Law Severable?** (Argued March 28, 2012)

- *Issue:* If the individual mandate is determined by the Supreme Court to be unconstitutional, can some or all of the rest of ACA remain intact?
- ACA does not contain a "severability clause." A severability clause provides that, if one part of a law is deemed invalid, then the remaining parts still remain in effect.
- Absent a specific severability clause, the Supreme Court still has discretion to determine which, if any, parts of the law will remain intact. On the other hand, if the Court determines that the individual mandate is not severable from the rest of ACA, the entire law may be invalidated if the individual mandate is found to be unconstitutional.
- *Implication:* If the individual mandate is found by the Supreme Court to be unconstitutional but severable, the Court would leave other parts of ACA (to be determined by the Court) in place.

4. **Are the Amendments Expanding Medicaid Coverage Constitutional?** (Argued March 28, 2012)

- *Issue:* Do ACA's provisions expanding Medicaid eligibility exceed the federal government's authority to place conditions on funds provided to states?
- Starting in 2014, ACA requires states to expand eligibility for their Medicaid programs to include all residents earning less than 133 percent of the federal poverty level. The federal government would fund the full cost of the expansion for the first 10 years, then fund 90% of the cost thereafter.



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- A state that does not comply with the Medicaid eligibility expansion would lose all federal Medicaid funding, not just funding related to the most recent expansion of eligibility. The states' argument is that the additional funding by the federal government for Medicaid tied to the states' compliance with the Medicaid eligibility expansion is unfairly coercive.
- Many states challenged the constitutionality of this requirement as exceeding the federal government's authority to place conditions on funds provided to states. However, prior to the Supreme Court taking the case, no district or circuit court had found ACA's Medicaid provisions to be unconstitutional.
- *Implication:* If ACA's expansion of Medicaid eligibility is found to be a violation of Congress's spending powers, it also raises the question of whether ACA's Medicaid provisions are severable from the remainder of ACA without a specific severability clause. If not, and the Court finds ACA's expansion of Medicaid to be unconstitutional, it could invalidate the entire law.

As national Health Care Reform continues to evolve, further clarifications will be provided and new challenges will emerge. ADP will continue to inform you of such developments.

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