Welcome to this webinar. We will begin at 3:00pm EDT.

The audio portion of today’s webinar is available via broadcast audio on your computer. If you prefer, you can dial-in to listen: 800-745-8951.

This webinar is being recorded, and will be posted this week on two APHA webpages:

• http://apha.org/advocacy/Health+Reform/court_cases/
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The Supreme Court’s Decision on the Affordable Care Act: Implications for Prevention and Public Health

American Public Health Association Webinar

July 5, 2012
ACA Litigation by the Numbers

- 27 Federal district court cases
- 11 Federal circuit court of appeal cases
- 1 Federal circuit courts holding minimum coverage requirement unconstitutional
- 2 Federal circuit courts holding minimum coverage requirement constitutional
- 1 Federal circuit court holding Medicaid expansion constitutional
- 0 Federal circuit courts holding Medicaid expansion unconstitutional
- 90 Amicus briefs supporting constitutionality of the Medicaid expansion
- 17M Individuals who could obtain health coverage through the ACA Medicaid expansion
Setting the Supreme Court Scene

• Appeal from 11th Circuit Court of Appeals
  • Nat’l Federation of Indep. Businesses v. Sebelius
  • Dep’t of Health & Human Services v. Florida
  • Florida v. Dep’t of Health & Human Services

• Oral Argument
  • March 26-28
ACA Provisions at Issue

- **Minimum essential coverage**: Requires individuals to have minimum essential coverage or pay a penalty (a.k.a. individual mandate or individual responsibility)
- **Medicaid Expansion (2014)**: Extends coverage to individuals with incomes below 133%* of federal poverty level
  
  *Plus an additional 5% standard disregard
Four issues considered by the Court

• Whether the Anti-Injunction Act bars challenge to the minimum coverage provision’s penalty until it goes into effect in January 2014.
• Whether Congress has the power under the Constitution to enact the minimum essential coverage provision.
• Whether the mandatory Medicaid expansion is unconstitutionally coercive.
• If unconstitutional, whether the minimum coverage requirement can be severed from the remainder of the Act.
Anti-injunction Act

- Does it prevent the challenge?
  - **Yes**: The individual mandate will generate revenue, therefore, it is a tax. Taxes cannot be challenged until they are assessed or paid (no sooner than 2014-15).
  - **No**: Payment is described as a “penalty,” and Congress deliberately did not use the word “tax.” The purpose of the payment requirement is to give individuals an incentive to have minimum coverage, not to raise revenue.
“Congress . . . chose to describe the ‘[s]hared responsibility payment’ imposed on those who forgo health insurance not as a ‘tax,’ but as a ‘penalty’…. Congress’s decision to label this exaction a ‘penalty’ rather than a ‘tax’ is significant because the Affordable Care Act describes many other exactions it creates as ‘taxes.’”
Minimum Essential Coverage

• Whether the requirement to buy insurance or pay a penalty exceeds Congress’ powers under the Commerce and Necessary and Proper Clauses.
  
  • **No**: Congress has extensive authority to regulate activities with a substantial effect on interstate commerce. Health insurance and health care fall within the scope of activities that can be regulated. The requirement is also authorized by the Necessary and Proper Clause. Without the mandate, individuals would wait until they were sick to purchase insurance, which would make system unworkable.
  
  • **Yes**: Congress does not have the power to regulate inactivity, which is what the failure to purchase insurance is. Moreover, the Necessary and Proper Clause only authorizes actions to be taken in furtherance of a constitutional power.
Majority: Unconstitutional

“...does not regulate existing commercial activity. It instead compels individuals to become active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce. Construing the Commerce Clause to permit Congress to regulate individuals precisely because they are doing nothing would open a new and potentially vast domain to congressional authority.”
Minimum Essential Coverage

• Whether the individual mandate is a valid exercise of Congress’ **power to lay and collect taxes.**
  • **NO:** Congress called it a penalty and it is intended to compel individuals to purchase insurance, not raise revenue.
  • **YES:** It has many of the important characteristics of a tax, including that it is collected and enforced by the IRS and raises revenue.
Majority: Constitutional

• “The exaction the Affordable Care Act imposes on those without health insurance looks like a tax in many respects….It is of course true that the Act describes the payment as a ‘penalty,’ not a ‘tax.’ But while that label is fatal to the application of the Anti-Injunction Act, it does not determine whether the payment may be viewed as an exercise of Congress’s taxing power.”
Majority: Constitutional (cont’d)

• “In distinguishing penalties from taxes, this Court has explained that ‘if the concept of penalty means anything, it means punishment for an unlawful act or omission.’ While the individual mandate clearly aims to induce the purchase of health insurance, it need not be read to declare that failing to do so is unlawful. Neither the Act nor any other law attaches negative legal consequences to not buying health insurance, beyond requiring a payment to the IRS.”
Medicaid Expansion

• Question: Whether the Medicaid expansion impermissibly coerces the States into continuing their participation in the Medicaid program?
  - Yes: The Medicaid expansion is part of the larger ACA and is the only way for states to cover low income people. Medicaid has grown to the point where states cannot afford to decline the expansion and lose all federal Medicaid funds. Potential loss of all Medicaid funding is too onerous a condition.
  - No: The expansion is similar to numerous previous expansions, except that it is more generous to states (100%/90% FFP). Medicaid has always been and remains a voluntary program. No federal court has accepted this argument.
Plurality: different opinions

- Two justices (Ginsburg, Sotomayor): Constitutional
- Four justices (Kennedy, Scalia, Alito, Thomas): Unconstitutional, should be struck down
- Three justices (Roberts, Kagan, Breyer): Constitutional, but remedy allowing HHS Secretary to terminate all Medicaid funding is barred

**RESULT:** Medicaid expansion survives
Majority - mixed holding: Expansion constitutional, enforcement mechanism is not

- The Medicaid expansion “accomplishes a shift in kind, not merely degree. The original program was designed to cover medical services for four particular categories of the needy: the disabled, the blind, the elderly, and needy families with dependent children.”

- “Under the Affordable Care Act, Medicaid is transformed into a program to meet the health care needs of the entire nonelderly population with income below 133 percent of the poverty level.”
Severability

• Medicaid provision authorizing HHS Secretary to withhold all Medicaid funding for failing to comply with Medicaid requirements is unconstitutional, but severable from remainder of ACA.

• However, “nothing in our opinion precludes Congress from offering funds under the Affordable Care Act to expand the availability of health care, and requiring that States accepting such funds comply with the conditions on their use. What Congress is not free to do is to penalize States that choose not to participate in that new program by taking away their existing Medicaid funding.”
All ACA Provisions Survive

- Young adults can stay on parents’ insurance until age 26
- Insurance companies can’t exclude people with preexisting conditions, rescind coverage, discriminate on condition or disability
- States may still obtain permission to offer Medicaid-covered community based services
- Premium assistance tax credits available
- Basic Health Plan option
- And more!
Public health provisions survive

• National Prevention, Health Promotion, and Public Health Council
• Prevention and Public Health Fund
• Requirements that health plans cover substance use disorder treatment;
• Provisions for reasonable break times for nursing mothers in the workplace;
• Programs to improve oral health;
• Provisions increasing Medicare and Medicaid coverage of preventive services;
• Establishment of a national diabetes prevention program;
• Permanent reauthorization of and appropriations for the Indian Health Care Improvement Act;
• And more!
Other challenges on the horizon

• Contraception coverage requirement
  • Challenges by employers claiming violation of religious freedom
• Independent Payment Advisory Board
  • Created to monitor Medicare spending
• Challenges based on invasion of privacy, interference with medical autonomy, usurping legislative authority
Medicaid Expansion: many questions remain

• Is the expansion “optional?”
• May states expand only partially, e.g., only to 75% of FPL?
• May states opt in, then opt out when federal match decreases to 90%?
• Is enforcement of other Medicaid ACA provisions affected?
• Is the Medicaid eligibility Maintenance of Effort (MOE) provision affected?
Questions?
Please use the chat function to submit any questions.

For more information:

somers@healthlaw.org
perkins@healthlaw.org
www.healthlaw.org
www.networkforphl.org
www.apha.org

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