

Health Care Reform Management Alert Series

Supreme Court Upholds Affordable Care Act's Individual Mandate; Limits Medicaid Enforcement Mechanism



Issue 41

This is the forty-first issue in our health care reform series of alerts for employers on selected topics in health care reform. (Our general summary of health care reform and other issues in this series can be accessed by clicking [here](#).) This series of Health Care Reform Management Alerts is designed to provide a more in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

Yesterday, the Supreme Court released the long-awaited decision in *State of Florida v. U.S. Department of Health and Human Services* – the challenge to the Affordable Care Act. The Court concluded that:

- The Anti-Injunction Act does not bar the Court from issuing an opinion on the constitutionality of the individual mandate;
- The individual mandate is constitutional under Congress' specifically enumerated Constitutional power to "lay and collect" taxes;
- Congress cannot revoke state Medicaid funding in its entirety as a penalty for failure to comply with the Affordable Care Act's Medicaid expansion.

In a surprise move, Chief Justice Roberts sided with the four liberal justices (Ginsburg, Sotomayor, Breyer and Kagan) to draft the opinion concluding that the individual mandate is constitutional. Many speculated Chief Justice Roberts would side with the majority so he could draft the opinion, but most thought the majority would be determined by Justice Kennedy, rather than the Chief Justice. The majority opinion was narrowly crafted and evidenced Roberts' view that Congress is limited to those powers expressly enumerated in the Constitution. Justice Kennedy sided with three other conservative justices (Scalia, Thomas and Alito) who would have struck down the entire Affordable Care Act, so Chief Justice Roberts essentially saved the law.

Individual Mandate is a Constitutional Exercise of Congress' Taxing Power

Chief Justice Roberts wrote the opinion for the 5-4 majority concluding that the individual mandate is constitutional. The government had argued that the mandate was constitutional based on Congress' powers under the Commerce Clause, the Necessary and Proper Clause, and Congress' taxing powers.

**Webinar: Full Steam Ahead on
Health Care Reform**

Thursday, July 12, 2012

12:00 p.m. to 1:00 p.m. Eastern
11:00 a.m. to 12:00 p.m. Central
10:00 a.m. to 11:00 a.m. Mountain
9:00 a.m. to 10:00 a.m. Pacific

Registration:

There is no cost for attending this webinar, however, registration is required.

REGISTER

When you register, you'll be given an opportunity to submit topics you would like to see covered in this webinar.

Seyfarth Shaw — Health Care Reform

Writing for the majority, Chief Justice Roberts concluded that the individual mandate is a tax and, as a result, was a valid exercise of Congress' taxing powers. He rejected the petitioners' argument that the mandate fell outside of Congress' taxing powers because Congress called it a "penalty," noting that the Court must look past labels to determine the substance of the mandate, for Constitutional purposes. (The majority simultaneously ruled that the mandate was not a tax for purposes of the Anti-Injunction Act, however). Justice Kennedy, writing for the dissent, noted that the Court had "never held—never—that a penalty imposed for a violation of the law was so trivial as to be in effect a tax."

Chief Justice Roberts separately joined the remaining four conservative justices in rejecting the government's Commerce Clause and Necessary and Proper Clause arguments, noting that while the Commerce Clause grants Congress the authority to regulate activity, that power does not extend to regulating inactivity -- such as a failure to obtain health insurance. Chief Justice Roberts also noted that for a law to be upheld under the Necessary and Proper Clause, it must involve an exercise of authority derivative from, and in service to, a granted power, which the individual mandate was not. Even so, these determinations were not necessary to reach the ultimate ruling on constitutionality, so the Commerce Clause opinions by five of the Justices do not have the same precedential effect as the Court's ruling on Congress' taxing power.

Justice Ginsburg wrote a concurring opinion (joined by Kagan, Sotomayor and Breyer), stating that Chief Justice Roberts was exercising a "novel constraint on Congress' commerce power [that] gains no force from [the Court's] precedent."

Medicaid Expansion Upheld but Court Limits Penalty to Affordable Care Act's Funding

The Affordable Care Act expands Medicaid eligibility to require states to offer benefits to anyone under 65 with income up to 133% of the poverty level. Although a state's participation in Medicaid remains voluntary, the petitioners argued that the law's expansion coerces states to spend more on Medicaid and eliminates the flexibility they previously enjoyed to determine what level of coverage to provide.

Chief Justice Roberts, Justice Breyer, Justice Kagan and the four dissenting conservative justices agreed with this argument, concluding that the government may not revoke all Medicaid funding to penalize a state for failing to expand Medicaid eligibility. Separately, however, the justices split differently (5 to 4) to rule that the Affordable Care Act's overreaching on Medicaid expansion does not require a finding that the entire statute is unconstitutional. So, the Affordable Care Act survives, and Congress may penalize states that reject the Medicaid expansion by withholding only the additional Affordable Care Act funding.

Benefit Design Considerations to be Addressed in Separate Alert

Many plan sponsors were waiting for the outcome of the Court's decision before moving forward with these requirements. While its constitutionality has been settled, the future of the Affordable Care Act remains uncertain with Republicans in Congress pledging to repeal it and the results of the November elections looming. In the interim, however, the Affordable Care Act regulatory requirements must be complied with, including its short-term requirements of the summary of benefits and coverage. And, planning must begin on its long-term requirements, such as the 2014 employer mandate.

Seyfarth Shaw will be issuing a separate Management Alert and sponsoring an additional client webinar to address Affordable Care Act benefits requirements.

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