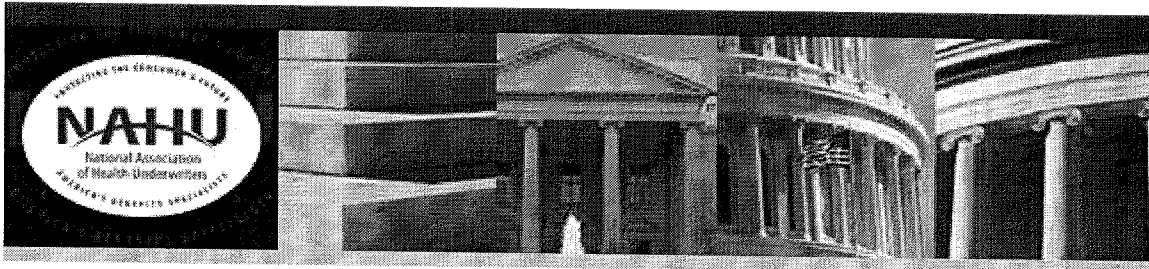


Eva

From: washingtonupdate@nahu.mmsend.com on behalf of washingtonupdate@nahu.org
Sent: Thursday, June 28, 2012 3:23 PM
To: eva@placerwest.com
Subject: Detailed Analysis of Supreme Court Ruling

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NAHU Members:

Here is a detailed analysis of today's Supreme Court ruling, courtesy of our retained counsel, Ernst & Young:

US Supreme Court Upholds Affordable Care Act

The US Supreme Court today (June 28, 2012) upheld the Affordable Care Act (ACA), ruling that the law's individual mandate is a constitutional exercise of Congress's power to impose taxes. With the Court's decision, compliance efforts likely will move ahead at full speed with major provisions of the ACA becoming effective in 2013 and 2014.

In a 5-4 decision, Chief Justice Roberts, joined by Justices Ginsberg, Breyer, Sotomayor and Kagan, concluded, "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."

In the Court's analysis of the ACA's Medicaid provisions, it held that it would be unconstitutional for the federal government to withhold all Medicaid funding in order to force states to comply with the Medicaid expansion. Chief Justice Roberts wrote, "Nothing ... precludes Congress from offering funds under the ACA 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."

The Court ruled that the Anti-Injunction Act, which limits lawsuits challenging a tax before it is assessed, does not apply because Congress specifically provided that the penalty payment enforcing the individual mandate would

not be treated as a “tax.” Notwithstanding acceptance of Congress’s penalty label for purposes of application of the Anti-Injunction Act, the Court ruled that for purposes of determining whether the individual mandate is constitutional, the penalty payment falls within Congress’s general power to tax and, therefore, is upheld.

The decision arises from cases brought by the state of Florida (and joined by 25 other states), the National Federation of Independent Business, and several individuals challenging the constitutionality of the individual mandate and the Medicaid expansion. The cases were later consolidated.

In their dissent, Justices Kennedy, Scalia, Thomas and Alito wrote that the law should have been struck down in its entirety.

With the exception of the limitation on the federal government’s authority to withhold Medicaid funding, all provisions of the ACA stand and compliance efforts likely will move ahead at full speed. In preparation for the major coverage expansion to occur under the ACA in 2014, the Administration is expected to release a host of regulations dealing with the definition of minimum essential coverage, employer coverage and reporting requirements, and an array of new taxes and fees. Clients should be aware of provisions of the law set to take effect in 2013 and 2014, including those listed in the table below.

Provisions of the Affordable Care Act That Take Effect in 2012, 2013 and 2014

2012

- Medicare hospital value-based purchasing program
- Increase in physician quality reporting requirements in Medicare
- Additional Medicare pilot programs on alternative payment methodologies, e.g., accountable care organizations
- Increased requirements for hospitals to maintain not-for-profit status
- Fees from insured (including self-insured) plans transferred to the Patient-Centered Outcomes Research Trust Fund

2013

- Increase Medicare payroll tax by 0.9% on high-income earners
- Impose a 3.8% tax on net investment income of high-income individuals
- \$500,000 cap on health insurers’ deduction for executive compensation
- Eliminate employer deduction for Medicare Part D subsidy
- FSA limitations
- Excise tax on medical device manufacturers and importers
- Medical expense deduction floor increases to 10%
- Nationwide bundled payment pilot begins in Medicare
- Increased Medicaid reimbursement for primary care
- Medicare physician comparison data available to the public

- Reductions in Medicare payments for select hospital readmissions
- Expanded coverage of preventive services by Medicaid

2014

- Employer mandate and individual mandate
- Employer and insurer reporting requirements
- New health insurance market reforms take effect
- State health insurance Exchanges established
- Premium tax credits and cost-sharing subsidies available to certain individuals in Exchange insurance products
- Medicaid expansion to new populations (100% federal match to states for newly-eligible populations through 2016)
- Annual fee on health insurers
- Medicare/Medicaid DSH payment cuts begin
- Independent Payment Advisory Board (IPAB) issues first report to Congress if Medicare spending exceeds growth target

Post-2014

- Excise tax on high-cost employer-sponsored coverage (2018)

Political reactions

The Court's ruling will not end the political debate over health care, which will remain a central issue in the 2012 elections and beyond. The law stands as the centerpiece of the domestic record of President Obama, who today said, "Whatever the politics, today's decision was a victory for people all over this country whose lives will be more secure because of this law and the Supreme Court's decision to uphold it." The President added, "With today's announcement it is time for us to move forward to implement and, where necessary, to improve this law."

In comments in response to the ruling, presumed Republican presidential nominee Gov. Mitt Romney said, "What the Supreme Court did not do on its last day in session, I will do in my first day in office. I will act to repeal Obamacare."

Following the release of the decision, House Majority Leader Eric Cantor (R-VA) announced that the House on July 11 will hold a vote on legislation to repeal the ACA in its entirety. The measure likely will pass the Republican-controlled House, but it is unlikely to advance in the Democratic-controlled Senate.

Repeal of the ACA has been a primary focus of congressional Republicans and remains a central objective of many Republicans' campaigns in the November elections. Efforts to repeal all or part of the law will remain difficult unless Republicans maintain control of the House, win the presidency, and

win at least a majority in the Senate in the November 2012 elections.

Republicans to date have not coalesced around a proposal to replace the ACA. Further efforts to control rising health care costs, including reforms to federal health entitlement programs and health-related tax expenditures, will be at the center of budget and deficit-reduction debates that are expected to dominate Washington after the November elections.

Background on the law

The Affordable Care Act was enacted in March 2010; it comprises the Patient Protection and Affordable Care Act of 2010 (which President Obama signed on March 23, 2010) and the Health Care and Education Reconciliation Act of 2010 (which the President signed on March 30, 2010).

The primary goals of the ACA are to: (i) expand coverage to an estimated 32 million Americans without health insurance; (ii) reform the delivery system to improve quality and drive efficiency; and (iii) lower the overall costs of providing health care.

To accomplish the goal of expanding coverage, the ACA mandates that all Americans maintain a minimum level of health coverage (the so-called individual mandate) or face a tax penalty. The law expands Medicaid coverage and provides federal premium tax credits and cost-sharing subsidies to assist low and moderate income individuals without affordable employer-sponsored insurance in obtaining health insurance through state-based insurance Exchanges. The ACA mandates, for the first time, that employers with 50 or more full-time employees provide certain minimum benefits or pay penalty fees.

The law also implemented insurance market reforms, including a ban on exclusions for pre-existing conditions, premium rate restrictions, extension of dependent coverage through age 26, and mandatory coverage of preventive services.

A mix of Medicare and Medicaid reimbursement cuts; provisions to reduce fraud, waste, and abuse in those public programs; other delivery system reforms; and a series of tax increases on individuals, corporations and the health industry are used to offset the cost of the law.

For more information

A video highlighting key elements of the Supreme Court's decision will be available on www.ey.com.

An Ernst & Young Thought Center webcast discussing the ruling's implications for individuals, employers, and health care providers has been scheduled for July 17. Follow this [link](#) to register.