



Kim Stanger

Partner
208.383.3913
Boise
kcstanger@hollandhart.com

Affordable Care Act Upheld in a Nuanced Opinion

Affordable Care Act Upheld in a Nuanced Opinion

Insight — 6/29/2012

In a dramatic and narrowly reasoned 5-4 ruling yesterday, the Supreme Court upheld the Patient Protection and Affordable Care Act (ACA).

Chief Justice Roberts started his summary of the decision by announcing that the Constitution's Commerce Clause could not support the law's controversial provision that most individuals purchase health insurance or pay a penalty – the so-called "individual mandate." To observers, this appeared to signal that a key piece of the President's signature legislation would be struck down. However, Justice Roberts went on to explain that the individual mandate may be upheld on the basis of Congress's authority under the Taxing Clause. The Court reasoned that the Commerce Clause allows Congress to *regulate* commerce, not *compel* it. On the other hand, the Court determined the individual mandate can be upheld as a tax for three main reasons: the payment is not so high that it leaves no real choice except to buy health insurance, the payment is not limited to willful violations (as penalties for unlawful acts are), and the payment is collected exclusively by the IRS through normal means of taxation.

In an unexpected turn, Justice Kennedy, widely considered to be the swing vote, joined the dissent in objecting to the individual mandate on any grounds. Chief Justice Roberts, appointed by President George W. Bush, ultimately swung the Court's decision in holding that the individual mandate is constitutional under Congress's taxing authority. Ironically, the Court ruled that the mandate was not a "tax" for purposes of being able to decide the case without violating the Anti-Injunction Act (which holds that a tax cannot be challenged in court until some time after the tax is due in the spring of 2015), but was a tax for purposes of upholding the law.

The other major provision of the law that had been challenged is the expansion of Medicaid. Again, the Court held that the Medicaid expansion violates the Constitution by threatening States with the loss of their existing Medicaid funding if they decline to comply with the expansion. The Court, however, provided careful guidance to remedy the violation by holding that the Medicaid expansion is constitutional so long as the Secretary of Health and Human Services is precluded from withdrawing existing Medicaid funds for failure to comply with the requirements set out in the expansion.

The result of today's opinion is that the ACA is considered constitutional. Accordingly, those provisions of the ACA already in place will continue. These include:

- Children may remain on their parents' health insurance until age 26;

- Insurers are prohibited from dropping coverage if an individual gets sick or makes an unintentional mistake on his/her application for insurance coverage;
- Insurers are prohibited from denying children up to age 19, who have pre-existing conditions, access to health insurance;
- Insurers are required to establish a simplified appeals process for coverage and denials of claims;
- States are required to begin laying the groundwork for health insurance exchanges. The exchanges will make available to everyone, including individuals purchasing insurance on their own and those working for small businesses, the same economies of scale of administration, marketing, and risk pooling available to workers in large businesses, thereby making insurance more affordable to all;
- States are required to create a temporary "high-risk pool" to provide coverage until 2014, when the exchanges become operational, for eligible individuals who have been denied health care coverage on the basis of pre-existing conditions;
- Medicaid beneficiaries will receive free preventative services;
- Insurance providers are required to cover some preventative services and eliminate co-pays;
- Insurers will be required to limit the ratio of premiums spent on administrative costs compared to medical costs (called the medical loss ratios, or MLRs); and
- Small businesses may be entitled to tax credits that make it easier to provide coverage to workers, while also reducing premiums.

Likewise, provisions of the ACA scheduled to be implemented in the future will go forward as planned, unless Congress moves to eliminate or delay those provisions. These include the major expansion and reform provisions of the ACA that will take effect in 2014, including:

- Individuals must purchase insurance or pay a tax penalty;
- States must possess operational health insurance exchanges by 2014;
- Insurers will be prohibited from denying coverage on the basis of pre-existing conditions, regardless of age, and will be prohibited from charging higher premiums without adequate justification;
- Insurance companies will be prohibited from imposing lifetime dollar limits on essential benefits;
- State Medicaid programs will be required to expand coverage to all eligible non-pregnant, non-elderly legal residents with incomes up to 133% of federal poverty guidelines. The federal government will initially cover all costs for this group, with the federal matching percentage decreasing to 90% by 2020;
- States will be required to maintain their current Children's Health Insurance Program (CHIP) structure through 2019, and provide federal CHIP payments through 2015 (a two-year extension on

CHIP funding);

The ACA contains numerous cost containment and financing provisions. While the ultimate cost of the ACA is the subject of much debate, the ACA is designed to offset the costs associated with the expansion of coverage by slowing the rate of growth of federal health care spending and increasing revenues through taxes and penalties. The largest share of revenues will come from additional Medicare payroll taxes on those with incomes over \$200,000 for single individuals and \$250,000 for married couples. The ACA also creates an excise tax on high-cost plans, limits annual contributions to flexible spending accounts (FSAs) and excluding over-the-counter medications (with the exception of insulin) from reimbursement by FSAs and other health savings accounts.

The Congressional Budget Office (CBO) estimates that the direct spending and revenue effects of the ACA will reduce the federal deficits by \$143 billion over a ten-year period (2010-2019) and that, by 2019, will result in 94% of the non-elderly, population of legal U.S. residents being insured. In actual numbers, this means that the ACA will reduce the number of uninsured by an estimated 32 million people, leaving approximately 23 million uninsured by 2019.

While the Supreme Court's actions today resolve the constitutionality of the ACA, the controversy surrounding the law and challenges to it will continue. Mitt Romney has vowed, if elected, to repeal the ACA on the first day of his term by sending out waivers to all 50 states to keep them from having to pursue the law. With only 132 days to the election, the Supreme Court's decision is only one volley in a greater debate. We at Holland & Hart LLP will continue to follow all health care issues that affect our clients and communities, and to provide timely updates as they develop.

For questions regarding this update, please contact

Kim C. Stanger

Holland & Hart, U.S. Bank Plaza, 101 S. Capitol Boulevard, Suite 1400,
Boise, ID 83702-7714

email: kcstanger@hollandhart.com, phone: 208-383-3913

This news update is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author. This news update is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

This publication is designed to provide general information on pertinent

legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.