

REFORM *Update*

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The Supreme Court recently ruled on four specific federal health care reform legislation issues. The requirement that individuals pay a penalty if they do not buy health insurance received the most attention. Was that requirement constitutional? The Supreme Court decided, in a surprising 5-4 majority opinion, that this penalty is a tax. Therefore, it does fall under Congress' taxing authority; the individual mandate is constitutional.

This ruling automatically resolved two additional issues. The Supreme Court ruled that the Anti-Injunction Act, which limits lawsuits challenging a tax before it is assessed, does not apply in this case. The other issue involved removing the individual mandate from the health care act. If the individual mandate was found unconstitutional, would removing it cause the entire act to be struck down? Again, since the individual mandate was ruled constitutional, this issue became a moot point.

The fourth and final issue the Supreme Court resolved was expanding Medicaid eligibility. Currently, the states determine Medicaid eligibility requirements. The rules vary from state to state. In most states, the eligibility rules are incredibly complex. The health care reform act tried to simplify those rules and expand Medicaid eligibility significantly. In general, individuals or families with household incomes at or below 133 percent of the Federal Poverty Level (FPL) would have been eligible for Medicaid. States could choose to expand the eligibility definition, or lose all federal matching funds for their Medicaid program.

The proposed expansion of Medicaid increases costs significantly for most states. The expanded eligibility definition dramatically increases the number of eligible individuals. The federal and state governments share the cost of the Medicaid program. The federal government initially will pay the entire cost for expanding Medicaid to 133 percent of the FPL. The state share slowly rises to 10 percent of the cost by 2020. Most states are dealing with budget challenges because of the difficult economy. They are therefore concerned about any cost increases, especially the substantial increases involved in expanding Medicaid eligibility.

The Supreme Court ruled that the penalty for not expanding Medicaid eligibility is coercive. Most states would be forced to expand Medicaid because they cannot afford to lose their current Medicaid funding. As a result of the ruling, states can now refuse to expand Medicaid without losing their current federal funding. States can now decide whether they will expand Medicaid; a few have already indicated that they are unlikely to do so.

Interestingly, the Supreme Court ruling creates a potential issue for anyone with very low income in states that do not expand Medicaid. Health care reform subsidizes premiums to help low- and moderate-income individuals buy health coverage through the public exchanges. These subsidies depend on household income; they are available to households earning between 100 percent and 400 percent of the FPL. If a state does not expand Medicaid, however, it is possible that some individuals making less than 100 percent of the FPL will not qualify for Medicaid. For example, very few adults in Michigan qualify for Medicaid because the income and asset tests are so limiting. These very low-

income individuals may be ineligible not only for Medicaid, but also for premium subsidies if they earn less than the FPL.

The health care reform statute is likely to undergo future changes. The 2012 elections could have an impact in 2013, with Congress revising or defunding portions of the program. However, the Supreme Court ruling has confirmed that the Affordable Care Act stands. Employers should continue to move forward on complying with the many requirements that health care reform will bring in the coming years.

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