



The ViewsLetter

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The Supreme Court Will Review Health Care Reform

The Supreme Court will hear arguments about the Affordable Care Act (ACA), commonly referred to as health care reform. The case is scheduled to be heard in March, 2012. This will likely result in a decision by June, just months before the 2012 presidential election.

The ACA includes a significant number of provisions that impact employers and their health plans. The Supreme Court will listen to five and a half hours of arguments, which is an exceptionally long session to address the following:



- Determine whether the individual mandate is unconstitutional. Is it unconstitutional to require individuals to purchase health coverage or pay a tax penalty?
- Determine if the individual mandate is severable. Can the ACA remain in place if a central aspect of the Act, the individual mandate, is deemed unconstitutional?

- Review the findings of the federal appeals court of Richmond, Virginia. This court determined the argument over the alleged unconstitutionality of the individual mandate is premature, because federal law prohibits challenges to taxes until those taxes are actually paid.

- Determine if the expansion of Medicaid is unconstitutional. Since the expansion of the Medicaid program forces states to participate or lose federal Medicaid funding, is it

unconstitutional?

The four provisions reviewed by the Supreme Court can have significant impact on the country.

If the Supreme Court rules that the individual mandate is unconstitutional, that may severely impact the health insurance industry. In 2014, health plans will not

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About the ViewsLetter

We welcome you to the first quarterly issue in Volume Fifteen of the McGraw Wentworth ViewsLetter. It is our mission to be the leader in the employee group benefits brokerage and consulting industry to mid-sized organizations.

We have established the ViewsLetter as an integral part of our commitment to keep

you informed of benefit trends, legislative and marketplace developments that may affect your group benefit programs.

We welcome your comments and suggestions regarding the ViewsLetter. You can pass your comments directly to your McGraw Wentworth Account Director or Account Manager, or you can reach us at www.mcgrawwentworth.com.

The Supreme Court Will Review Health Care Reform, cont.

be permitted to medically underwrite applicants. In addition, plans will no longer be permitted to include pre-existing condition limitations. The requirement to purchase coverage provides some incentive for individuals to secure coverage. Without that requirement, there will be very little incentive for some individuals to purchase coverage until the point they have a medical need to do so. The impact of this adverse selection would be financially devastating to carriers who need to comply with the strict rating rules associated with health care reform. Some carriers have indicated that they will exit the individual market, because it would no longer be financially viable. Some organizations have indicated that if the individual mandate is removed it could result in a 10%-25% increase to rates.

Employers can limit enrollment in their group plan to annual enrollment, which offers limited protection from adverse selection. It is unclear at this point, if Exchanges will have limited opportunities to enroll participants, similar to employer plans.

The Supreme Court will consider whether the individual mandate is so central to the ACA that the entire law becomes invalid if that provision is found unconstitutional. It is clear, if the entire law is not struck down, the insurance market will be adversely impacted.

The Supreme Court may find that the argument of constitutionality is premature. Since a federal law prohibits challenges to taxes until the taxes are actually paid, the Court could simply defer the case. The deferral would be at least until 2015, when

individuals who forgo coverage will be required to "pay" for not securing health coverage.

The final element of the Supreme Court decision will address the expansion of Medicaid. Medicaid is a state and federally funded program that is generally administered at the state level. States are arguing that the requirement to expand Medicaid eligibility is essentially coercion. This is because if a state fails to expand eligibility, federal funding will subsequently be cut off.

There is no clear indication regarding how the Supreme Court may decide the key provisions under debate. Several courts throughout the country have heard the case and issued conflicting rulings. At the district court level, the rulings have followed party lines, with Democratic appointees upholding the law, while Republican appointees struck it down.

In the federal appeals courts, the story is much different. In Atlanta, a Democratic appointee joined with a Republican to strike down the law. In two other federal appeals courts, Republican appointees upheld the law.

No one can be sure of how the Supreme Court will rule, but the ruling will be pivotal to how health care reform is implemented going forward. Hopefully, the decision will not be deferred until the penalty for the individual mandate takes effect.

MW

DID YOU KNOW?

The top 10 most-liked provisions of health care reform:

1. The requirement that health plans provide consumers with a short, easy-to-understand description of benefits and coverage (60% of people polled favored).
2. Guaranteed issue of coverage (47% of people polled favored).
3. The gradual closure of the Medicare "donut hole" for prescription drugs (46% of people polled favored).
4. Tax credits to small businesses (45% of people polled favored).
5. Subsidy assistance to individuals (44% of people polled favored).
6. Health plan decision appeals (37% of people polled favored).
7. Employer mandate/penalty for large employers (35% of people polled favored).
8. Medicaid expansion (34% of people polled favored).
9. Medical loss ratio (34% of people polled favored).
10. No cost-sharing for preventive services (33% of people polled favored).

Source: Kaiser Family Foundation Poll, 2011

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Importance of Health Literacy

Health care literacy is an individual's ability to gather, process, and understand health information. It also relates to understanding how the health plan works. Health care literacy challenges people of all ages, incomes and education levels, so employers should not make assumptions about their employees' health literacy. Increasing health literacy should be a key focus of employers.

Health care reform has added a new wrinkle to communication efforts. The Summary of Benefits and Coverage (SBC) is a four-page summary that health plans or employers will need to distribute. The SBC is intended to create a common language and format to summarize the benefits available under the health plan. The government hopes this will build a better understanding of health benefits.

Initially, the SBC was required to be distributed beginning in March, 2012. However, the government is delaying the effective date until additional guidance is issued.

Health benefits are only one part of the health literacy problem. The volume and complexity of health care issues is contributing to the challenge. Over the last decade, the availability of health information has exploded. However, very few patients have the ability to understand this information.

The lack of sufficient health literacy contributes to issues with patient health, care efficiency and cost. The American Medical Association indicates that individuals with limited health literacy have four times as many doctor visits and hospital stays as individuals with adequate health literacy.

YOUR QUESTIONS

- Q.** Our company began offering a high deductible health plan paired with a health savings account (HSA) this year. One of the employees who enrolled in the plan has a husband that recently became eligible to participate in a medical FSA through his employer. My employee would like to know if her husband can set aside funds in his employer's medical FSA?
- A.** If the husband is eligible for his employer's medical FSA, he can always choose to set aside funds in this account. However, his election to participate may result in unintended consequences to your employee's ability to contribute tax-favored dollars to an HSA.

In order to be eligible to contribute to an HSA, an account holder must not be covered by any other comprehensive health insurance plan. A full-scope medical FSA plan is considered comprehensive coverage. The Section 125 regulations dictate who can have tax-favored expenses reimbursed by the FSA, and spouses are eligible. Therefore the husband's medical FSA election would disqualify the employee from making contributions to her HSA. This is the case even if her husband does not submit her expenses to his FSA for reimbursement.

The only exception would be if the husband's employer offered a limited-scope medical FSA. This type of plan limits benefits payable under an FSA to specific expenses, such as dental and vision. A limited-scope FSA, therefore, is not considered comprehensive health coverage and would not disqualify the employee from making HSA contributions.

If increasing health care literacy sounds like an easy proposition, think again. Educating all of your employees about the health plan and health care is difficult. Your attempts can be frustrated for several reasons. Many organizations employ people with a wide range of education levels and health understanding. Some organizations also are challenged by language barriers and cultural differences within their population.

When reviewing your health plan communications, consider the following key questions:

1. Are you using plain language?
2. Can you replace complex ideas with simple examples?
3. Are your materials geared toward your employee population's reading level?
4. Can you use pictures to make key points?
5. Are you emphasizing the behaviors you want your employees to adopt?

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Importance of Health Literacy, cont.

Teaching employees to effectively use the health plan is just one step of the process. For example, employers may want to teach their employees how to communicate with their health care providers. The following free resources are available to increase health literacy:

- America's Health Insurance Plans (AHIP) offers a toolkit to develop health literacy. It is available at www.ahip.org/healthliteracy/toolkit.
- The Department of Health and Human Services (DHHS) offers a quick guide to health plan literacy. It is available at www.health.gov/communication/literacy/quickguide/quickguide.pdf.

Employers can also contact their health plan vendors to see if there are other communication materials available to assist with health education efforts.

Improving health care literacy should continue to be a focus of employers and health care providers throughout the country. Health plan costs are one of the top challenges for employers. However, in order to manage cost, patients must first be informed and engaged in the health care system. Hopefully, the requirement to provide the SBC will raise the basic understanding of health benefits. Additional efforts by employers and health care providers may further increase understanding of health plans and health care issues. Hopefully, these efforts will likely result in smarter utilization and lower costs. **MW**

TREND TIDBITS

- \$ Health benefit plan costs increased by 6.1% in 2011, and employers are expecting a 5.7% increase for 2012.
- \$ Costs averaged \$10,146 per employee in 2011 (all plan types combined).
- \$ Health plan enrollment grew at 2%, which is attributed to the extension of coverage to children up to age 26.
- \$ Large employers reported significantly lower increases in 2011 compared to small employers: 3.6% for large employers and 9.9% for small employers.

Source: 2011 Mercer National Survey of Employer-Sponsored Health Plans

Technical Corner - Social Media and HIPAA Privacy

Many employers have implemented, or are strongly considering implementing, social media policies. Social media usage has grown substantially over the last decade, and age is not an indicator of use. For example, at one time Facebook was extremely popular with high school and college students. Today, almost everyone has a Facebook account; even grandparents use the popular network to keep in touch with family.

Social media policies are critical in making sure that employees are not disclosing confidential company information. Employers sometimes focus solely on intellectual capital when addressing confidentiality. However, employers may also want to specifically address the disclosure of protected health information (PHI) for non-approved purposes.

In April, 2011, the Rhode Island Board of Medicine fined an emer-

gency room physician \$500 for unprofessional conduct due to patient information that she posted on Facebook. Although she did not identify the patient, the posted information matched details provided by the local news, which identified the patient by name. HIPAA has a broad definition for PHI, and names do not necessarily need to be provided. If enough information is provided to identify the individual, then it is considered protected health information.

It is important to consider HIPAA when drafting a social media policy for your company. The Rhode Island case is telling. Your health care workforce may be sharing situations on social media that they think are anonymous. However, if enough details are shared, individuals may be identifiable, and that can result in a HIPAA violation. **MW**

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