

US Supreme Court Upholds Affordable Care Act

On June 28, 2012 The US Supreme Court 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.

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 ACA That Take Effect in 2012, 2013 and 2014

2012

- Medicare hospital value-based purchasing program
- 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%
- Increased Medicaid reimbursement for primary care
- Medicare physician comparison data available to the public
- 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)



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.

