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## The United States Supreme Court Rules On The Constitutionality Of The Patient Protection And Affordable Care Act

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**The United States Supreme Court decision in *National Federation of Independent Businesses, et al v. Sebelius, Secretary of Health and Human Services, et al*, rules on the constitutionality of the Patient Protection and Affordable Care Act.**

Two issues were resolved in this decision: (1) is the individual mandate an appropriate exercise of Congressional power to tax; and (2) is it permissible for the Federal Government to expand Medicaid (a state program) by withholding federal funding, including Federal Medicaid programs? The Supreme Court held that the individual mandate is nothing more than a tax and, accordingly, within the power of Congress. It also held that it is illegal for the Federal Government to withhold federal funding from states that do not want to expand state Medicaid eligibility.

Chief Justice Roberts explained that Congress may “lay and collect Taxes, Duties, Imposts and Excises” and can exert considerable influence in areas which it cannot directly regulate: “The Federal Government may enact a tax on an activity that it cannot authorize, forbid or otherwise control.”

As such, amongst other things not discussed here, the following will take place in 2014:

1. All Americans who refuse to purchase health insurance will pay a “shared responsibility payment” through their tax returns. The amount of said payment will

depend on the individual’s taxable income, number of dependents and joint filing status. The requirement to purchase health insurance does not apply to taxpayers who do not file, and consequently do not pay, income tax because their household income is less than the filing threshold of the IRS.

2. Employers with 50 or more full-time employees who otherwise did not offer health insurance programs will be required to offer minimum essential health benefits to employees or pay a penalty.

3. Group health plans must comply with the “administrative simplification rules” for electronic exchange health information and electronic fund transfers and file a certification with the Federal Government that the plans are in compliance.

4. Employers must provide notice to employees of the upcoming existence of state insurance exchanges which must be established by all states in 2014. The notice must comply with DOL guidance as to its form and content.

5. Insurance companies will continue to be prohibited from discriminating or charging different premiums based upon health status and pre-existing conditions. All insureds will continue to receive preventative care without co-payment responsibility.

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6. States will be required to establish health care exchanges to provide coverage to the uninsured.

Another key provision of the Act is the Medicaid Expansion Provision, which expands the scope of the Medicaid program and increases the number of individuals the state must cover. Although the Act increases Federal funding to increase the state's increased costs in expanding the Medicaid program, the Act also penalizes any state that will not comply with the Act's new coverage requirements by withholding Federal funding, not only for compliance with those requirements, but all of its existing Federal Medicaid programs. While the Court of Appeals for the Eleventh Circuit had upheld the Medicaid expansion as a valid exercise of the Congressional spending power, Chief Justice Roberts, joined by Justices Breyer and Kagen, concluded in Part IV of the Supreme Court Opinion that Medicaid expansion violates the Constitution by unlawfully threatening states with the loss of their existing Medicaid funding if they decline to comply with the expansion mandate. Justice Ginsburg, joined by Justice Sotomayer, did not view the required withholding of Medicaid funds based on a state's refusal to comply with its expansion as a violation of the U.S. Constitution's spending clause, but nonetheless, concurred with the Chief Justices' conclusion that the Medicaid Act and Severability Clause would determine the appropriate remedy such that extension of the Medicaid programs and enhanced Federal funding to support it remain available to any state willing to comply with the terms of the Act.

Unquestionably, however, the ruling poses a serious threat to Medicaid expansion efforts. Without the ability to withhold Federal funding, there is no "teeth" in the law, and thus, little incentive for a state to

expand its existing program, even if additional Federal funding for the expansion exists. State agencies, including the departments of insurance and state Medicaid agencies, are already overburdened. In addition to monetary restrictions (which are likely less of an issue given the enhanced Federal funding), manpower is a significant limitation. The time required of state agencies in connection with reviewing Medicaid applications, contract language, confirming eligibility and implementing assignment of members, not to mention enforcement and compliance monitoring activities, is very substantial. The administrative burden of expansion may be an impediment, even if additional funding is available.

The needs of the Medicaid membership are also great. It is ironic that the law seemingly permits a state to mandate insurance under the guise of Federal taxing authority, while at the same time, it precludes enforcement of an expansion mandate which would provide benefits to the many. Interestingly, in the context of the Medicare expansion and the U.S. Constitution spending clause, Congress is precluded from using its spending powers to force a state to regulate, *i.e.*, adopt Medicare expansion, on the theory that otherwise "the two-government system established by the framers would give way to a system that vests power in one central government, and individual liberty would suffer." While the Supreme Court's legal analysis of the propriety of the individual mandate and the Medicare expansion appear sound, the result, nonetheless, seems philosophically inconsistent.

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Other inconsistencies are also peppered within the decision, including the fact that the individual tax for failure to obtain health insurance will be paid through an individual's tax return. It appears, therefore, that the poorest of Americans, despite the decision, may neither be covered by insurance nor taxed for their failure to purchase the insurance. Moreover, several parts of the law were upheld that have nothing to do with taxation. For example, eliminating pre-existing conditions is not a function of taxation, but most assuredly affects commerce.

## Implications of the Act:

- Although PPACA mandates that certain employers offer health insurance benefits, what will it mean for the future of ERISA, which does not require employers to offer health plans?
  - With the influx of insureds into the market, will the quality of healthcare decline or will providers become more efficient? How long will the average patient wait before being able to schedule an appointment, and what will be the average time-period a health provider gives to each patient?
- Bressler's attorneys would be happy to discuss redesigning your plan and how the required changes will affect your employees and your business. ■
- PPACA prohibits the denial of insurance benefits to those with pre-existing conditions and prohibits increased premiums due to poor community ratings. While this certainly provides access to those who otherwise would be unable to enter or stay in the health insurance marketplace, it does little to motivate otherwise healthy individuals to seek medical care until there is a critical need. Will this, then, turn healthy Americans into those lying in wait for a medical crisis in the promise of guaranteed and affordable coverage? How will this behavior affect the regulations surrounding HSAs?
  - At what cost will universal access to healthcare come? Since healthcare providers will be unable to price healthcare differently depending on experience, by what percentage will healthcare companies increase premiums on all to make up for insuring the otherwise uninsured or

unhealthy? Will healthy Americans pay premiums that are more costly than the healthcare procedures and medications that they will need and/or use over their lifetime?

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