

In the Spotlight: ACA and the Supreme Court – Before the Decision

If you have heard anything about health care reform in the last few months, it's likely that the March Supreme Court arguments were the topic of discussion. The Supreme Court will ultimately decide the constitutionality of the individual mandate and the Medicaid expansion and whether or not these are severable from other parts of the law. No matter what the decision, it will have enormous consequences for the future of the law and the health care system.

Arguments

It is important to understand that the Supreme Court is not actually making a decision about the Affordable Care Act (ACA) as a whole, but rather specific provisions of ACA. (Also keep in mind - the Supreme Court only weighs in on constitutionality and legality of the law, not the merits of it.) The Supreme Court agreed to hear four separate oral arguments on certain provisions, stretched over three days – the longest arguments in 45 years. The four arguments were:

- Day one entailed arguments regarding whether the Anti-Injunction Act bars a ruling on the law until after the Act is fully implemented in 2015.ⁱ
- Day two arguments addressed the constitutionality of the requirement that individuals must have health insurance starting in 2014 or pay a fine (“[the individual mandate](#)”).ⁱⁱ
- The morning of day three was about the severability of the individual mandate from the remainder of the law.ⁱⁱⁱ
- The afternoon of the same day addressed the constitutionality of the Medicaid expansion.^{iv}

The Obama administration defended the constitutionality of the law, while the 26 states and the National Federation of Independent Businesses (NFIB) argued for the opposition.

Potential Outcomes

Most legal experts agree that the Supreme Court will not find that the Anti-Injunction Act applies to this case and, therefore, that the Court will make a decision on the law this summer. The main point of interest for the insurance industry, as well as many involved or invested in the health care market, is the constitutionality of the individual mandate and the potential consequences of finding the mandate unconstitutional. Potential outcomes of the Supreme Court decision which would impact the status of the mandate include:

- Everything is upheld;
- Only the [mandate](#) is struck;
- The individual mandate, along with the [insurance market reforms](#) (guarantee issue and community rating only) are struck;
- All of Title 1 is struck (including other market reforms, like medical loss ratio, appeals changes, no pre-existing conditions for kids, the individual mandate, insurance reforms, etc);
- Entire law is struck

If the individual mandate alone is struck, insurers (and most other experts) believe that the insurance pool would shrink significantly and, since the guarantee issue and community rating provisions would still be in effect, become a disproportionately unhealthy population. This would cause insurance premiums to skyrocket.

If the mandate is held to be not severable from other parts of the law, some of the other provisions will also be struck. The most likely provisions to be struck with the mandate are those relating to insurance (guarantee issue and community rating). However, other key parts of the law – or even ACA in its entirety – could also be struck. The other key provisions that could be struck include [preventive services](#) at no cost-share, [medical loss ratio](#) (MLR) requirements, annual and lifetime limits, among other things.

The questioning of the Justices during oral arguments heightened speculation that the Supreme Court may decide that some or all of the law should be overturned. Even once a decision has been reached, regardless of the outcome, there may be some additional questions or issues. Many of the changes in the law have already been implemented and some have even caused other laws to change. For example, if the law is overturned, many states have changed their laws to comply with parts of the law, like rate review, that will not automatically be repealed even if the entire law is struck.

How did it get here?

Almost immediately after passing the Affordable Care Act in March of 2010, the lawsuits began to be filed. In fact, even before the bill had been signed into law, ten state Attorneys General announced that they would file suit, contesting the constitutionality of the law. Several more law suits sprouted around the country and, slowly but surely over the last two years, more than two dozen suits made their way through the federal court system all the way up to the Supreme Court. Several different Courts of Appeal weighed in on the constitutionality of the ACA with varying outcomes, not consistent along party lines. In November of 2011, the Supreme Court agreed to hear the case.

Many interested parties filed amicus briefs with the Supreme Court to express support for one outcome or another and explain potential implications of implementing and striking certain parts of the law. The Blue Cross and Blue Shield Association (BCBSA) and America's Health Insurance Plans (AHIP) filed a [joint amicus brief](#) stating that the insurance market reforms are inextricably linked to the individual mandate and must be severed from the ACA if the Supreme Court finds the mandate unconstitutional. The Administration, the Economists, Families USA, among other organizations, all recognized this link. The insurance market reforms identified in the amicus brief as not being severable from the individual mandate are:

- A guarantee issue provision that requires health plans to offer health care coverage to any individual that applies for it;
- A prohibition on excluding pre-existing medical conditions from coverage or imposing a waiting period before coverage is effective;
- A prohibition on the establishment of coverage eligibility rules that are based on health status related factors; and
- The required use of an adjusted community rating system that prevents health plans from setting premium prices based on an individual applicant's medical history and that sharply limits variations in rates based on age, rating areas, or tobacco usage.

BCBSA and AHIP did not, however, weigh in on the constitutionality of the individual mandate or any other part of ACA.

BCBSNC Views

Blue Cross and Blue Shield of North Carolina supports access to quality, affordable health care for all. We have been working hard to implement ACA on time – sometimes even ahead of schedule – and we will implement whatever outcome the Supreme Court reaches as the law of the land. However, we know that the insurance reforms are intrinsically linked with the individual mandate, and a wide [range of experts](#) agree. We look forward to the final outcome from the Supreme Court, and, as always, we will continue to focus on extending quality health insurance to as many North Carolinians as possible.

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ⁱ The Anti-Injunction Act is a federal rule that requires that a person resisting an assessment or tax must first pay the full amount of the tax and then file a complaint. If this Act applied, it would mean that the Supreme Court would not be able to make a decision until after the individual mandate had been enacted in 2014 and individuals had paid the penalty for not purchasing insurance in 2015. Essentially, this delays a decision for an additional three years, until after the November 2012 elections.

ⁱⁱ The arguments for the individual mandate revolved around its constitutional under the Commerce Clause. Only one of the lower courts found the individual mandate to be unconstitutional under the Commerce Clause. Opponents of the mandate view it as an overstep by Congress to compel individuals to participate in commerce, while proponents argue that everyone participates in the health care market and mandating the purchase of insurance coverage simply changes the way it is financed.

ⁱⁱⁱ Severability is only relevant if the individual mandate is held to be unconstitutional. In the event that the mandate is held unconstitutional, the Supreme Court will then have to determine which parts of the law are so closely linked with the individual mandate that they must also be struck. The litmus test for severability is if the altered law still meets original congressional intent.

^{iv} The Medicaid expansion by ACA moves the eligibility threshold from 100% of the federal poverty line (FPL) to 138% FPL. Opponents of the expansion have argued that it is overly coercive because states that do not comply with the new eligibility level will lose all federal Medicaid funding. Proponents offer that it is not coercive because the federal government picks up 95% of the tab for the newly eligible individuals.