

What The Health-Care Decision Means

By **Randal Schultz**
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ON JUNE 28, the U.S. Supreme Court ruled on the constitutionality of the Patient Protection and Affordable Care Act of 2010, or the ACA. The case, *National Federation of Independent Business, et al., v. Sebelius, Secretary of Health and Human Services*, focused on whether individuals can be required to purchase health insurance and whether the federal government is overstepping its bounds by forcing states to implement expanded Medicaid eligibility rules or face losing all the states' federal Medicaid reimbursement.

In a 5-to-4 decision written by Chief Justice Roberts and joined by justices Ginsburg, Sotomayor, Breyer and Kagan, the court upheld the law in part, struck down the law in part but kept the entire law in effect so that all citizens must obtain health insurance for themselves and their dependents beginning in 2014 or pay a "tax."

Technically, the court stated that the mandate requiring individuals to purchase health insurance is unconstitutional — the government cannot force people to buy insurance — but the penalty aspect requiring individuals not covered by insurance to pay the "tax" is constitutional ... not as a penalty but as a tax.

According to the opinion, Congress used the commerce clause of the federal



RANDAL SCHULTZ

constitution in a variety of ways to deal with the issues of national concern. "But Congress has never attempted to rely on the power to compel individuals not engaged in commerce to purchase an unwanted product." The court concluded that the power to regulate commerce "pre-supposes the existence of commercial activity to be regulated." According to the majority opinion, the individual mandate does not relate to existing commercial activity and

therefore mandating individuals to purchase insurance is not a power given to Congress through the commerce clause.

The government also contended that Congress has the power under the necessary and proper clause to enact the individual mandate as it was an "integral part of a comprehensive scheme of economic regulation." The court held that "the individual mandate cannot be sustained under the necessary and proper clause as an essential component of the insurance reforms."

Despite finding the law unconstitutional under the commerce clause and the necessary and proper clause, the court upheld the individual mandate and the related penalty as an appropriate tax. The court stated that the government's authority to assess taxes "includes the authority to assess penalties" but does not equate assessable penalties to taxes for other purposes. The court concluded that the penalty was not a tax for purposes of the Anti-Injunction Act but was an appropriate tax within the authority of the federal government. The bottom line: Individuals are not required to purchase health insurance but must pay a tax if they do not.

The obligation placed on states to increase Medicaid eligibility in exchange for continuing to receive federal funds was found unconstitutional. The states can continue operating their Medicaid programs as historically structured and continue receiving federal Medicaid funds but must comply with the federal law as it relates to new (additional) federal funds. The same principle should apply to health insurance exchanges.

Although the Medicaid expansion component of the act was held unconstitutional, the court did not find that the entire act must be stricken. The court stated it must determine "whether Congress would have wanted the rest of the act to stand had it known that states would have a genuine choice whether to participate in the new Medicaid expansion. Unless it is "evident" that the answer is no, we must leave the rest of the act in tact...[We] are confident that Congress would have wanted to preserve the rest of the act."

From a health-care provider perspective, the realignment occurring in the marketplace should continue. The ruling has little impact on how health-care services must be delivered or how health-care organizations will be structured. However, hospitals and physicians will not be able to rely upon an expanded Medicaid-covered population to subsidize the large amount of charitable care provided.

Arguably, the ability to acquire commercial insurance without concern about pre-existing conditions will cause some of the sick and injured to buy insurance just long enough to cover their immediate health-care needs, enable providers to be paid for their services, but result in losses to the insurance companies who may not receive sufficient premiums to cover those costs.

The results of the ruling include:

- Health-insurance plans must maintain dependent coverage up to age 26.
 - Insurers will be prohibited from denying coverage to individuals because of pre-existing health problems.
 - Medicare payroll taxes on couples making more than \$250,000 and individuals making more than \$200,000 will increase.
 - A new tax of 3.8 percent of income from investments will start in 2013, and states will be required to establish health-insurance exchanges or face the federal government creating exchanges for use by citizens in those states that fail to do so.
 - Employers with more than 50 workers will pay penalties if insurance is not offered or if their workers get coverage through the exchange and receive a tax credit.
 - New taxes are imposed on "Cadillac health plans" worth more than \$10,200 for individual coverage and \$27,500 for family coverage.
 - Numerous other modifications will be made to employee benefit plans.
- And, the final result for the foreseeable future, a firestorm of debate will occur relating to the wisdom of the law. •

— Randal L. Schultz is a partner at Lathrop & Gage and chair of the firm's Healthcare Strategic Business Planning Practice group, rschultz@lathropgage.com.

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