

Health System Reform INSIGHT



Jan. 13, 2011

Given the new direction for the nation's health system, the AMA has developed *Health System Reform Insight* to help you understand the health system reform legislation and what it means to you and your patients.

Legal challenges to the Affordable Care Act

A key component of the Affordable Care Act (ACA) is a provision—effective in 2014—that requires most individuals to purchase health insurance or pay a penalty. In addition, the ACA significantly expands health insurance coverage to the uninsured through the Medicaid program. Since passage of the ACA, numerous lawsuits have been filed, several of which are summarized below, challenging the constitutional authority of Congress to enact an individual mandate and expand the Medicaid program.

Individual mandate

Section 1501 of Title I of the ACA requires that most individuals maintain minimum essential health insurance coverage for themselves and their dependents. Those who fail to do so will be required to pay a penalty, administered through the tax code for each month of noncompliance. Qualified individuals will be provided subsidies to help pay for their premiums and cost-sharing. Others will be exempt from the individual mandate, including those with qualifying religious exemptions, those in a health care sharing ministry, individuals not lawfully present in the United States and incarcerated individuals. No penalty will be imposed on those without health insurance coverage for less than 90 days, members of Indian tribes, individuals whose household income does not exceed 100 percent of the federal poverty level (FPL), or any individual who is determined by the secretary of Health and



Feb. 2

Join AMA President Cecil B. Wilson, MD, at 7 p.m. Eastern time for the next [Office Hours with Dr. Wilson](#). Along with listening to your comments and answering your questions, Dr. Wilson will provide an update on the latest happenings in Congress.

Feb. 8–10

Join the AMA and your colleagues at the Grand Hyatt Washington in Washington, D.C., for the annual National Advocacy Conference. Physicians will hear from political insiders, industry experts and members of Congress on health system refinement and implementation efforts. They also will take part in discussions that will help shape the AMA's advocacy efforts. [Learn more and register](#).

Feb. 16

Attend "Pathways to success: What physicians need to know about ACOs and the coming revolution in payment practices," an [AMA seminar](#) being held from 4 to 8:30 p.m. PST at the Oregon Medical Education Foundation Conference Center in Portland, Ore.



Human Services to have suffered a hardship with respect to being able to obtain health insurance coverage under a qualified health plan.

The individual mandate is generally consistent with AMA policy, which states that individuals and families earning greater than 500 percent of FPL should be required to obtain health insurance coverage for at least catastrophic health care and evidence-based preventive health care. For those earning less than 500 percent of FPL, the individual responsibility requirement is supported only upon implementation of a system of refundable tax credits or other subsidies to help obtain health insurance coverage. AMA policy also supports using the tax structure to achieve compliance.

Medicaid expansion

The Medicaid provisions in the ACA significantly expand Medicaid eligibility. Beginning in 2014 or earlier if the state chooses, nonelderly, nonpregnant individuals with income below 133 percent of FPL will be newly eligible for Medicaid. The ACA also adds new mandatory benefits that states must cover. From 2014 to 2016, the federal government will cover 100 percent of the Medicaid costs of these newly eligible individuals, with the percentage dropping to 90 percent and the states covering the difference by 2020. AMA policy supports maintaining Medicaid as a safety net program and covering all individuals with incomes below the poverty level.

Constitutional challenges

Since its enactment, several lawsuits have been filed challenging the constitutionality of various provisions of the ACA. Although challenges to the law have deployed a wide range of constitutional arguments, the main questions are whether the individual mandate is a permissible exercise of congressional power under the commerce clause in Article 1 of the Constitution, whether the individual mandate (if ruled to be unconstitutional) can be "severed" from the rest of the ACA (leaving intact other provisions in the ACA), and whether the expansion of the Medicaid program under the ACA is "coercive" to states.

Summary of cases

[Advocating for improvements to the Affordable Care Act](#) 

[Medicare physician payment rates for 2011](#) 

[AMA comments on ACA implementation regulations](#)

[Investments in disease prevention and wellness initiatives under the Affordable Care Act](#) 

[New HHS Web portal to help consumers buy health insurance](#)

[Pathways for physician success under health care payment and delivery reforms](#) 

[How reform law integrity provisions impact your practice](#) 

[Independent Payment Advisory Board](#) 

[New payment and delivery reform models](#) 

[Overview of major provisions relating to coverage](#) 

[Taxes and credits in the health system reform law](#) 

[Major Medicare savings under health reform legislation](#) 

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Commonwealth of Virginia v. Sebelius (U.S. District Court, Eastern District of Virginia)
On Dec. 13, 2010, in the first ruling against the constitutionality of the individual health insurance mandate, Judge Henry Hudson held that the ACA's mandate that all individuals must purchase health insurance or pay a penalty is unconstitutional. This ruling, however, is limited to Section 1501 of the ACA (the minimum essential coverage provision). And because the ACA does not include a severability provision (i.e., maintaining the rest of the statute when one provision is determined to be unconstitutional), he exercised his judicial discretion to sever Section 1501 from other provisions of the law. Judge Hudson also declined to issue an injunction blocking the entire law, noting that the mandate does not take effect until 2014, and that his ruling would most likely not be the final word on this issue. Further, Judge Hudson rejected the government's claims that the ACA was valid under the Constitution's "necessary and proper" clause, and that the penalty for failing to obtain health insurance is a tax that could be upheld under the "general welfare" clause. This case most likely will be appealed to the U.S. Court of Appeals for the Fourth Circuit.

State of Florida v. U.S. Department of Health and Human Services (U.S. District Court, Northern District of Florida)
This lawsuit was brought by 13 states (there are now 20 participating states and the National Federation of Independent Business) challenging the constitutionality of the individual health insurance mandate and the expansion of Medicaid. On Oct. 14, 2010, Judge Roger Vinson dismissed four of the six claims in the lawsuit. The two remaining claims involve the constitutionality of the individual mandate as an exercise of congressional authority to regulate interstate commerce and make laws "necessary and proper" for carrying out its powers, as well as the claim that expansion of the Medicaid program is coercive because it "coerces and commandeers" states to devote their limited financial resources to achieve federal aims, thereby violating the 10th Amendment to the Constitution. Oral arguments on the merits of the case, as well as motions for summary judgment from both sides, were heard on Dec. 16, 2010.

Thomas More Law Center v. Obama (U.S. District Court, Eastern District of Michigan)

On Oct. 7, 2010, Federal District Court Judge George Steeh dismissed this case, and found the individual mandate constitutional under the commerce clause. This case has been appealed to the U.S. Court of Appeals for the Sixth Circuit.

Liberty University, Inc. v. Geithner (U.S. District Court, Western District of Virginia)

On Nov. 30, 2010, Federal District Court Judge Norman Moon ruled that the requirement that most Americans obtain health insurance coverage falls within Congress' authority to regulate interstate commerce. This case has been appealed to the U.S. Court of Appeals for the Fourth Circuit.

What happens next?

After the Courts of Appeals issue their rulings, it is widely expected that the constitutional challenges to the ACA ultimately will be determined by the U.S. Supreme Court, most likely this year or in 2012.

For more information

Visit the [ACA litigation blog website](#) for news, legal analysis and official documents related to ACA legal challenges.

Feedback

If you have specific comments on this edition of *Health System Reform Insight* simply reply to this message. For more general feedback on *Health System Reform Insight*, send an e-mail to hsr@ama-assn.org to alert the editor of your comments and concerns.

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