

Supreme Court Issues Decision on the Affordable Care Act – Immediate Implications for Health Care Industry

In the United States Supreme Court's historic [decision](#) announced today, the Patient Protection and Affordable Care Act ("ACA") has emerged substantially intact as the blueprint for national health reform in the coming years. The Court upheld the "individual mandate," preserving the key counterweight to the ACA's requirement that insurers guarantee the issue of health care coverage. The Court also upheld the ACA's Medicaid expansion, but ruled that the Secretary of Health and Human Services may not exercise the power granted her in the ACA to deny Medicaid funding to States choosing not to participate in the expansion. All of the remaining benefits and requirements of the ACA were left whole by the Court. An analysis of the constitutional law implications of the decision will be provided in our companion Alert tomorrow.

For health care industry stakeholders, the Court's affirmation of the constitutionality of the major elements of the ACA finally provides clarity and direction on the fate of federal health care reform. Although efforts to repeal the ACA may continue, and some states may decide not to implement the now-voluntary Medicaid expansion, federal regulators and many state governments will now push ahead with ACA implementation. Health care providers, insurers and managed care plans, pharmaceutical and device manufacturers and employers will proceed in their efforts to prepare for the reforms and comply with the numerous requirements of the law.

Medicaid Expansion

The most significant change in the implementation of federal health care reform likely to ensue from the Court's ruling today is the scope of the Medicaid expansion. The Court's decision represents a victory for States which argued that the mandatory nature of the expansion was unduly coercive. The ACA tied States' current participation in Medicaid to their expansion of Medicaid coverage to State residents under 133% of the federal poverty level. States that opted not to participate in the Medicaid expansion would have lost federal Medicaid funding. The Court concluded that the federal government is entitled to offer funds to entice States to expand Medicaid coverage, but could not condition State participation in the basic Medicaid program on implementation of Medicaid expansion.

The Court's decision is certain to have a notable impact on levels of Medicaid coverage in the years ahead. With Medicaid expansion now essentially optional, and not mandated, some States, including those with large Medicaid populations such as Texas and Florida, may well opt out. The non-participation of such States would result in several million fewer Medicaid enrollees than the previously estimated 16 million new enrollees to be covered by 2019. Further, with disproportionate share hospital cuts effective nationwide in fiscal year 2014, hospitals in States that opt out of the Medicaid expansion may experience financial hardship that would otherwise be reduced in those States in which both private insurance and Medicaid rolls are expected to grow.

The decision today also raises the prospect that States could initially opt in to Medicaid expansion when the Federal Medical Assistance Percentage ("FMAP") for the newly covered population is 100%, but later drop participation in the Medicaid expansion when the FMAP gradually drops beginning in 2017, reaching 90% in 2020. The Court's decision implied that the States must accept the entirety of the Medicaid expansion "contract" should they decide to participate in Medicaid expansion. The ACA, however, is silent on whether States could end Medicaid expansion in the future (when a portion of the costs begin to shift to the States)

because, at the time of its drafting, it was not anticipated that States would have the option of not participating in the expanded program. This uncertainty may be addressed by later legislation or administrative action. For hospitals and Medicaid HMO plans, this means a shifting population that could be in flux in the years ahead, and subject to political and fiscal decisions of each State.

The Remainder of the ACA

In the meantime, the Court left intact all of the insurance reform provisions of the ACA, including the elimination of lifetime caps, the requirement that insurers issue plans to all who request them, and the prohibition against denying coverage due to pre-existing conditions. The decision also preserves expanded primary care and drug benefits for the elderly and leaves in place a number of provisions intended to transform the way providers are paid as well as providing incentives for safer, more efficient care.

With the enhanced clarity stemming from today's decision, federal agencies will move forward with the rulemaking process, implementation and enforcement on all fronts. Although the current course for health reform charted by the ACA remains relatively undisturbed, the Court's action hardly resolves all doubts about the destiny of the ACA and health system change generally, which remain subject to political and economic forces. Health care providers, insurers and other industry players will continue to be challenged by the need to innovate, cut costs, improve quality and satisfy diverse and complex demands, to meet both the ACA's requirements and the market's imperatives.

To follow the continued implementation of health reform, please visit [Ropes & Gray's Health Reform Resource Center](#). For more information about the significance of the Supreme Court's decision and about health care reform in general, contact your regular Ropes & Gray lawyer.