

In the Wake of the Verdict

The U.S. Supreme Court's ruling on the federal health law leaves lawmakers working out what it means for their states.

BY MARTHA KING

The months of speculation and uncertainty about the constitutionality of the federal health law ended June 28. The U.S. Supreme Court upheld the law, with the exception of the provision that would have allowed the federal government to withhold all federal Medicaid funds from states that don't expand their Medicaid programs.

The complexities of the Patient Protection and Affordable Care Act (PPACA) confound even seasoned policy experts, with provisions covering myriad programs and topics. The Supreme Court case, however, related primarily to the law's key mechanisms to provide health coverage to about 32 million of the nation's 50 million uninsured, beginning in 2014. Those include:

◆ **Individual mandate.** The court upheld this provision, which requires most people to have coverage. People may purchase coverage through insurance exchanges with sliding scale subsidies for those with incomes between the federal poverty level and four times the poverty level. In 2012, for a family of four, that would be between \$23,050 and \$92,200.

◆ **Medicaid.** The law expands eligibility for the program to most people with incomes up to 138 percent of the poverty level. The court let the expansion stand as a voluntary program separate from the rest of Medicaid, and prohibits the federal government from cutting off existing Medicaid funds for states that choose not to participate in the expansion.

The Implications

So what does the ruling mean for states?

The question could elicit more than 50 different answers, depending on the state, not to mention the variety of viewpoints within states.

States that put their insurance exchange planning on hold, awaiting the court's ruling, have some quick decisions to make. States already faced daunting challenges in developing exchanges by 2014, including these deadlines.

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◆ By September 2012, states must determine the “essential” health benefits for insurance plans sold in the exchanges, or federal officials will determine the benefits for them.

◆ By mid-November 2012, states must submit plans to the federal government stating whether they want to run their own exchange or adopt a state-federal model. Otherwise, federal officials will run it.

“I’m not sure how the ruling will affect Oklahoma’s exchange plans,” says Representative Mark McCullough (R), NCSL’s Health Committee co-chair. “Oklahoma does not want the PPACA. Period. We may just let the federal government come in and start setting one up while we wait for the November elections.”



*Representative
Mark
McCullough (R)
Oklahoma*

Other states are moving full steam ahead. “Colorado’s exchange was designed and supported by Democrats and Republicans to operate on its own, regardless of the court’s decision,” says Senator Betty Boyd (D), NCSL’s other Health Committee co-chair. “We’re ready to apply for our next federal grant, so this will enhance the ability of our exchange to meet its goals of providing affordable health coverage options for all Coloradans.”



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As for Medicaid, it’s too early to tell what path states will take. The court cut off the very large stick that threatened to stop all federal Medicaid funds to states that don’t expand their eligibility. But the very large carrot—billions of dollars to cover 100 percent of the medical costs for all the newly eligible people for three years—may be hard to pass up. After three years, the federal share phases down to 90 percent by 2020, and continues at that level.

McCullough, a lawyer, notes that he “was pleasantly surprised that they won’t hold the Medicaid expansion over our heads. Tying federal funds to specific state conduct seems to me to have more basis in precedent, but I’ll take it.”

“I think states will have a difficult time turning down such a bargain in the 90 percent federal match to expand Medicaid,” says Boyd.

In the meantime, several states have vowed to continue to resist certain provisions of the federal law. Sixteen states prohibit government employees from enforcing the individual mandate or the required employer contribution, even though the PPACA delegates those tasks to the federal government. Five states require legislative approval before their state agencies, alone or with federal agencies, can administer various provisions in the act. In addition, at least seven states have passed laws to create Interstate Health Compacts to circumvent the federal law

The Big Four

On June 28, the Supreme Court:

- ◆ Determined it had jurisdiction to consider the constitutionality of the individual mandate under the Anti-Injunction Act without waiting for the mandate to be imposed.
- ◆ Concluded the individual mandate is constitutional under Congress’ taxing powers.
- ◆ Nullified the issue of other provisions being overturned, the so-called severability argument, since the mandate was ruled constitutional.
- ◆ Ruled states may opt out of the Medicaid expansion without losing existing federal funds, even though the expanded eligibility was found to be constitutional.

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by joining together to establish programs outside of the PPACA, which would require congressional approval.

“I still believe that the PPACA is deeply flawed, and I hope for its eventual repeal,” says McCullough.

The Prognosis

The court ruling may have laid to rest the legal challenges at the national level for the time being. But it does not fix the nation’s continuing challenge to create a high-quality, sustainable and affordable health system.

“As we sift through all the implications of the court’s decision, we must keep our focus on the best path forward to improve the health system,” advises Boyd.

Both supporters and opponents of the law agree that the daunting dilemma of controlling health care costs remains. Virtually everyone also agrees that the political challenges that linger will play out in the 2012 elections.

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