

healthcare policy & reform

from the Employee Benefits Practice

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Employer Group Health Plans and the Constitutionality of the ACA

Focus turns to completing 2012 and 2013 compliance tasks following the U.S. Supreme Court's decision.

Today, the U.S. Supreme Court ruled that virtually the entire Patient Protection and Affordable Care Act of 2010 (ACA) is constitutional (with the exception of a Medicaid issue that is not directly relevant to employers), validating the full range of past, present, and future ACA requirements. Employers now must continue to press ahead with 2012 and 2013 ACA compliance requirements, particularly if these tasks were placed on a back burner awaiting the decision.

The Decision

Writing for a 5-4 majority in *National Federation of Independent Business et al. v. Sebelius*, Chief Justice John G. Roberts, Jr., found that the individual mandate in the ACA is a permissible exercise of Congress's taxing authority, stating that "[t]he Affordable Care Act's requirement that certain individuals pay a financial penalty for not obtaining health insurance may reasonably be characterized as a tax." Chief Justice Roberts also wrote that "because the Constitution permits such a tax, it is not our role to forbid it, or to pass upon its wisdom or fairness." Chief Justice Roberts was joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor, Stephen G. Breyer, and Elena Kagan. Justices Antonin Scalia, Anthony M. Kennedy, Clarence Thomas, and Samuel Anthony Alito, Jr., dissented.

Next Steps for Employers

Now that the ACA has been upheld, employer group health plans must focus on a number of pressing tasks for 2012 and 2013 compliance with the ACA. In the coming weeks and months, employers should do the following:

- Determine whether they are appropriately aggregating group health plan valuation data in order to support 2012 Form W-2 reporting.
- Prepare to receive, and properly distribute or apply, any Medical Loss Ratio rebates associated with 2011 insured health coverage.
- Finalize Summary of Benefits and Coverage material for inclusion in the 2013 Open Enrollment package.
- Complete updates to Summary Plan Descriptions and plan documents to capture and describe the 2011 and 2012 ACA changes to their plan design.
- Reflect the 2013 plan year \$2,500 cap on salary deferral contributions into healthcare spending accounts in 2013 Open Enrollment material, payroll processes, and administration systems.
- Understand and begin to determine the patient-centered outcomes trust fund fees due in July 2013.
- Begin to identify whether their group health plans are both affordable and available to full-time employees in order to avoid any shared responsibility penalty in 2014.

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- Prepare for audits associated with their participation in the Early Retiree Reinsurance Program, if applicable.
- Review possible design changes to retiree drug programs to reflect the change in Medicare Part D subsidy taxation rules.
- Review future plan design changes to blunt the balance sheet impact of the 2018 Cadillac Tax.

Implications

While the Supreme Court decision is an important milestone in the federal debate over expanding healthcare coverage, it likely represents just the first in a series of future federal discussions and actions in the coming months and years.

The federal debate now moves to the November election cycle. The ACA no doubt will play a large role in the upcoming elections, but it is premature to expect any quick legislative reversals to ACA provisions, as any changes would require a significant shift in power.

In the interim, employer group health plans should continue to examine and implement those ACA requirements that will be effective in 2012, 2013, and later years into the design and operation of their group health plans.

We will release future LawFlashes and hold webinars as further guidance becomes available.

Our prior LawFlashes on the ACA, as well as material and opinions from today's webinar, can now be found in one location. Please visit <http://www.morganlewis.com/topics/healthcarereform> to view our Healthcare Policy and Reform resource page.

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