

# Health Care—US Supreme Court Decision



July 2012

Dear Client:

On June 28, 2012, the United States Supreme Court issued its long-awaited decision on the constitutionality of the Patient Protection and Affordable Care Act (PPACA) and its companion law, the Health Care and Education Reconciliation Act (HCERA). In summary, the nation's highest court upheld the law – except for certain Medicaid provisions. The 5 to 4 decision preserves many far reaching tax provisions and health insurance reforms. In coming months, lawmakers and legal scholars will examine all of the nuances of the Court's highly complex decision. More immediately, individuals and businesses are concerned about what steps they need to take next.

## **Court Challenges** (a brief history of PPACA/ HCERA's path to the Supreme Court)

After passage of the PPACA, several states challenged the law on constitutional grounds. The cases started in the federal district courts, worked their way through the circuit courts of appeal and eventually landed before the Supreme Court.

In March 2012, the Supreme Court heard three days of oral arguments on whether the *individual mandate* in the law is a proper exercise of Congress' taxing power or its power under Constitution's commerce clause. The Court also heard arguments on the viability of the PPACA without the individual mandate. Another issue before the Court was whether the law's expansion of Medicaid exceeds the government's spending authority. Finally, the Court heard arguments on whether the Anti-Injunction Act (Code Sec. 7421) applies.

## **Individual Mandate** (the pivotal issue in the case before the Supreme Court)

The PPACA includes a shared responsibility requirement for individuals. This has come to be known as the individual mandate. Broadly, this provision requires individuals to obtain minimum essential health coverage or pay a penalty starting in 2014. Many individuals, however, are exempt from the

penalty. These include individuals covered by Medicare and Medicaid, individuals with coverage under military health plans, undocumented individuals, and others.

The PPACA also imposes no penalty on individuals who could not afford coverage. Additionally, individuals with employer provided coverage generally are treated as having minimum essential coverage and are exempt from the penalty unless the coverage is deemed unaffordable.

In *National Federation of Independent Business et al. v. Sebelius*, June 28, 2012, Chief Justice Roberts and Justices Ginsburg, Breyer, Sotomayor, and Kagan found that the individual mandate was a valid exercise of Congress' taxing power under the Constitution. "Under the mandate, if an individual does not maintain health insurance, the only consequence is that he must make an additional payment to the IRS when he pays his taxes. That, according to the Government, means the mandate can be regarded as establishing a condition—not owning health insurance—that triggers a tax—the required payment to the IRS. Under that theory, the mandate is not a legal command to buy insurance. Rather, it makes going without insurance just another thing the Government taxes, like buying gasoline or earning income."

The majority concluded: "Our precedent demonstrates that Congress had the power to impose the exaction in Section 5000A under the taxing power, and that Section 5000A need not be read to do more than impose a tax. That is sufficient to sustain it."

Justices Scalia, Kennedy, Thomas, and Alito dissented. According to the dissenting justices, the majority's decision that the individual mandate imposes a tax in essence was a rewrite of the PPACA and not an interpretation. The dissenting justices would have struck down the entire law.

Continued ▼

# Health Care—US Supreme Court Decision



July 2012

## Tax Provisions

Along with the individual mandate, the PPACA includes many tax provisions, which remain law. It cannot be over-emphasized that the tax provisions impact nearly every individual and business. Here's a listing of some of the tax-related provisions:

- › Code Sec. 45R small employer health insurance tax credit
- › Additional Medicare tax for higher income individuals
- › Medicare tax on investment income
- › Contribution limits on health flexible spending arrangements (health FSAs)
- › Increased itemized medical expense deduction threshold
- › Excise tax on high-dollar health insurance plans
- › Additional tax on distributions from health savings accounts (HSAs) and certain other arrangements
- › Excise tax on certain medical devices
- › Indoor tanning excise tax
- › Tax credit for therapeutic discovery projects
- › Disclosure of cost of employer-provided coverage on Forms W-2 for informational purposes
- › Limits on use of health FSA dollars on over-the-counter medications
- › Enhanced simple cafeteria plan rules for small businesses
- › Changes to retiree prescription drug subsidies
- › Codification of the economic substance doctrine
- › Branded prescription drug fees
- › Reforms for charitable hospitals
- › Reporting requirements for sponsors of health care coverage

The PPACA also imposes a penalty on applicable employers (generally employers with more than 50 full-time employees) that do not provide affordable health insurance coverage to their employees. The penalty is scheduled to take effect after 2013. Employers need to review their coverage to determine if it satisfies the minimum essential coverage and affordability requirements under the PPACA. Employers also should review their benefits packages for compliance with the PPACA. Since passage of the PPACA/HCERA, the IRS and the U.S. Departments of Health and Human Services (HHS) and Labor (DOL)

have issued extensive guidance on the new law. The pace of guidance is expected to accelerate now that the law has been upheld by the Supreme Court.

## Insurance Reforms

Along with the tax-related provisions we have discussed, the PPACA has set in motion many insurance reforms. These include:

- › Enhanced coverage for certain dependents
- › Summary of benefits coverage and uniform glossary
- › New rules for internal and external reviews of adverse decisions by health insurance carriers
- › Patient's bill of rights
- › New rules for preventive services

Like the tax provisions, federal agencies have been busy issuing guidance on the insurance reforms. More guidance is expected in coming weeks and months.

## Health Insurance Exchanges

The PPACA requires every state to establish an American Health Benefit Exchange and Small Business Health Options Program (SHOP Exchange) to provide qualified individuals and qualified small business employers access to qualified health plans. Some states have already begun the process of setting up exchanges. Other states waited to see the outcome of the Supreme Court case.

## Medicaid

The PPACA also expanded Medicaid to cover more individuals with incomes below 133 percent of the federal poverty level. The federal government would cover 100 percent of the Medicaid costs of the newly eligible individuals, with the percentage dropping to 90 percent (with states covering the difference) by 2020. States would be required to make up the difference. The PPACA also set minimum essential levels of Medicaid coverage and made other changes. States that fail to comply with the PPACA risk termination of all Medicaid funding from the federal government. The Supreme Court held that Congress could expand Medicaid. However, Congress could not penalize states that choose not to participate in the expansion by taking away their Medicaid funding.

Continued ▼

# Health Care—US Supreme Court Decision



July 2012

## Looking Ahead

Employers, taxpayers – indeed everyone – must prepare for sweeping changes in health care in coming years. Many of the provisions in the PPACA have already been implemented or are in the process of being implemented. Other provisions are scheduled to take effect after 2012. The Supreme Court's upholding of the PPACA clears the way for implementation of the new law (unless a future Congress votes to repeal the law).

Our office will keep you posted of developments and the steps you need to take in the coming months and years. If you have any questions about the Supreme Court's decision, please contact us.

804.747.0000 | [information@keitercpa.com](mailto:information@keitercpa.com)

Stay in touch



---

Information provided by Keiter is intended for reference only. The information contained herein is designed solely to provide guidance to the reader, and is not intended to be a substitute for the reader seeking personalized professional advice based on specific factual situations. This information does NOT constitute professional accounting, investment, tax or legal advice and should not be interpreted as such.

Although Keiter has made every reasonable effort to ensure that the information provided is accurate, Keiter, and its shareholders, managers and staff, make no warranties, expressed or implied, on the information provided. The reader accepts the information as is and assumes all responsibility for the use of such information. All information contained is protected by copyright and may not be reproduced in any form without the expressed, written consent of Keiter. All rights are reserved.

### IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction(s) or tax-related matter(s) addressed herein.