



Where Does The Healthcare Law Now Stand?

By Sandra Feingerts

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The Patient Protection and Affordable Care Act (PPACA) – better known as Healthcare Reform, or even "Obamacare" – continues to make news. The recently-passed act to keep the government open eliminated the free choice voucher – a requirement that would have placed an additional burden on employers in the administration of their health plans by requiring them to give some employees a voucher for the amount the employer pays for an employee's insurance that could be used by the employee to purchase insurance on the state exchange.

The Republican members of Congress appear committed to dramatic change or repeal of the law. President Obama has said he is open to change, but without specifics. In the other branch of government – the judiciary – the cases that have dealt with the constitutionality of the PPACA are worth noting.

Legality Of The Law Under Fire

Specifically at issue in these legal cases is the so called "individual mandate" which requires almost all individuals who file a federal income tax return to have health coverage that meets the definition of "minimum essential coverage." Minimum essential coverage is not minimal at all. The definition will be issued through regulations, but it is expected to be broad-based health coverage with few limitations.

Individuals who are required to have health insurance either can obtain coverage through their employers or can purchase it from an insurance company through the state-operated exchange. Those who fail or refuse to purchase health coverage are subject to payment of a tax called the "shared responsibility payment." This payment is

payable for any month a taxpayer does not have health coverage. Generally, the tax is calculated based on the number of individuals claimed as exemptions on the individual's return.

In 2014, the tax for a single person is the lesser of \$95 per month or 1% of income above the threshold amount that a person has to earn to be required to file a federal income tax return ("filing threshold"). The shared responsibility payment increases both in amount and percentage in 2015, and in 2016 the tax is the lesser of \$695 per month or 2.5% of income above the filing threshold. The rules are a little complicated and there are limits on the tax for taxpayers claiming more than two dependents.

So, is it constitutional for the federal government to require that most of its citizens be covered by health insurance? At the end of 2010, a federal district judge in Florida held that Congress has no authority under the commerce clause of the Constitution to enforce this provision of health reform. The commerce clause allows Congress to regulate economic activity that affects interstate commerce. This holding struck down the health reform act on the grounds that the individual mandate is such an integral part of the whole scheme that PPACA is void.

A Virginia court has taken a more limited approach to the constitutionality of the individual mandate and found it to be unconstitutional, but upheld the other provisions of health reform. Both of these decisions conflict with decisions of other federal district courts which have found the new law to be constitutional. There are dozens of cases like this pending in other jurisdictions.

Appeals of the Virginia case and the Florida case are pending. But the Attorney General of Virginia is advocating that the entire law is unconstitutional and that the Florida court is the one that got it right. He intends to ask the Supreme Court for an expedited direct appeal from the district court – before the court of appeals has heard the case – because the case is of "imperative public importance." As Congress struggles with legislative change, and while the IRS and the Departments of Labor and Health and Human Services grind away on the list of regulations that have to be issued, the end of this make-or-break drama will ultimately be determined by the U.S. Supreme Court.

Obviously no one can predict the ultimate outcome, and we're not going to try. But we'll continue to monitor the situation and keep you apprised of any important developments.

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