The Supreme Court’s Decision on the Constitutionality of the Affordable Care Act

National Federation of Independent Business v. Sebelius

Center for Health Law and Policy Innovation
Harvard Law School
July 10, 2012
Webinar Instructions

• All attendees are in listen-only mode.
• This webinar is being recorded.
• During Q & A segments panelists will respond to your questions.
  – Everyone can ask questions at any time using the chat feature.
  – Today’s webinar is too large for questions via phone.
• If you are having audio trouble go to preventionjustice.org/content/blog for troubleshooting help.
Use the Chat Box to Ask Questions

During the session, you can use this button to "Raise Your Hand" if you have a question.

If there are more questions than can be answered during a session, the Organizer may ask that you type in questions in the Question Log so that they may be addressed later, via email.
Presentation Outline

Part 1: What did the Supreme Court decide?

Part 2: What does the decision mean for people living with HIV?

Part 3: Where do we go from here?
Part 1: What did the Supreme Court decide?

The Affordable Care Act is Constitutional!
(Yet Court alters one major provision)

The Individual Mandate

- Is constitutional
- (Congress has authority to tax most individuals who refuse to buy health insurance)

The Medicaid Expansion

- Is Constitutional...
- ... but cannot withdraw existing Medicaid funding from states that do not comply with the expansion
The Individual Mandate Ruling

Congress does not have authority to require individuals to buy health insurance under its power to regulate commerce (the Commerce Clause Argument)

But Congress does have authority to impose the mandate under its authority to tax!

“The Federal government does not have the power to order people to buy health insurance... The Federal government does have the power to impose a tax on those without health insurance.”
What does upholding the individual mandate mean?

Requires that all legal residents who are uninsured but can afford health insurance must buy it (subsidies available for people living < 400% FPL)

Starting in 2014, those who can afford it and do not obtain health insurance will be required to pay a penalty (to the IRS)

The penalty starts at the greater of $95 or 1% of taxable income in 2014, phasing in to the greater of $695 or 2.5% in 2016
The Medicaid Expansion Ruling

ACA requires states to expand Medicaid eligibility to cover most people living below 133% of the FPL

(∼ $14K for an individual and ∼$29K for a family of four)

Under ACA, failure to expand = lose ALL federal Medicaid funding

Supreme Court’s holding:

HHS cannot take away existing Medicaid funding from any state for failing to expand Medicaid, as threatening states with withdrawal of existing Medicaid funding for failure to expand is “coercive” (i.e. “compels” states to implement a federal plan)
What does limiting the Medicaid expansion mean?

If states opt into the expansion, most residents with income below 133% FPL are eligible for Medicaid, including a newly defined essential health benefits package.

If states do not opt into the expansion, traditional Medicaid eligibility rules apply.
Part 2: What does the Court’s decision mean for people living with HIV?

• Major private insurance reforms and other investments in prevention and health go into effect

• Medicaid expansion now requires state by state advocacy to ensure states opt in
Important Provisions Already in Effect

- Pre-existing Condition Insurance Plans (PCIPs) & ADAP as TrOOP
- Health plans cannot drop people from coverage when they get sick
- No lifetime or annual benefit limits for all private health insurance plans
- Prevention and Public Health Fund: increasing annually up to $2 billion in FY 2015 and thereafter
- Optional Medicaid Health Home Program
- Funding for community health centers -- $11 billion from 2010-2014
Coming soon…

- Medicaid reimbursement rate increases for primary care providers in 2013-14
- Essential Health Benefits in state Exchanges and in Medicaid for the newly eligible (in participating states)
- Medicaid expansion for states that opt in
- Prevention and Public Health Fund: increasing annually up to $2 billion in FY 2015 and thereafter
- No pre-existing condition exclusions or discrimination based on gender or health status for all private health insurance plans
### Reasons to expand Medicaid

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<th>State governments currently pay for uncompensated care</th>
<th>Federal funding to hospitals to cover uncompensated care will be reduced to fund the expansion</th>
<th>Hospitals will end up charging higher prices to compensate for emergency care provided to the uninsured</th>
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<td>Now federal dollars will cover 90-100% of the cost of most uninsured</td>
<td>If states don’t expand Medicaid they’ll receive even less federal funding to support the uninsured</td>
<td>Residents of states that don’t expand will continue to pay these higher prices</td>
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*Medicaid expansion will reduce health disparities*
We Can’t Fight an Epidemic with a Discretionary Program Alone

Ryan White Part C Caseloads Compared to Funding Levels: 2001 to 2009

Source: Andrea Weddle, HIV Medicine Association, HIV Medical Provider Experiences: Results of a Survey of Ryan White Part C Programs, Institute of Medicine Committee on HIV Screening and Access to Care, September 29, 2010
### Part 3: Where Do We Go From Here?

#### At the Federal Level
- Ensure Congress does not repeal the ACA
- Urge Congress and HHS to clarify the consequences for states that do not expand Medicaid

#### At the State Level
- Talk to state officials about the needs of people living with HIV and the importance of Medicaid expansion
- Encourage state officials to take advantage of Medicaid Health Homes and Bridge to 2014 opportunities
- Join coalitions of other health advocates

#### Stay Informed
- Keep your finger on the pulse of federal and state legislative and regulatory health care reform initiatives
- **WE CAN HELP!**
Advocacy Priorities

• Advocate with state government leaders to ensure your state expands Medicaid

• Continue to influence all reform implementation to ensure a smooth transition for people living with HIV
  • Ensure that your state’s Essential Health Benefits package meets care and treatment needs
  • Ensure that outreach, enrollment, and patient navigation systems work
2012 Elections = Watershed for Health Care

Will the ACA be fully implemented?

Will our health care safety nets (Medicaid, Medicare, Ryan White Program) be preserved?
HIV Legislative Week in DC

• Coming to DC for the International AIDS Conference?
• Pledge online to visit your Congressional members!
  – [http://tinyurl.com/7bez8mh](http://tinyurl.com/7bez8mh)
• Check out the DIY Guide to Influencing Policy on Capitol Hill
  – [www.aidsunited.org](http://www.aidsunited.org)
• Participate in an advocacy training in the Positive Community Networking Zone in the Global Village
  – [http://tinyurl.com/86393r9](http://tinyurl.com/86393r9)
• Brought to you by AIDS United, TAEP/HLS, NAPWA, POZ Army, and many others
Resources


HIV Health Reform, http://www.hivhealthreform.org/


AIDS United, www.aidsunited.org

Dose of Change, www.doseofchange.org

HIV Medicine Association, www.hivma.org

Health Care Reform Resources

• Kaiser Family Foundation, www.kff.org
• FamiliesUSA, www.familiesusa.org
• Community Catalyst, www.communitycatalyst.org
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