

# Supreme Court Upholds Affordable Care Act, Questions Remain

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The US Supreme Court (Court) issued its decision in *National Federation of Independent Business v. Sebelius*, the highly anticipated case regarding challenges to the Affordable Care Act (ACA), on June 28, 2012. In a 5-4 decision, the Court upheld the constitutionality of the ACA, including the requirement that most individuals obtain health insurance or pay a tax (commonly known as the “individual mandate”), as well as the ACA’s expansion of Medicaid. However, the Court struck down the federal government’s ability to withhold all Medicaid funding from states that do not expand Medicaid eligibility. While the Court’s decision provides clarity on the current status of the law, there remains as many questions as answers about whether and how the ACA will affect states and physicians.

## Background

The ACA, which was signed into law by President Barack Obama in March 2010, represents the largest change to national health care law since the creation of Medicare and Medicaid. The ACA is comprised of the Patient Protection and Affordable Care Act (PPACA) and Health Care and Education Reconciliation Act (HCERA). The goals of the ACA are to expand health care access, improve health

care quality, and implement cost-containment and financial reform strategies. The ACA increases the number of Americans with access to health care, expands health insurance market requirements, creates health insurance exchanges to provide individuals and small employers with access to insurance, reforms payments under Medicare and Medicaid, and establishes numerous programs, pilots, and incentives to control rising health care costs. The ACA calls for staggered implementation of various provisions. Some provisions went into effect immediately, others took effect in subsequent years, and still others will take effect between now and 2018.<sup>1</sup>

Multiple challenges to the ACA were filed almost immediately after its passage. Wisconsin joined a lawsuit with 25 other states, including Nebraska and North Dakota, in which the US Court of Appeals for the Eleventh Circuit affirmed a Florida district court’s decision striking down the “individual mandate” as unconstitutional but upholding the remainder of the law. That decision was appealed to the US Supreme Court, which heard an unprecedented 3 days of oral argument in March 2012.

## The Supreme Court Decision

The challenges focused on 2 provisions of the ACA: the “shared responsibility payment” (individual mandate) and the expansion of Medicaid eligibility. Under the individual mandate, most Americans will be required to obtain health insurance (per-

sonally or through an employer) or pay a tax starting in 2014. Under the Medicaid expansion, states would be required to expand Medicaid coverage to include any non-Medicare eligible individual without health insurance whose income is below 133% of the federal poverty line (FPL).

The Supreme Court upheld the individual mandate, not under the Commerce Clause of the Constitution as many anticipated, but as a valid exercise of Congress’s power to impose taxes. The majority opinion, written by Chief Justice John Roberts, noted that taxes often are used to incentivize or disincentivize conduct and the ACA does not make going without health insurance illegal because an individual can fully comply with the law by paying the tax instead of purchasing insurance. Therefore, the Court found the individual mandate to be a valid exercise of Congress’s power to impose taxes.

The Court did, however, strike down a provision in the ACA giving the federal government the power to withhold all Medicaid funding from states that do not expand eligibility. The Court held that while the federal government can provide financial encouragement to states to implement the desired Medicaid expansion, it cannot withhold existing funds in order to coerce states into compliance. Medicaid funding accounts for approximately 10% of most states’ budgets. Withholding all Medicaid funding from states, according to the majority opinion, is not “relatively mild encouragement—it is a gun to the head.” By striking down the

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federal government's ability to condition all Medicaid funding on a state's compliance with the expansion, the Court effectively made the expansion of Medicaid optional for states. However, all other provisions of the ACA remain in effect.

### **What the Supreme Court's Decision Means for Physicians**

The ACA's goals of increased access to health care and cost control mean that physicians can expect increased patient demand and an emphasis on accountability and efficiency. The Congressional Budget Office estimates that 30 million to 32 million additional Americans will have access to health care as a result of the ACA.<sup>2</sup> While the fact that the Medicaid expansion was made optional by the Court undoubtedly will affect this estimate, there will still be millions of new patients looking for physicians. Primary care physicians are expected to see the greatest increase in demand. An unknown percentage of those new patients may be covered by Medicaid, increasing administrative and financial strains on certain providers. Physicians will have to ensure that increased demand does not result in decreased quality and will have to find efficient ways to handle the increased demand and associated administrative burdens.

Perhaps an even larger long-term effect of the ACA on physicians is the move toward new payment methodologies. The ACA begins a potential move away from the fee-for-service model that some contend incentivizes excess treatment and toward a more accountable, efficient, and coordinated system. These new methods stress coordination across provider networks and disciplines in order to reduce duplicate efforts and to control costs. These methods also stress accountability by incentivizing providers to cut down on unnecessary tests and by reducing payments under Medicare for readmissions and hospital-related infections. Some providers may find these new methods advantageous while others may

find them cumbersome or even arbitrary. Regardless, these new methods will put physicians and other health care professionals at the forefront of cost containment and stress efficiency, coordination, and accountability for quality.

### **What the Supreme Court's Decision Means for Wisconsin**

While the Supreme Court's decision confirms the current status of the law, it is not clear how this will affect Wisconsin. The same day the Court released its decision, Governor Scott Walker stated that Wisconsin will not take additional steps to comply with ACA until after the November elections, which he hopes will result in a federal government that repeals the ACA.<sup>3</sup> Wisconsin Attorney General J.B. Van Hollen has stated that Governor Walker is obligated to follow the ACA, but also noted that "...there are a number of parts of this law that give options to the states and give time frames that allow wiggle room."<sup>4</sup>

Wisconsin's strong record on health care will likely shape its implementation of the ACA. For example, the Medicaid expansion would provide coverage to anyone with income below 133% of the FPL. However, Wisconsin's BadgerCare Plus and Core Plan provide coverage to individuals with income below 200% of the FPL, including individuals without dependents. Thus, the now-optional Medicaid expansion may not have as dramatic of an impact in Wisconsin as it would in other states because Wisconsin has one of the lowest rates of uninsured people in the nation.<sup>5</sup>

Further, some states that currently cover more than the required minimum under Medicaid, like Wisconsin, have suggested that they could cut eligibility back to the federal minimum in order to save money. The ACA requires states to maintain their Medicaid eligibility to those at the time the ACA was enacted, but some states, such as Maine, contend that this too was struck down by the Supreme Court.<sup>6</sup> It is not clear yet whether Wisconsin will participate in the

### **Additional Resources**

- Wisconsin Medical Society FAQs: [http://www.wisconsinmedicalsociety.org/\\_WMS/publications/medigram/\\_files/07262012/ACA\\_FAQ\\_july12.pdf](http://www.wisconsinmedicalsociety.org/_WMS/publications/medigram/_files/07262012/ACA_FAQ_july12.pdf)
- Full text of the US Supreme Court's decision: <http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>
- Full consolidated text of ACA: <http://housedocs.house.gov/energycommerce/ACAcon.pdf>

expansion, maintain current eligibility standards, or reduce eligibility as implementation of the ACA continues.

The ACA also requires states to set up health insurance exchanges, which are designed to foster competition among insurers, standardize plans, and allow consumers and employers to compare and purchase coverage. If a state does not set up an exchange, the federal government may set one up for the state instead. Wisconsin began work on a Wisconsin-specific exchange in 2010, but that work was halted soon after Wisconsin joined the legal challenges to ACA. It is not clear whether Wisconsin will resume work on a health insurance exchange, whether the federal government will be forced to set one up, or whether Wisconsin will establish a hybrid system shared between the state and HHS.

### **Conclusion**

The US Supreme Court's historic decision upholding the majority of the ACA provides clarity in that we know that the ACA, with the exception that expansion of Medicaid eligibility is now optional for states, is the law. This allows physicians, other health care professionals, organizations, and states to continue to plan for and comply with the ACA.

However, many questions remain. The

Court's decision has pushed the debate over the ACA back into the political arena, with some groups calling for the law's total repeal. It is unclear whether states will implement optional features of the ACA, such as the health insurance exchanges or Medicaid expansion, or how these choices will affect physicians. The ACA also requires new federal regulations to be written that interpret the ACA, only some of which have been written to date. Thus, while the Supreme Court's decision clarified what the law is, questions remain about the implementation and future of that law.

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