

Health Reform Update

Conflict Between Circuits Regarding Individual Mandate

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The U.S. Court of Appeals for the 11th Circuit (Alabama, Florida and Georgia) recently declared the individual mandate to be unconstitutional. Under the Affordable Care Act, the individual mandate requires individuals to maintain a specific minimum level of health insurance coverage beginning January 1, 2014, or pay a federal tax penalty for each month coverage is not maintained. Although the court held this particular provision to be unconstitutional, the remainder of the law stands. The decision will likely be appealed to the Supreme Court.

The 11th Circuit's decision creates a conflict between the Federal Circuits. In June, the 6th Circuit (Kentucky, Michigan, Ohio and Tennessee) upheld the individual mandate as valid. The 6th Circuit decision has already been appealed to the Supreme Court; however there is no decision as to whether it will be heard at this time.

Although the Supreme Court has discretion over what cases it hears, it is not required to grant review of this issue simply because there is a split in the Circuits; however, it seems likely that the fate of the provision will ultimately be decided by the Supreme Court. Without a consensus among the Circuits, it would be difficult to implement the law. When the case would be heard is uncertain; the Court may wait to see what happens in the other Circuits (there is also a case pending in the 4th Circuit in Virginia). President Obama continues to maintain confidence that the individual mandate is constitutional.

What are the ramifications if the individual mandate is ultimately declared unconstitutional? The individual mandate is one of the central tenets on which the reform is based. Without the individual mandate, which would increase the insurance pool by bringing more people into it, insurance carriers will likely argue that it is unreasonable to require them to cover all applicants regardless of their health status. Further, if there is no requirement for everyone to have coverage, there is nothing to guaranty that the risk pool contains enough individuals in good health, as well as those with medical problems, and nothing to stop people from waiting until they are sick or injured to demand coverage. As a result of these concerns, we would likely see dramatic premium increases in the individual and small group markets -- which would lead to drops in enrollment, causing even further increases in premium. We will continue to monitor this issue and keep you apprised.