



Chief Roberts Pulls Huge Rabbit From Hat: Supreme Court has upheld the Affordable Care Act

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After two years of often bitter national debate, the Supreme Court has upheld the Affordable Care Act (ACA). The Justices seeking to uphold the ACA were unable to garner the support of frequent swing vote Anthony Kennedy, instead turning to Chief Justice Roberts to uphold the ACA on a 5-4 majority. Roberts upheld the bill based on the Obama administration's fallback argument: that the controversial individual mandate was a tax. The decision, while a victory for President Obama, raises serious questions about the future of legislation under the Commerce Clause. Five justices agreed that the ACA was not within congressional power under the Clause, possibly inviting more Commerce Clause challenges to other federal legislation in the future.

In Washington, a determined group of members of Congress may continue pushing for repeal of the ACA. Indeed, the Republican leadership has announced that the House will vote the week of July 9 to overturn the legislation. But with the Supreme Court review of the law complete, and implementation drawing near, the tide is against these lawmakers. Some opponents of the ACA now assert that the entire bill can be repealed in the Senate via the reconciliation process, which requires only a simple majority vote (as opposed to the 60 votes required to defeat a filibuster). But unless Mitt Romney is elected President in November, and brings with him not only a Republican House but decisive Republican control of the Senate, repeal of the ACA will be difficult.

With the potential for repeal of the ACA fading, yesterday's decision has momentous implications for the healthcare industry. In California and other states, officials had vowed to move forward with healthcare reform measures with or without the support of the ACA. Recognizing the need to improve quality while lowering costs, states have signed on for health insurance exchanges, coordinated care initiatives for dual

eligibles, and other programs. Now, they can breathe a sigh of relief knowing that these programs will have needed federal support.

For example, in the wake of Thursday's decision, we now know that Medicaid will expand substantially in less than two years. Here in California, Low-Income Health Plans have given the state a head start on this historic extension of health insurance, enrolling more than 350,000 people in 47 counties. But this is only the beginning. Now, with the Medicaid expansion firmly in place, the state projects that 1.5 million additional Californians will gain access to health care. California can look forward to \$45 to \$55 billion in federal funds to cover the expansion during the next seven years, according to the Kaiser Family Foundation.

Not all states are as committed as California to the Medicaid expansion, however. Thursday, a controlling plurality of the Justices ruled that the federal government may not withhold existing Medicaid funds from states who do not participate. The ruling therefore potentially renders the expansion "optional" for those states who have not already committed. This is sure to lead to further controversy in statehouses around the country.

The question that the Supreme Court did not answer Thursday was whether the ACA's reworking of American healthcare will actually work. Based on successful prior demonstration projects, many will argue that as a result of today's decision, patients are likely to see both improved care and improved access. And providers who had been sitting on the fence still have time to get in the game with innovative payment and delivery system reforms, not to mention strategies for how to make the most of the new health insurance exchanges that will be established throughout the country by 2014.

Success in the rapidly transforming healthcare industry is within reach. But that success will depend both on providers' entrepreneurship and the quality of the legal advice they receive—particularly with a new wrinkle in the Medicaid expansion that could alter the playing field in some states.

How Nossaman Can Help

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Nossaman attorneys are available to assist with any questions you may have about the Supreme Court's decision, including the health insurance exchanges, upgrading delivery and payment systems, legal barriers to care innovations, and more.

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