

*By now the dust has started to settle on the Supreme Court's highly anticipated ruling on the constitutionality of the Affordable Care Act (ACA). While the ink has dried on the jaw-dropping ruling, the importance of the decision cannot be overstated.*

## What the U.S. Supreme Court Was Deciding

Here's a quick recap of the four questions considered by the Court.

Legal Question	How the Court Ruled
Does the Anti-Injunction Act (which bars challenges to taxes until they are due) prohibit the law from being challenged until 2015, after the penalty for not having insurance is implemented?	<b>No</b> The wording in the law describes the shared responsibility payment as a "penalty," not a tax, therefore the Anti-Injunction Act doesn't apply.
Does Congress have the authority to require all Americans to have a basic form of insurance by 2014 or face a penalty (individual mandate provision)?	<b>Yes</b> The penalty is permitted under Congress' taxing authority, but not permitted under the Commerce Clause.
If the individual mandate is found to be unconstitutional, can the rest of the law stand?	<b>Not Applicable</b> The individual mandate is upheld.
Is the law's Medicaid expansion a valid exercise of Congress's spending power?	<b>Yes and No</b> The Medicaid expansion is ruled constitutional, but a provision that allowed Congress to withhold all existing federal Medicaid matching funds from a state that refuses to participate in the Medicaid expansion is struck down.

While it can be tricky to navigate the legal jargon, in simple terms the Court ruled first and foremost that they could rule on the constitutionality of the ACA now, before the penalty for not having insurance begins.

On the closely-watched and highly controversial issue of the individual mandate — whether Congress has the authority to require all Americans to have a basic form of insurance by 2014 or face a penalty — the Court ruled that the Commerce Clause of the Constitution does not permit the penalty. However, if viewed as a tax, the penalty is permissible under Congress' taxing authority.

Therefore, the individual mandate stands. Given that the Court upheld the constitutionality of the individual mandate, it didn't need to address whether the rest of the law could stand.

Yet with most of the country's attention prior to the decision focused on the individual mandate provision, far less attention was paid to the Medicaid expansion provision. Under the original ACA, states that refused to expand their Medicaid programs to everyone who earns less than 133 percent of the federal poverty level (FPL) would face a loss of all of their existing federal Medicaid funds. A majority of justices ruled that Congress had exceeded its authority by coercing states into participating in the expansion by threatening them with the loss of all existing federal Medicaid payments. States that participate in the Medicaid expansion will receive the federal financial support included in the ACA and states that don't comply will now only lose the new federal matching funds associated with the expansion.

## Health Reform Marches On

From the beginning, most people — even those championing the law — recognized that it was imperfect. Yet it was a starting point to address the rising number of uninsured as well as the need for consumer protections that had arisen due to the questionable business practices of some insurance companies. Now, with fewer distractions from the protracted legal debate, healthcare providers and other stakeholders can continue the hard work of implementing the numerous provisions of the law and patients can truly begin to understand how the law will affect them.

## How Will It Affect Patients?

The Supreme Court's ruling has vast implications for the health coverage of millions of Americans. The stakes were arguably highest for some of the sickest Americans, particularly those with pre-existing conditions, who prior to the ACA often found it too expensive to purchase insurance in the individual market. Had the individual mandate been struck down, many people believed it would be unfair if not unsustainable to require the health insurance market to keep protections for individuals with pre-existing conditions. Fortunately, those protections were kept intact.

The federal healthcare reform law provides some much-needed reforms to ensure that patients who were previously uninsured now have access to health coverage. By requiring most people in the U.S. to purchase health coverage, and providing subsidies to help low- and middle-income families purchase coverage through the newly created insurance exchanges, the law promotes access to healthcare in the most appropriate and cost-effective setting. Patients who were previously uninsured will now have the opportunity to enter the healthcare system as most individuals with insurance typically do, through the primary care system, rather than waiting until a health problem escalates to the point of needing emergency care.

## What Is Still Unknown?

One of the biggest unknowns, now that the decision is in, is how the Court's ruling will impact the number of individuals who qualify for coverage under the Medicaid expansion. The Medicaid expansion under the original ACA was expected to extend coverage to an additional 17 million working poor in the U.S. As of today, it is unclear which states will decide to move forward with the Medicaid expansion and which ones won't. Without the threat of the loss of all of their federal Medicaid matching dollars, many have questioned whether states will voluntarily choose to expand coverage.



There is certainly one huge incentive for states to expand their Medicaid programs – a giant pot of federal money. The ACA specifies that federal matching funds for the newly eligible are 100 percent between 2014 and 2016, 95 percent for 2017 and, after a slow decline, reach 90 percent by 2020 where they will remain. This is a huge benefit considering the federal matching rate for the Medicaid program typically averages 57 percent across the states.<sup>1</sup> Will the federal Medicaid matching funds be too enticing to pass up for many states?

While the giant cash infusion might appeal to many states, some have voiced concern that the federal government might decide to decrease the federal Medicaid expansion matching rate over time. In this case, states worry, they will be left with a new population of Medicaid enrollees that requires a greater share of state dollars than originally anticipated. Apart from these concerns, some states might choose not to expand their Medicaid programs simply out of an ideological opposition to the ACA. Ohio's Governor John Kasich has yet to signal whether Ohio will participate in the expansion or not.<sup>2</sup> An estimated 789,000 uninsured Ohioans could qualify for coverage under the Medicaid expansion, accounting for 57 percent of the state's uninsured population.<sup>3</sup>

However, for some of the poorest uninsured individuals living in states that choose not to expand the Medicaid program, the Court's ruling may have inadvertently created a gap in coverage. The original ACA provides uninsured individuals earning between 100 and 400 percent of the FPL with help paying for health insurance premiums in the health insurance exchanges. Also included in the original ACA was cost-sharing assistance to individuals earning between 100 percent and 250 percent of the FPL. However, the law as written didn't provide any subsidies to most individuals earning less than the federal poverty level, given that under the original ACA they would have been covered under the Medicaid expansion. Individuals earning below 100 percent of the FPL who don't qualify for Medicaid are unlikely to be able to afford coverage without subsidies.<sup>4</sup> Whether politicians will choose to remedy this gap in coverage remains to be seen.

## How Will Hospitals Respond?

Nobody is more keenly aware of the importance of healthcare coverage than those working in the healthcare field. Hospitals and other providers see first-hand the devastating effects that a lack of health insurance can have and that is why they advocated for an expansion of coverage from the beginning of the debate. For now, questions about which states will move forward with an expansion of Medicaid coverage remain unanswered. Hospitals located in states that choose not to expand their Medicaid programs can expect higher uncompensated care costs than under the original ACA.

The ruling also means that hospitals can continue implementing the many new requirements contained in the original ACA without as many distractions. They will likely see an increase in the number of patients seeking care, though it is more likely that those patients will enter the healthcare system through the primary care system rather than the emergency room.

Reimbursement initiatives to reward quality care rather than volume, such as what is seen with value-based purchasing, will also continue. Healthcare providers will continue efforts to create a greater continuity of care, while using evidence-based practices to improve quality of care.

Hospitals will also continue their focus on reducing the cost of delivering care. Economic pressures are forcing hospitals to treat more patients at lower costs – a fact that would have been true regardless of the Court's ruling. While hospitals applaud extending care to millions of Americans, refinements to other aspects of the law through the legislative process will be necessary.

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## Conclusion

While the protracted legal battle is over, don't expect the controversy over the law to dissipate. With the November elections looming, both parties will continue trying to use the ruling to their advantage. Republicans have vowed to continue fighting to repeal the law through the legislative process — and, in fact, already have. Just days after the Supreme Court decision, the House of Representatives, with its Republican majority, voted for the 33<sup>rd</sup> time to repeal health reform. The vote, which is considered largely symbolic since the Democratic majority in the Senate would stop any further efforts to move the repeal along, clearly demonstrates that the fight over health reform is far from over.

To be sure, the political debate will continue, prolonging many uncertainties about how this law will impact healthcare in the short and long term. Yet, despite the political controversy, what has always been indisputable is that something needed to be done to reform the healthcare system. A recent poll taken just before the Court's landmark ruling found that 86 percent of Ohioans — across party lines — believed that even if the law had been struck down that lawmakers should continue to work on ways to provide access to affordable, quality healthcare.<sup>5</sup> With the Supreme Court's decision now firmly in place, hospitals can stop worrying about constitutionality and continue the work they have begun to advance those goals.

## Endnotes

1. Kliff, S. "The Supreme Court Forces States to Make a Big Medicaid Decision. Here's How They'll Do It." *The Washington Post*. June 29, 2012. <http://www.washingtonpost.com/blogs/ezra-klein/wp/2012/06/29/the-supreme-court-forces-states-to-make-a-big-medicaid-decision-heres-how-theyll-do-it/>
2. Tribble, S.J. "Gov. John Kasich Says Medicaid Expansion Decision Will Wait." July 2, 2012. [http://www.cleveland.com/healthfit/index.ssf/2012/07/kasich\\_says\\_medicaid\\_expansion.html](http://www.cleveland.com/healthfit/index.ssf/2012/07/kasich_says_medicaid_expansion.html)
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4. "A Guide to the Supreme Court's Affordable Care Act Decision." July 2012. *The Henry J. Kaiser Family Foundation*. <http://www.kff.org/healthreform/upload/8332.pdf>
5. *The Health Foundation of Greater Cincinnati*. "Ohio Health Issues Poll: 2012." June 2012. <https://www.healthfoundation.org/docs/Health%20care%20top%20priority.%20regardless%20of%20court%20ruling.pdf>