The Supreme Court Decision on the Affordable Care Act: Forging Ahead

On June 28, 2012, the Supreme Court of the United States (SCOTUS) delivered its decision on the constitutionality of the Affordable Care Act (ACA). In a five-to-four ruling, the court largely upheld the ACA, maintaining important provisions already in place and paving the way for a fundamental transformation of the health care system. Following the decision, Grantmakers In Health held several webinars analyzing the implications of the ruling. This Issue Focus summarizes highlights from the calls and provides guidance for funders as they forge ahead with health reform implementation.

A BRIEF HISTORY

In March 2010 the state of Florida filed a lawsuit in federal district court challenging the constitutionality of the individual mandate and the Medicaid expansion of the ACA. Florida was joined by 25 other states, along with several individual plaintiffs, the National Federation of Independent Business, and other plaintiffs.

In November 2011 SCOTUS agreed to hear the case. Along with considering the issues raised by the plaintiffs, the court also reviewed two additional issues related to the individual mandate. If the court found that the individual mandate was unconstitutional, it would have to decide whether the mandate was severable, which would allow the rest of the ACA to remain in effect, or whether all or part of the law would have to be invalidated along with the individual mandate. The court also considered whether it was an appropriate time to rule on the ACA's constitutionality, or whether the decision had to wait until taxpayers incurred a financial penalty for failure to comply with the individual mandate (Kaiser Family Foundation 2012).

THE RULING

To the surprise of many, SCOTUS upheld the individual mandate. Though the court deemed the mandate to be a violation of the Commerce Clause[1], it also found that the financial penalty levied on those choosing not to purchase health insurance was in effect a tax, which Congress has the authority to impose.

The court substantially limited the law's expansion of Medicaid to individuals in families earning up to 133 percent of the federal poverty level. A majority of the court agreed that Congress had exceeded its constitutional authority by threatening states with the loss of existing federal payments, should they choose not to expand participation. As a result, the authority of the Secretary of the U.S. Department of Health and Human Services (HHS) to withhold federal Medicaid funding from states that elect not to expand their programs was circumscribed (Liptak 2012).

LOOKING AHEAD

While the Supreme Court decision has allowed supporters to breathe a sign of relief, it also signals the start of new political and operational challenges (Perry 2012).

Opponents of the law may find opportunities to act in the months leading up to and following the federal election. By the end of the year, Congress will have to address the expiration of the Bush and Obama tax cuts, across-the-board budget cuts, and the federal debt ceiling, all of which could have serious implications for implementation. Several governors have indicated refusal to expand Medicaid coverage and have vowed to fight the law. Republican presidential nominee Mitt Romney has promised to repeal and replace the ACA if elected.

Legal challenges will also continue. For example, 23 lawsuits have been filed across the country challenging the ACA's requirement that religiously affiliated institutions, such as schools and hospitals, provide insurance coverage for birth control and other contraceptives. It is also expected that opponents will bring suit against the federal government, challenging its authority to offer subsidies in the federally operated health insurance exchanges.

The financial sustainability of expanding state Medicaid programs, even with significant federal support, is also a concern, and many states have yet to commit to expanding their programs. Under the ACA, states are offered a substantial financial incentive to expand their Medicaid programs to low-income individuals: the federal government will provide 100 percent of the cost of covering people made newly eligible for Medicaid for the first three years (2014-2016) and no less than 90 percent on a permanent basis (Angeles 2012).

Operationally, the task ahead is tremendous. Only 15 states have been active in designing health insurance exchanges, and these states will need to strive to meet upcoming deadlines. For the states that held back from making decisions, a monumen-

[1] The Commerce Clause, Article I Section 8 Clause 3 of the Constitution of the United States, grants Congress the power to regulate commerce with foreign nations, among the states, and with Indian tribes (Legal Information Institute 2012).

tal task lies ahead. Exchanges are required to be fully operational by January 1, 2014, and HHS will evaluate their readiness one year prior to opening. Given these fast-approaching deadlines and that most states' legislative sessions have come to a close, regardless of their progress to date states will confront serious challenges in making necessary policy and implementation decisions.

A ROLE FOR HEALTH FUNDERS

There are several ways that health philanthropy can continue to support and propel health reform implementation.

- ***Medicaid*** – By making Medicaid expansion optional, the Supreme Court ruling potentially leaves millions of low-income individuals without access to coverage (Jost and Rosenbaum 2012). Comprehensive state-level data about the health and cost benefits of expanding state Medicaid programs will be crucial for policymakers as they weigh the pros and cons of their options. Philanthropy can support the production of state-level data and can also convene key stakeholders to examine the implications of expansion and its alternative for state budgets. Health funders can also help create and spread strong messages on how to shift the dialogue about Medicaid expansion away from the negative rhetoric to one that focuses on the benefits for states' citizens. Strong advocacy may help to turn the tide.

  Legal challenges to the Maintenance of Effort (MOE) requirement, which prohibits states from reducing eligibility levels for Medicaid and the Children's Health Insurance Program until the ACA is implemented, are also very real. Philanthropy can support advocacy to thwart any attacks on the MOE provision to ensure that recent gains in coverage are not eroded.

- ***Implementation Challenges*** – States are under tremendous pressure to establish health insurance exchanges and will require significant support to design, implement, and evaluate them. Philanthropy can assist state agencies as they make difficult policy decisions. In addition to providing direct support, health foundations can consider offering their resources to help states access the billions of dollars in federal funds earmarked for state-level ACA implementation.

- ***Women and Children*** – Women and their families stand to benefit greatly from the ACA through increased access to coverage, new health insurance reforms, and free preventive care services. As states begin to make decisions regarding health insurance exchanges and Medicaid expansion, philanthropy can provide technical assistance, research and analyses, and direct financial support for implementation activities. For funders focused on women's health, access to affordable reproductive health services will remain an issue. Insurance plans participating in state-based exchanges will be required to cover a minimum set of services, defined as "essential health benefits," and the ACA explicitly prohibits states from including abortion in any essential benefits package.

- ***Disparities*** – The ACA makes significant inroads toward reducing health disparities by expanding insurance coverage to vulnerable populations, including mental health and substance use disorder services in essential benefits packages, focusing on preventive services, and ensuring parity between medical benefits and mental health/substance abuse benefits. Health funders will want to keep a watchful eye on challenges that undermine these provisions. Health funders can support interest area advocacy to ensure that prevention and mental health/substance abuse services are included in plans offered through the exchanges.

- ***The Safety Net*** – The affordability of health care services will remain an issue for a huge segment of the population. Philanthropic support will be needed to sustain the current safety net in order to help provide health care for families who are not eligible for coverage under Medicaid or through the exchanges. Small providers will need help to expand capacity and provide continued coverage. Foundation assistance could take the form of support to cover basic operating costs, professional development, or strategic planning.

- ***Outreach and Enrollment*** – The ACA provided HHS with limited financial resources to conduct outreach and marketing campaigns. Health funders can support state agencies and health advocates that are crafting educational campaigns on what certain populations stand to gain from health reform, and specifics on enrolling in state health insurance exchanges. Funders can also work with the federal government and the exchanges to ensure that the enrollment process is straightforward and user-friendly.

- ***Delivery System Transformation*** – In the current fiscal climate, many states have neither the financial nor the personnel resources to invest in improvements that will yield long-term changes. Improving the way health care is delivered and achieving costs savings, however, are areas where philanthropy has already made significant contributions and can continue to make a difference. These undertakings require long-term commitments and ongoing communication, collaboration, and convening.

CONCLUSION

The Supreme Court decision on the ACA is an enormous milestone toward achieving a transformed health care system. With upcoming budget negotiations, the federal election, and battles over the Medicaid expansion, however, the debate over health care reform is far from over. Health funders can continue to support advocacy, fund research on the fiscal implications of state Medicaid expansion efforts, and help facilitate and evaluate delivery system changes that will help realize the vision of the ACA.

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