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Issue: # 2

March 23, 2011



Happy Birthday PPACA!

Today, March 23, 2011, the Patient Protection and Affordable Care Act (PPACA) celebrates its first birthday. Let's take this opportunity to share a piece of cake and review 2 big PPACA questions.

Is PPACA going to be repealed?

PPACA is still law. Polls show that Americans are generally confused about the congressional efforts to repeal PPACA. However, the legislation was *not* repealed in January. The Republican majority House voted (245-189) in favor of repeal on January 19th. However, the Democrats still control the Senate and the White House, so outright repeal before the completion of the 2012 term is extremely unlikely. The more interesting aspect of the repeal effort is to consider the components of PPACA that House Republicans seemed anxious to amend and/or repeal. This may provide some insight into where they will focus future efforts or even a sneak peak into 2012 campaign issues. Amendments to the individual mandate, minimum medical loss ratios, and funding for state run exchanges amassed the most support in the House.

Is the individual mandate under PPACA constitutional?

27 states have filed or joined lawsuits challenging the constitutionality of the healthcare law. The constitutional question is whether the federal government's authority under the commerce clause is broad enough to encompass enforcement of economic *inactivity*. To date, the federal district courts have split in their decisions and appeals are

pending. Unless all of the federal circuits that hear the appeals reach the same position, it seems very likely that this issue will ultimately be resolved by the U.S. Supreme Court. If the individual mandate is deemed unconstitutional it will likely result in the reconsideration of other aspects of the law by Congress. In particular, it is very likely that the prohibition of pre-existing condition limitations would need to be evaluated since the individual mandate was the mechanism for creating (near) universal coverage. Without universal coverage, health plans would be subject to significant adverse risk selection if they could not limit their exposure to pre-existing conditions.

One notable federal district court decision was issued by Judge Roger Vinson of Florida who declared the individual mandate and the entire PPACA law unconstitutional. His ruling stated "Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void." This finding has not been supported in any of the other decisions, all of which have either (a) upheld the mandate or (b) deemed it unconstitutional but severable from the other provisions of PPACA.

PPACA's first year has definitely been interesting. In fact, we may have as many questions today about healthcare reform as we did one year ago. But whether you agree or disagree with the legislation, we need to continue preparing for PPACA as the appeals move forward and the dramatic changes of 2014 (mandates, exchanges, subsidies, vouchers, and surcharges) loom closer.

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