

Healthcare Reform Update: Week of September 19

Fourth Circuit Rules on PPACA Cases

On September 8, 2011, a 3-judge panel of the U.S. Court of Appeals for the Fourth Circuit dismissed, on procedural and jurisdictional grounds, two cases challenging the individual mandate provision in the Patient Protection and Affordable Care Act (PPACA). The individual mandate, which is effective in 2014, requires individuals to have health coverage or pay a tax penalty. In *Virginia ex rel. Cuccinelli v. Sebelius*, the panel held that Virginia lacked "standing" to challenge the constitutionality of the individual mandate and instructed the district court to dismiss the case. The panel found that Virginia's Attorney General, Kenneth Cuccinelli, lacked standing to challenge PPACA's individual mandate because only the residents of Virginia are affected by the requirements (states are generally barred from suing the federal government on behalf of their citizens).

In *Liberty University Inc. v. Geithner*, which challenged the individual mandate and the employer play-or-pay mandate penalty, the Fourth Circuit found it lacked jurisdiction to hear the case. The panel held that the suit constitutes a pre-enforcement action seeking to restrain the assessment of a tax and the Anti-Injunction Act prevents federal courts from deciding the legality of a tax or other exaction that has not yet been collected. The appellate court vacated the district court's decision that had upheld the constitutionality of the individual mandate. The court did not address the constitutional merits of either case.

Regardless of the Fourth Circuit's ruling, there is already a split in the circuits regarding the constitutionality of PPACA's individual mandate. The Eleventh Circuit Court of Appeals (Alabama, Georgia, and Florida) ruled in *State of Florida, et al v. U.S. Dept. of HHS* that the individual mandate was unconstitutional. The U.S. Court of Appeals for the Sixth Circuit (Kentucky, Michigan, Ohio and Tennessee) had earlier held in *Thomas More Law Center v. Obama* that PPACA's individual mandate is a valid exercise of congressional authority under the U.S. Constitution's Commerce Clause.

Commentators agree that the U.S. Supreme Court is likely to take up the consideration of PPACA in the next Supreme Court session and a decision is expected by June 2012.

Background

The Fourth Circuit heard an appeal brought by the Department of Justice on the lawsuit filed by Virginia's Attorney General Kenneth Cuccinelli. Immediately following the enactment of PPACA, Cuccinelli filed suit against the federal government citing a conflict that existed between state law and PPACA in regards to the requirement that individuals have health coverage. District Judge Henry Hudson for the U.S. District Court for the Eastern District of Virginia ruled in favor of the state's constitutional challenge to the individual mandate.



The Fourth Circuit Court of Appeals also heard the appeal by Liberty University which had its lawsuit dismissed by the U.S. District Court for the Western District of Virginia. Liberty University had challenged the constitutionality of the individual and employer insurance mandates under PPACA but on November 30, 2010 Judge Norman K. Moon issued a ruling upholding PPACA and granting the government's request to dismiss the lawsuit.

The Fourth Circuit includes Virginia, Maryland, West Virginia, North Carolina and South Carolina.