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AAP works to protect Affordable Care Act as Supreme Court hears challenges

Although two years have passed since the Affordable Care Act became law, work to protect its strong child health provisions is far from over. Legal challenges to the health reform law's constitutionality have advanced to the highest level of judicial review, with the U.S. Supreme Court set to hear an unprecedented five and a half hours of oral arguments later this month.

In advance of what could serve as the most significant medical ruling in the history of the Supreme Court, the pediatric voice is far from silent. The Academy has signed on to eight amicus curiae, or "friends of the court," briefs throughout the litigation process in support of the health reform law; submitted public comments to more than 50 rules, regulations and other guidance released by federal agencies to shape the law's provisions; and has urged Congress to stop efforts to defund and repeal aspects of the law.

Since the Affordable Care Act became law, 26 lawsuits have been filed in federal district courts challenging its constitutionality, six of which were heard at the U.S. circuit court level. Five of these circuit court rulings were appealed to the Supreme Court, which agreed to hear only one — *Florida et al. v. Department of Health and Human Services*.

This suit — commonly referred to as the multistate lawsuit — was filed in Florida by the state's attorney general and later joined by 25 additional state attorneys general and the National Federation of Independent Business. The suit argues that the law is unconstitutional and has led the Supreme Court to focus its review on four areas: the law's individual mandate, its proposed Medicaid expansion, the concept of severability and the Tax Anti-Injunction Act.

Beginning on March 26, lawyers representing both sides of the multistate case will summarize their positions before the nine justices of the Supreme Court in a process known as oral arguments.

Is the fine for not buying insurance a tax or penalty?

The first day of these arguments will provide an hour of debate on whether the fine individuals are required to pay under the law if they fail to purchase health insurance by 2014 is considered a tax or a penalty. If the court decides that the fine is a tax, its consideration of the provision would fall under the Tax Anti-Injunction Act, which became law in 1867. This statute precludes federal courts from hearing tax litigation cases until after the tax is levied and a prospective plaintiff refuses to pay it.

Since the individual mandate would not go into effect until 2014, the soonest the Supreme Court could rule on the issue would be after April 2015, when individuals would have to include the penalty within their federal tax returns.

Should the Supreme Court decide the Tax Anti-Injunction Act applies to the individual mandate, the case likely would take much longer to hear as it winds its way through district and circuit court consideration before finally being examined — likely in 2017 — by the Supreme Court.

Is it constitutional to require people to buy health insurance?

Oral arguments will continue on March 27 with two and a half hours of debate on the individual mandate's constitutionality. Under this provision, all legal U.S. residents are required to obtain health insurance beginning in January 2014 or pay a penalty. Individuals meet the requirement if they already have insurance, so for the vast majority of U.S. residents, no fine/tax will be levied under this provision.

The plaintiffs in the multistate suit argued before the Florida federal district court that Congress does not have the constitutional authority to require people to purchase health insurance. Even though many other courts did not reach this conclusion, this district court agreed, ruling the mandate (and therefore the rest of the law) unconstitutional. The U.S. Department of Justice appealed the case to the 11th Circuit Court, which also found the individual mandate unconstitutional, the only U.S. Circuit Court of Appeals to do so.

If part of law is unconstitutional, should the entire law be struck down?

On March 28, the third and final day of oral arguments, the Supreme Court will hear 90 minutes of debate on how much of the law should be struck down if the mandate is found unconstitutional, based on severability. Unlike most other laws, the Affordable Care Act does not contain a severability clause, which would have clarified that even if one provision of the law is illegal, other provisions would not be affected.

If the Supreme Court rules that the individual mandate (or any other provision) is unconstitutional but finds "implied severability," other components of the law still could be implemented as passed. If it reaches the severability issue, the Supreme Court would decide whether to leave the rest of the law intact, strike down the entire law or strike down certain other provisions in the law.

"...[T]he Affordable Care Act is a significant achievement for the patients that their members serve because it ensures greater protection against losing or being denied health insurance coverage and it promotes better access to primary care and to wellness and prevention programs. The Act's goal of optimizing health insurance coverage for the greatest number of people permits health care professionals to place their attention on the most important thing — the patient's well-being and healing — rather than on economic considerations."

— amicus curiae brief supporting individual mandate

Should Medicaid be expanded?

The final issue to be argued before the Supreme Court will be an hour discussion on the law's proposed Medicaid expansion to families with incomes up to 138% of the federal poverty line (approximately $30,000 for a family of four). The plaintiffs in the multistate suit have argued that forcing states to expand their Medicaid programs is a coercive act by the federal government and that the Medicaid expansion itself is unconstitutional under the limits of federal power granted in the Constitution. This argument has not been successful in lower court challenges: The Florida district court and the 11th Circuit Court both upheld the Medicaid expansion as constitutional, even though they both ruled that the individual mandate was not.

Once oral arguments conclude at the end of the month, the Supreme Court has until the end of its term to issue a ruling, which is expected in late June or early July.

AAP judicial advocacy

Throughout the litigation process, the Academy has been at the forefront of supporting the law's Medicaid expansion and individual mandate. Recently, the Academy also weighed in on severability to defend the myriad programs in the Affordable Care Act that could be struck down if a portion of the law is found unconstitutional. The Academy recently joined amicus curiae briefs to the Supreme Court on three of the four issues in conjunction with other clinician and advocacy organizations. The Academy did not file a brief on the Tax Anti-Injunction Act.

The Academy also joined five district and appellate court briefs over the last two years, arguing that the Affordable Care Act's individual mandate requirement is constitutional and would improve children's health by preserving parts of the law that protect children, such as the ban on pre-existing condition exclusions.

AAP leaders also have helped amplify the pediatric benefits of the Affordable Care Act in the media. As the district level court proceedings advanced in the spring of 2011, AAP leaders wrote eight opinion editorials in support of the law's constitutionality and child health protections.

This judicial advocacy push comes after years of work by AAP leaders to include strong child health provisions in the Affordable Care Act and after legislative and executive branch advocacy to ensure that the law's provisions are funded, preserved and implemented with children and pediatricians in mind.

For more information on the Academy's work on health reform at the federal level, visit http://Feder alAdvocacy.aap.org.