



## NEWS ALERT

# FLORIDA JUDGE STRIKES DOWN THE INDIVIDUAL MANDATE DECLARES THE PATIENT PROTECTION AND AFFORDABLE CARE ACT UNCONSTITUTIONAL

February 2011

*ON JANUARY 31, 2011 SENIOR UNITED STATES DISTRICT JUDGE ROGER VINSON RULED THE INDIVIDUAL MANDATE AS WELL AS THE ENTIRE PATIENT PROTECTION AND AFFORDABLE CARE ACT UNCONSTITUTIONAL. WHAT LIES AHEAD?*

### THE LEGAL CHALLENGES

In the *State of Florida v U.S. Department of Health and Human Services* lawsuit, 26 states<sup>1</sup> (6 states joined the original lawsuit after the November elections) claim that certain provisions of the Affordable Care Act (ACA) are unconstitutional. Similar to the other high profile lawsuit, the *Commonwealth of Virginia v Sebelius*, this action claims that the individual mandate, scheduled to become effective in 2014, violates the Constitution's Commerce Clause citing that you cannot regulate an individual's "inactivity" (the decision not to buy insurance) as commerce.

The Judge agreed with the states' claim. He noted that "I must reluctantly conclude that Congress exceeded the bounds of its authority in passing the act with the individual mandate. That is not to say, of course, that Congress is without power to address the problems and inequities in our health care system. The health care market is more than one-sixth of the national economy, and without doubt Congress has the power to reform and regulate this market. That has not been disputed in this case. The principal dispute has been about how Congress chose to exercise that power here. Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void."

### THE IMPACT ON HEALTHCARE REFORM EFFORTS

The ruling certainly throws a monkey wrench into the ACA implementation timeline. Many provisions have already been enacted and plan sponsors have modified

plan designs to comply with new requirements. The States as well as the provider and insurance communities have also taken steps to ensure compliance with the ACA. At this time, it is generally believed that implementation will continue, as planned, but we will need to monitor the reaction from the state and federal governments, Congress, the provider and insurance communities and pay close attention to the legal maneuverings as we go forth to the Supreme Court.

### WHAT'S NEXT FOR ACA?

The Justice Department stated that it will appeal the ruling to the 11<sup>th</sup> Circuit Court of Appeals in Atlanta and is determining what other steps may be necessary including seeking a stay while the appeal is pending. It's fully expected that the validity of the individual mandate and the Affordable Care Act will eventually be decided by the United States Supreme Court. There has been discussion that, given the enormity of the ruling and the need to bring this to a conclusion, it is possible the case may be brought directly to the Supreme Court and bypass the Appellate division. This is an option, however, both sides must agree to the process. It will be interesting to see which of the many ACA lawsuits the Supreme Court will actually hear. Many believe it will be the *State of Florida v U.S. Department of Health and Human Services*.

As a note, the *Commonwealth of Virginia v Sebelius* decision, issued on December 13, 2010, was appealed by the Justice Department. The 4th US Circuit Court of Appeals granted a request for expedited process from both parties and a court hearing is currently scheduled between May 10 and May 13, 2011 in Richmond Virginia. Ken Cuccinelli, the Virginia District Attorney may also appeal the decision directly to the Supreme Court.

*We will continue to monitor the healthcare reform landscape and bring you developments as they unfold.*

# Insights

## ADDITIONAL INFORMATION

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## Footnotes:

<sup>1</sup> The 26 plaintiff states are: Florida, Alabama, Alaska, Arizona, Colorado, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, Texas, South Carolina, South Dakota, Utah, Washington, Wisconsin, and Wyoming.