



HEALTH CARE REFORM OUR UPDATE & ADVICE

HEALTH CARE REFORM LIKELY HEADED TO U.S. SUPREME COURT OPPONENTS ARGUE INDIVIDUAL MANDATE IS UNCONSTITUTIONAL

IS HEALTHCARE REFORM LEGAL?

Over a year after initial provisions were implemented and with key provisions scheduled to start in 2014, the future of the 2009 landmark health care reform is uncertain. As an update we are pleased to provide you with this edition of our Health Care Reform newsletter.

Attorneys for 26 states, led by Florida, argued that the law's provision that forces people to buy health insurance or pay a penalty is unconstitutional. The Administration disagrees.

Florida's lawsuit challenging the constitutionality of the federal health care law moved to a federal appeals court Wednesday, June 8th, where judges questioned the Administrations lawyers and questioned whether Congress can force people to buy health insurance. Many believe that the debate will end up in the United State's Supreme Court and that that Court will decide if the mandate is legal.

The 26 states and the National Federation of Independent Business say the law's "individual mandate" *violates the commerce clause of the Constitution* by requiring people to buy health insurance or pay a penalty. The Administration's lawyer, Solicitor General Neal Katyal, sees it differently.

"People are seeking this good already in untold numbers. The good of health care," Katyal said during his arguments before the U.S. Court of Appeals for the 11th Circuit. *"It is purely financing,"* Katyal said.

"It's about failure to pay. Not about failure to buy. The 50 million people who don't have insurance in this country "end up in emergency rooms, unable to pay for their care, and that drives the cost up for everybody else".

Attorney Paul Clement, representing the states, conceded that government can compel people to buy insurance, but not until they need medical care. Before that, "they're not engaged in commerce," Clement argued. *"They're sitting in their living rooms."*

During the June 8th hearing judges repeatedly questioned attorneys about Congressional powers and whether the mandate to purchase insurance can be "severed" from the entire federal law and considered on its own.

The question is important because **a Florida federal judge in January ruled that the individual mandate is unconstitutional and that the entire federal law is invalid.** The federal government appealed the ruling.



Judges Marcus and Hull wanted to know which pieces of the new law would be affected *if* the individual mandate was deemed unconstitutional but the rest of the law was not. They also questioned the necessity of the mandate if millions of the uninsured will be taken care of through pieces of the legislation that expand Medicaid, allow children up to age 26 to remain on their parents' insurance, and require insurance companies to cover pre-existing conditions.

Katyal, the Solicitor General, said the provision is essential to generate enough revenue for insurance companies who, under the new law, will bear additional costs for new requirements of broader coverage, covering pre-existing conditions and other provisions.

Chief Judge Dubina said he had read every Supreme Court case on the topic of the commerce clause to prepare for the day and then went on to say; *"There's no case out there*

just like this." *"If we uphold the individual mandate, are there any limits on Congressional power?"*

Hull later wondered how collecting the fee, which if unpaid has no interest, liens or criminal penalties associated with it, would be any easier than collecting unpaid medical bills and questioned Katyal on **what will stop Congress from requiring people to buy certain cars or types of energy** if the courts uphold the health care law.

It's not yet clear when the court will issue a ruling but most observers believe the question, and thus the very foundation of the new law's funding, will eventually be considered by the U.S. Supreme Court. Please know that the professional agents and underwriters here at Morris & Reynolds will keep you informed on the evolution of the health care reform law including the legal challenges it faces.



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