

## Supreme Court Divided on Health Care Reform

The Supreme Court recently heard oral arguments regarding constitutional challenges to the Patient Protection and Affordable Care Act (PPACA). The oral arguments extended for three days (March 26-28, 2012). The primary focus of the Supreme Court's review concerned the constitutionality of the PPACA's individual mandate, which requires consumers obtain health insurance by 2014, or face a penalty. The Court also discussed the applicability of federal tax law and state Medicaid expansion.

On the first day of oral arguments the Court evaluated whether the Anti-Injunction Act prevents challenges to the Affordable Care Act. The Anti-Injunction Act generally prohibits pre-enforcement legal challenges to the assessment and collection of taxes. Because the PPACA requires consumers to purchase health insurance or pay a penalty with their tax return, the Court discussed whether the Anti-Injunction Act deprives courts of jurisdiction to hear challenges regarding the individual insurance mandate. Neither the government nor opponents of the PPACA asserted the Anti-Injunction Act applied.

During oral arguments, the Court was skeptical of the Anti-Injunction Act's application. Justices Breyer and Ginsburg suggested the penalty associated with the individual mandate is not a "tax" within the meaning of the Anti-Injunction Act, given that the individual mandate is not intended to be a revenue source.

The second day of oral arguments focused on the constitutionality of the individual health insurance mandate, which requires most Americans to purchase health insurance by 2014. The discussion of constitutionality fixated on how to characterize the decision not to purchase insurance coverage. The government asserted the individual mandate is constitutional because it is a valid exercise of Congress' power under the Commerce Clause. Opponents to the law argued the individual mandate does not regulate commerce; rather, it forces people into the stream of commerce by requiring them to purchase health care coverage or pay a penalty.

The Court's opinion was split. Some Justices suggested the individual mandate was a permissible exercise of Congress' authority to regulate interstate commerce, while others felt the individual mandate would make it difficult to draw a "limiting principle" beyond which the government cannot go. Justice Kennedy stated there was a "very heavy burden of justification" to show where the Constitution authorizes Congress to change the relation of the individual to the government. Importantly, however, both Justice Kennedy and Roberts alluded that even if the mandate forced consumers into commerce to subsidize

health insurance, the health insurance market may be unique enough to justify that unusual treatment.

On the third day of oral arguments, the Court addressed two issues:

- What parts of the PPACA will survive if the individual mandate is declared unconstitutional?
- Is the PPACA's requirement that states expand Medicaid eligibility constitutional?

The government argued that only two provisions of the law— a prohibition against insurers discriminating against people with pre-existing conditions and a limitation on how insurers set rates— depended on the mandate and asserted the rest of the law should stand. Several

*continued on page 2*



## Uninsured Rate for 18- to 25-Year-Olds Levels Off

The Gallup-Healthways Well-Being Index survey found the percentage of 18- to 25-year-old Americans without health insurance has plateaued at the 24 percent range, after declining from about 28 percent after the health care law provision allowing adults up to age 26 to stay on a parent's plan was implemented.

The uninsured rate for 18- to 25-year olds remained at 24 percent in the first quarter of 2012. The uninsured rate for this group first began to decline in the fourth quarter of 2010, decreasing to 26.3 percent from 28.0 percent in the third quarter of that year. The rate then decreased to 24 percent in the first quarter of 2011 and has remained around that level since.

The survey also stated that the uninsured rate for 26- to 64-year olds also leveled off, with one in five Americans in this age group reporting not having health insurance for the past year.

Gallup-Healthways Well-Being Index also showed the percentage of seniors who are uninsured has remained

the same over the past four years. Very few adults aged 65 and older report not having health insurance, likely because they qualify for Medicare.

The Well-Being Index indicated the percentage of all adults who get their health insurance through an employer has declined to 44.5 percent. The percentage of adults who have a government plan through Medicare, Medicaid or military/veterans' benefits has increased over time, now at 25.3 percent. The percentage of Americans who say they get their health insurance through "something else," which could mean they purchase it themselves, has held steady near 11 percent over the years.

According to results from the Gallup-Healthways Well-Being Index survey, the percentage of all U.S. adults without health insurance was 17.3 percent in the first quarter of 2012, similar to its levels for the past year, although clearly lower than in 2008, 2009 and 2010, before the health care law provision took effect.

## HHS Announces One-Year ICD-10 Delay

On April 9, 2012, the Department of Health and Human Services (HHS) announced a proposed rule that will delay required compliance of ICD-10 by one year – from Oct. 1, 2013 to Oct. 1, 2014. ICD-10, short for the International Classification of Diseases, 10th Edition diagnosis and procedure codes, will include new procedures and diagnoses, and improve the quality of information available for quality improvement and payment purposes.

HHS announced in February a delay in the deadline for compliance with ICD-10, but did not specify the length of the delay. The proposed change in the compliance date for ICD-10 will give providers and other covered entities more time to prepare and fully test their systems to ensure a smooth and coordinated transition to these new code sets.

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*continued from page 1*

Justices expressed skepticism concerning whether the PPACA should be invalidated as a whole if the individual mandate was ruled unconstitutional. Justices Kennedy, Scalia, Alito and Roberts, however, considered whether any provision of the PPACA could survive without the individual mandate.

The last issue considered by the Court was the constitutionality of the PPACA's state Medicaid expansion. Twenty-six states challenged the constitutionality of the PPACA's requirement, which requires states

expand their Medicaid eligibility to cover individuals up to 133 percent of the Federal Poverty Level, starting in 2014. States argued the federal government was unconstitutionally "coercing" them into expanding Medicaid eligibility as a condition for qualifying for federal funds to help pay for Medicaid. Some Justices expressed concern whether states actually have a choice to accept the new Medicaid funding, while others appeared to reject the coercion argument.

The Justices attended a confidential

conference on March 30, 2012, to vote on the outcome of the challenges to the PPACA. It is expected the Court will issue its written decision at the end of its current term, near the end of June 2012.

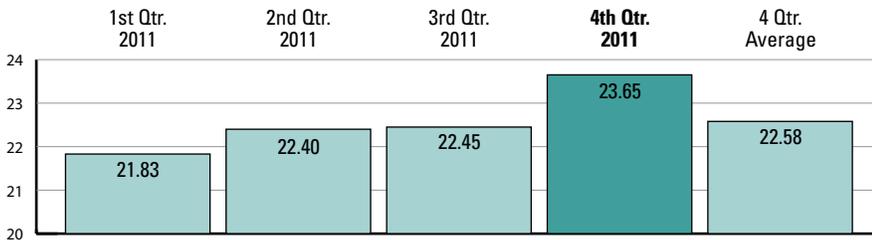
For more information on the PPACA hearings or to listen to the transcripts visit: <http://www.supremecourt.gov/docket/PPACA.aspx>.



# DATA WATCH

## Percentage of Discharge A/R Over 90 Days

Although the percentage of accounts receivable (A/R) greater than 90 days was on the rise again in fourth quarter 2011, U.S. hospitals achieved benchmark-level performance for this major financial indicator. The benchmark is to hold A/R aged greater than 90 days to 25 percent or less of total A/R. In fourth quarter 2011, U.S. hospitals reported 23.65 percent of A/R was aged greater than 90 days.



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