Florida Judge: Affordable Care Act Unconstitutional

Challenging ACA's individual mandate, 26 states involved in suit against health department.

BY ALICIA AULT

A federal judge in Florida issued a ruling on Jan. 31 that the Affordable Care Act is unconstitutional.

The ruling and the direction of his opinion were expected.

The suit was filed in March 2010 by 20 states. Another six states recently joined the suit. Two private citizens and the National Federation of Independent Business also joined the suit.

The parties challenged the law's requirement that individuals purchase health insurance and also the ACA's requirement that Medicaid eligibility be expanded to offer insurance to more Americans.

In his 78-page decision, Judge Roger Vinson of the U.S. District Court for the Northern District of Florida in Pensacola said that the individual mandate exceeds Congress' regulatory powers.

Judge Roger Vinson's decision 'puts all of the new benefits, cost savings, and patient protections that were included in the law at risk.'

"The individual mandate falls outside the boundary of Congress' Commerce Clause authority and cannot be reconciled with a limited government of enumerated powers," Judge Vinson wrote. "By definition, it cannot be 'proper.' "

Judge Vinson also ruled that the law in its entirety would have to be struck down, as the individual mandate could not be separated out from the ACA, in part because the legislation appeared to be built on a framework that required all the pieces for it to work.

"If…the statute is viewed as a carefully balanced and clockwork-like statutory arrangement [comprising] pieces that all work toward one primary legislative goal, and if that goal would be undermined if a central part of the legislation is found to be unconstitutional, then severability is not appropriate," he wrote.

While the judge agreed with the plaintiffs' argument that the mandate exceeded Congress' authority, he did not agree with the proposition that the government was overreaching through its proposed Medicaid expansion.

The plaintiffs failed to provide ample evidence of the claims, Judge Vinson ruled.

As a result, "the states have little recourse to remaining the very junior partner in this partnership," the judge wrote.

The White House characterized the ruling as outside the mainstream of judicial thinking and said that the administration would continue implementing health reform while it appeals.

During a background briefing, senior administration officials said that Judge Vinson's decision, indicating that there was no severability in this case, flew in the face of legal precedent.

And, on the White House blog, Stephanie Cutter, a senior adviser to President Obama, wrote, "This decision is at odds with decades of established Supreme Court law, which has consistently found that courts have a constitutional obligation to preserve as a much of a statute as can be preserved. As a result, the judge's decision puts all of the new benefits, cost savings, and patient protections that were included in the law at risk."

The Department of Justice issued a statement indicating that it was still analyzing the decision, but said that "there is clear and well-established legal precedent that Congress acted within its constitutional authority in passing this law and we are confident that we will ultimately prevail on appeal."

After the ruling, House Speaker John Boehner (R-Ohio) said in a statement that the decision "affirms the view, held by most of the states and a majority of the American people, that the federal government should not be in the business of forcing you to buy health insurance and punishing you if you don't."

Rep. Boehner filed a friend of the court brief on behalf of the plaintiffs.

"All parties involved should request that this case be sent to the U.S. Supreme Court for a swift and fair resolution," Rep. Boehner said in the statement.

Ron Pollack, executive director of Families USA, which filed a brief on behalf of the federal government, said in a statement, "Judge Vinson's decision is radical judicial activism run amok, and it will undoubtedly be reversed on appeal."

Mr. Pollack added that if the decision is not reversed, "it would have devastating consequences for America's families."

Most court watchers expect the case to end up at the Supreme Court.

A federal judge in Virginia also ruled against the insurance mandate in December; two other judges have upheld the ACA. ■

President Says Medical Liability Reform Is Back on the Table

BY MARY ELLEN SCHNEIDER

The issue of medical liability reform is back in the headlines since President Obama said he would consider some type of reform to curb frivolous lawsuits. But physicians say there are plenty of political obstacles to making meaningful changes to the tort system.

One of the major hurdles, according to Texas Medical Association president Susan Rudd Bailey, will be getting a bill passed by the Democratic-controlled Senate. Democrats have historically opposed capping noneconomic damages, otherwise known as pain and suffering awards, which have been at the heart of the tort reforms passed in Texas and California.

"This is no slam dunk," said Dr. Bailey, an allergist in Fort Worth.

The Texas Medical Association is one of more than 100 state and national medical organizations that have endorsed new federal legislation aimed at reducing medical liability lawsuits. The Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act, H.R. 5, is modeled after California's Medical Injury Compensation Reform Act (MICRA), which has been in place for about 30 years. The new federal legislation would place a $250,000 cap on noneconomic damages and would require that medical liability suits must be filed within 3 years of the injury in most cases.

The cap on noneconomic damages is the cornerstone of the Texas medical liability reform law enacted in 2003. The cap, Dr. Bailey said, has helped to reduce premiums and improve access for patients. For example, 90% of the state's physicians have seen their malpractice insurance rates cut by 30% or more, according to the Texas Medical Association.

In 2001– before the legislation was enacted – the number of newly licensed physicians in Texas was at a decade-long low of 2,088. By 2008, that number had risen to 3,621. And since enactment, the number of physicians practicing in previously scarce specialties including obstetrics, orthopedic surgery, neurosurgery, emergency medicine, and cardiovascular surgery has increased, according to figures from the Texas Medical Association.

Dr. Alex Valadka, a neurosurgeon at the Seton Brain and Spine Institute in Austin, said the 2003 tort law has dramatically improved the practice climate in the state. Anecdotally, Dr. Valadka says he's getting fewer calls from other physicians seeking consultations on complicated cases because there are more neurosurgeons to take on the work. Dr. Valadka said he hopes that similar reforms can be passed at the federal level, but he said he's doubtful that President Obama's vision for tort reform will look like the Texas statute.

So far, the President has been light on specifics. In 2009, as Congress was considering the Affordable Care Act, the President told the American Medical Association that he did not favor capping noneconomic damages because it can be unfair to patients.

The AMA has been pushing to get medical liability reform back at the top of the congressional agenda after it was left out of the ACA.

Dr. Ardis Dee Hoven, AMA chairwoman, recently testified before the House Judiciary Committee about the pressure physicians face from malpractice suits.

An AMA survey found that 61% of physicians age 55 and older had been sued at least once in their careers, with an average of 1.6 claims per doctor. But certain specialties, like obstetrics-gynecology and surgery, had much higher rates.

Many of the lawsuits are without merit, Dr. Hoven testified to the committee. The AMA survey found that 65% of claims were dropped, dismissed, or withdrawn. But it still cost about $20,000 per claim to defend the suits that were ultimately dropped, according to the report.

The American College of Physicians, which also supports the HEALTH Act, is calling on Congress to consider other reforms to reduce defensive medicine, such as health courts. The ACP is asking Congress to pass legislation that would allow for pilot testing of health courts on a national scale.

Health courts are a no-fault system in which cases are heard by specially trained judges with access to independent medical experts. Health court judges would be able to authorize awards based on the damages incurred. ■